

Contact: Tom Evans

**IOWA PUBLIC RADIO PUBLIC SERVICE OPERATING AGREEMENT**

**Action Requested:** Consider approval of the Public Service Operating Agreement (Agreement) between Iowa Public Radio and the Board of Regents, with the consents of the Universities Presidents.

**(Roll call vote)**

**Executive Summary:** Iowa Code §262.11 requires that agreements relating to the management of institutional property be approved by the Board of Regents by roll call vote. The proposed Public Service Operating Agreement has been reviewed by the Attorney General's Office and is recommended for approval.

**Background.** In December 2004, the Board of Regents adopted the Bornstein and Associates recommendations to consolidate the three Regent university public radio stations, which includes WSUI-AM and KSUI-FM at the University of Iowa (KSUI Radio Group); WOI AM and FM, KTPR-FM, KOWI-FM, and KWOI-FM at Iowa State University (WOI Radio Group); and KUNI-FM and KHKE-FM at the University of Northern Iowa (KUNI Radio Group) into a statewide public radio network, designated as Iowa Public Radio. The combined operations have 60 employees and revenues of approximately \$6 million (collectively the Radio Groups, comprised of the Stations). The Board further directed the university presidents, in consultation with the Board Office, to develop an implementation plan and timetable. In particular, the Board directed that an Executive Council be established and an executive director be hired.

In March 2005, the Board established the Iowa Public Radio Executive Council. Members include an appointee of the president of each of the Regent universities and two public appointees named by the Board. The purpose of the Executive Council is to make recommendations to the Board of Regents regarding all facilities and operations of the Regent universities' public radio stations. In September 2005, the Board ratified the appointment of Cindy Browne as the Executive Director of Iowa Public Radio.

On February 1, 2006, the Iowa Public Radio Executive Council submitted a report to the Board of Regents regarding Iowa Public Radio. The report outlined the Executive Council's phased action plan for Iowa Public Radio. Included in the Executive Council's report was a recommendation that Iowa Public Radio incorporate as a nonprofit corporation; and that Iowa Public Radio develop a management agreement between it and the Board of Regents for management and operation of the non-commercial educational radio stations licensed by the FCC to the Regents and Universities.

On February 28, 2006, Iowa Public Radio was incorporated under the Revised Iowa Nonprofit Corporation Act, Chapter 504 of the Iowa Code. The Articles of Incorporation of Iowa Public Radio provide that Iowa Public Radio is organized exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time, and has the primary purpose of supporting and promoting the welfare and growth of the network of public radio stations licensed to the Board of Regents, State of Iowa, and operated for the public benefit. The initial Board of Directors of Iowa Public Radio is comprised of five members; two Community Directors, representing the interest of the community; and three Licensee Directors, representing the interest of the Station Licensees, University of Iowa, Iowa State University and University of Northern Iowa.

**Operating Agreement.** The purpose of the proposed Public Service Operating Agreement is to engage Iowa Public Radio to manage the day-to-day operations of the Radio Groups on behalf of the Board of Regents and Universities consistent with FCC requirements for licensee control; and to serve as the primary fundraising entity for the Radio Groups.

The Public Service Operating Agreement provides that the Universities will continue to operate the Radio Groups on behalf of the Board of Regents through their Licensee Representative, including the determination of basic operating policies concerning personnel, programming and finances for the Radio Groups; and that the Board of Regents and Universities will provide the Radio Groups with such financial support, support services and facilities as are necessary for the continued operation and success of the Radio Groups.

Under the terms of the Agreement, Iowa Public Radio will manage the Radio Groups, including supervision of personnel, programming, technical support and administration on behalf of the Universities and assist in Radio Group operations, subject to the oversight of the Licensee Representative of the Universities. Additionally Iowa Public Radio will serve as the primary fundraising entity for the Radio Groups and coordinate and direct all fundraising efforts of the Radio Groups.

The Agreement further provides that Iowa Public Radio will manage the receipt, deposit, and expenditure of all funds and income received by it subject to the requirements of the laws of the State of Iowa; and invest and administer all funds and income, consistent with the purposes of Iowa Public Radio and the provisions of the Board of Regents Policy Manual Section 7.04 relating to the investment of Operating Funds and Endowment Funds. Deposits of funds will be limited to depositories approved for deposits of Board of Regents funds pursuant to Chapter 12C of the Iowa Code. Additionally, Iowa Public Radio will manage payables and receivables and establish systems of internal controls (and separate accounting for restricted and unrestricted gifts) in accordance with generally accepted budgeting and accounting principles based on recommendations, if any, of Iowa Public Radio's independent auditors, the Board of Regents and the State Auditor to provide internal controls over the funds, investment, accounts and other property of Iowa Public Radio.

The direct costs (management fee) of Iowa Public Radio in meeting its management and fundraising responsibilities under the Agreement will be determined in the annual budget process. The management fee will be deducted from fundraising proceeds. Any shortfall will be paid from Radio Group funds.

Iowa Public Radio will operate on a fiscal year basis ending June 30<sup>th</sup>. It will submit copies of fiscal year budgets for the Radio Groups and for itself to the Board of Regents and Universities. Budgets will be prepared in accordance with reasonable business practices, generally accepted accounting principles and Board of Regents Policy Manual Section 7.03.

Iowa Public Radio will provide the Board of Regents and Universities with:

1. monthly financial reports on Iowa Public Radio and Radio Group activities;
2. all books and records in its possession and any materials produced in connection with services under the agreement if requested by the Board of Regents, the Universities and State Auditor; and
3. a copy of its annual Form 990 Federal tax return.

Iowa Public Radio will also engage an independent public accountancy firm to conduct annual audits of Iowa Public Radio and the Radio Groups, and will provide copies of each audit report to the Board of Regents and Universities within 30 days of the completion of such audit; and will comply with all Board financial policies and the provisions Iowa Code Chapter 8F (Government Accountability – Service Contracts).

During the term of the Agreement, Iowa Public Radio will not manage additional radio stations owned by licensees of the FCC other than the Universities or the Board of Regents and will not own FCC licenses on its own behalf. Additionally, neither the Board of Regents nor the Universities will at any time delegate to Iowa Public Radio any licensee obligations mandated by the FCC.

The initial term of the Agreement is for 6 years, or until June 30, 2013, (renewal date of Radio Groups FCC licenses) and includes an automatic renewal clause.

The Agreement may be terminated or suspended for breach by either party; and terminated by the Board without cause or for failure of Iowa Public Radio to comply with the provisions of Iowa Code Chapter 8F.

In the event of termination or expiration of the Agreement, Iowa Public Radio will return to the Board of Regents and the Universities the exclusive access and control over all Station Facilities (including improvements and additions). Additionally, all monies and property in Iowa Public Radio's possession or control, including all funds raised or accepted at the time of or received subsequent to termination will be returned to the Board of Regents and Universities. An indemnification clause is included in the Agreement.

A copy of the Agreement is available from the Board Office.