



Board of Regents

Ted Strickland, Governor
Eric D. Fingerhut, Chancellor

University System of Ohio

DIRECTIVE 2009-003
January 16, 2009

Re: A JOINT USE AGREEMENT BETWEEN OWENS STATE COMMUNITY COLLEGE AND THE SYLVANIA AREA FAMILY SERVICES, INC.

H.B. 496 includes a specific capital appropriation of \$250,000 to Owens State Community College for capital improvements to the Sylvania Area Family Services, Inc. facility. Sylvania Area Family Services will own and operate the facility to receive state capital funds.

The Ohio Board of Regents' Rule 3333-1-03 requires that a joint use agreement between the institution for which funds are appropriated and the organization which will own or lease and operate facilities to be constructed or improved with such funds must be approved by the Chancellor. Owens State Community College and the Sylvania Area Family Services, Inc. presented a joint use agreement for approval.

The agreement conforms to Ohio Administrative Code as follows –

- The format of the agreement is appropriate
- The commitment extends no less than fifteen years
- The value of use to Ohio higher education institutions is reasonably related to the amount of the appropriation

Agency staff reviewed the agreement and posted its recommendations to the Regents' web site for purposes of providing a period of public comment before final approval by the Chancellor. The materials posted for comment and the joint use agreement are attached to this document.

Based on my review of staff recommendations, I hereby approve the Joint Use Agreement between Owens State Community College and the Sylvania Area Family Services, Inc.

This directive will take effect immediately.

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

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Joint Use Agreement between Owens State Community College and the Sylvania Area Family Services, Inc.

BACKGROUND

H.B. 496 includes a specific capital appropriation of \$250,000 to Owens State Community College for capital improvements to the Sylvania Area Family Services, Inc. facility. Sylvania Area Family Services will own and operate the facility to receive state capital funds. As required by Ohio Administrative Code section 3333-1-03, Owens State Community College submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support the construction of a community resource facility to be located at 5440 Marshall Road, Sylvania, Ohio.

REVIEW

Throughout the entire term of the agreement, Sylvania Area Family Services will provide the following to Owens –

- 1) Shared Use – Sylvania Area Family Services and Owens shall share in the use of the facility for purposes including, but not limited to, accommodations for meetings and gatherings for business, social, educational, and welfare purposes for the residents of their service areas in the community. Owens shall have the use of the facility at no cost.

The agreement conforms to Ohio Administrative Code as follows –

- The format of the agreement is appropriate
- The commitment extends no less than fifteen years
- The value of use to Ohio higher education institutions is reasonably related to the amount of the appropriation

RECOMMENDATION

Staff recommends Chancellor approval of the Joint Use Agreement between Owens State Community College and the Sylvania Area Family Services, Inc.

**Joint Use Agreement Worksheet Between
Owens Community College and
Sylvania Area Family Services, Inc.**

The Ohio Board of Regents
November 5, 2008

Direction: The purpose of this worksheet is to enable a campus to demonstrate how the value of the uses that will be derived from a Joint Use Agreement is reasonably related to the value of the state capital appropriation made to the partner entity. Section I is to be filled out by the staff of the Board of Regents. Sections II and III are to be filled out by the partner campus.

Example: A campus wishes to enter into a Joint Use Agreement with a 501(C)(3) entity for a state appropriation of \$ 250,000. The annual debt service paid by the state on this appropriation is about \$ 19,219 per year, for 20 years. To demonstrate that the value of the uses of the facility is reasonably related to the state appropriation, the sum of the campus' educational uses of the facility should roughly equal \$ 19,219 per year for 20 years.

Section I: State appropriation information.

- | | |
|--|-------------------|
| 1. Amount of state appropriation provided: | <u>\$ 250,000</u> |
| 2. Estimated annual debt service on the appropriation: | <u>\$ 19,219</u> |
| 3. Term of the state bond, in years: | <u>20</u> |

Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. Community Marketing Events	\$ 6,406	15
b. Campus Business Meetings	\$ 6,406	15
c. Staff and Faculty Retreats	\$6,406	15
d. Academic Programs Events	\$6,406	15
e.		
f.		

(* List additional uses on separate page as needed.)

Section III:

On a separate page, explain how each use listed in Section II was valued for this analysis.

For the purpose of establishing "in-kind" value for the aforementioned appropriation, use of the proposed facility and accommodations was considered. The facility would provide sufficient space and furnishing to meet with community groups, employee groups, prospective student enrollees as well as existing students so as to market the services and programs of the College. With a reasonable expectation of six of each of the aforementioned events, it was estimated that the value of each events would be approximately \$1,067.75. This estimate is based upon the as standard room rental fee and set up fee that the College charges for use of similar space on campus. This reasonable value applied to the collective total number (24) of College events would satisfy the required "in-kind" value.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Owens State Community College/Sylvania Area Family Services, Inc.
Project Title Community Resource Facility
Capital Bill HB 496 Item C38812 Sylvania Family Services

- Yes 1. Is the facility to be built/improved identified specifically by address or location?
- Yes 2. Does the non-profit organization now own the property or have a long term lease? If not, when will it control the property?
- Yes 3. Does the agreement provide for use of the facility for at least 15 years from the time that it is ready for occupancy?
- Yes 4. If the agreement is terminated, is there a pro rata reimbursement clause? Is the reimbursement formula correct?
- Yes 5. Will funds be used only for capital improvements and not operating costs?
- Yes 6. Will the non-profit hold the institution harmless for all operation/maintenance costs?
- Yes 7. Will the non-profit comply with federal, state and local laws and rules?
- Yes 8. Is the non-profit required to competitively bid as outlined generally in ORC Chapter 153 (published ads, sealed bids, public opening, award to lowest responsive and responsible bidder, etc.)?
- Yes 9. Does the contract provide for a 1.5% administrative fee for the institution?
- Yes 10. Does the agreement require that amendments be approved by the Chancellor of the Board of Regents?
- Yes 11. Is a drawdown schedule or payment procedure included?
- Yes 12. Are the extent and nature of spaces and uses adequately described?
- Yes 13. Are the terms and conditions of use of the facility described?
- Yes 14. **Has the institution demonstrated that the value of the use of the facility is reasonably related to the amount of the appropriation? (See attached worksheet)**
- Yes 15. Is the facility insured?

**JOINT USE AGREEMENT
BETWEEN
SYLVANIA AREA FAMILY SERVICES, INC.
AND
OWENS STATE COMMUNITY COLLEGE**

THIS JOINT USE AGREEMENT (herein the "Agreement") is made this 1st day of November, 2008 by and between **OWENS STATE COMMUNITY COLLEGE**, a political subdivision of the State of Ohio created and existing under Chapter 3358 of the Ohio Revised Code (herein "Owens"), and the **SYLVANIA AREA FAMILY SERVICES, INC.** a non-profit organization within the State of Ohio (herein after "SAFS").

RECITALS

WHEREAS, pursuant to House Bill No. 496 of the 127th General Assembly (Section 301.50.10), the Ohio General Assembly has appropriated funds in the amount Two hundred and Fifty Thousand Dollars (\$250,000) (herein the "Funds") for the use by Owens towards the construction and development by the SAFS of a community resource facility, to be located on 5440 Marshall Road, Sylvania, Ohio 43560 (herein the "Project"); and

WHEREAS, Owens, through this Agreement, agrees to commit the Funds towards the construction of the Sylvania Area Family Services community resource facility to be located at Marshall Road, Sylvania, Ohio 43560 (herein the "Facility") to be used as is more particularly described herein; and

WHEREAS, the new Facility will replace the existing shelter house in order to provide an improved facility, which will be used for food distribution, community service programs, youth diversion and after school programs, an other public gatherings; and

WHEREAS, the granting of the Funds by Owens to SAFS to construct the Facility necessitates that Owens and SAFS enter into a Joint Use Agreement in accordance with the provisions of Ohio Administrative Code Section 3333-1-03(E); and

WHEREAS, Owens finds that the value of the use of the Facility by Owens is reasonably related to the amount of the grant of Funds and that the terms of use of the Facility are more favorable to Owens than to others.

NOW THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein stated, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Construction of the Facility.**

- a. **Owens Contribution.** Owens will contribute the Funds to SAFS as set forth herein, to be used by SAFS solely towards the design and construction of the Project.
- b. **Sylvania Area Family Services' Role.** SAFS shall be solely responsible for designing, bidding, contracting, and paying for all fees, costs and expenses in connection with the Project. SAFS shall also be solely responsible for any and all costs of operation and maintenance of the Facility. SAFS will use the Funds solely for capital expenditures as defined in H.B. 496, appropriating such Funds for such purposes as architectural fees, site preparation, construction management, and building construction on the land owned by SAFS. Sylvania Area Family Services will hold title to and be the owner of the Facility.
- c. **Facility Budget.** SAFS has adopted a capital budget for the construction of the Project, denoting all funds which will be used within this Project. The planned Project and all costs associated with the Project are set forth in Exhibit "A" which is attached hereto and incorporated herein by reference.
- d. **Disbursement of Funds.** Upon execution of this Agreement and approval of the Project budget, Owens will submit a request for the release of Funds as appropriate. After appropriate State of Ohio approvals and the Funds are released to Owens, Owens will transfer the Funds to SAFS for use in the payment of eligible Project expenses. Funds paid by Owens to SAFS shall be Owens' sole contribution to the design, planning, construction, renovation, maintenance and operation of the Facility. SAFS hereby represents and warrants that it will be solely responsible for financing the balance of all costs and expenses for the Facility that exceed the Funds given by Owens to SAFS, and that SAFS will secure or has secured the balance of any funding required to successfully complete the Facility.
- e. **Compliance.** SAFS shall comply with all pertinent federal, state and local laws, rules and state administrative regulations in the design and construction of the Facility. Furthermore, SAFS shall follow the competitive bidding procedures identified in Ohio Revised Code Chapter 153 including, but not limited to, publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidder(s). SAFS and all contractors and subcontractors working on the construction of the Facility, shall follow all provisions of Ohio's prevailing wage law, Revised Code Chapter 4115.

2. **Joint Use of the Facility.**

- a. **Shared Use of the Facility.** SAFS and Owens shall share in the use of the Facility for purposes including, but not limited to, accommodations for meetings and gatherings for business, social, educational, and welfare purposes for the

residents of their service areas in the community. In consideration of the Funds contributed by Owens, Owens shall have the use of the Facility at no cost, however reserving the use of the Facility by Owens is subject to first-come-first served reservations as would be for any other potential user.

- b. **Terms of Use by Owens.** Owens may use the Facility upon terms and conditions more favorable than that available to the general public or any other user of the Facility to the degree that reflects the State's investment. The Chancellor of the Ohio Board of Regents shall, upon written request, be provided with pertinent records of the Facility by SAFS and Owens, which measure the nature and extent of the use of the Facility by Owens and the terms governing such use. Owens shall be entitled to use the Facility for educational programs, services or activities based on mutually agreed upon scheduling of space and time. The Facility shall be of such construction and be maintained as a modern, highly functional, multi-purpose facility which will assist Owens in meeting its academic goals for the citizens of Lucas County and the remainder of Owens' service district. It is recognized that the proximity of the Facility to the population of Lucas County will enhance the ability of Owens to host an increased range of educational programs, services and activities for this community.

3. **Term and Termination.** The term of this Agreement shall commence November 1, 2008 and shall continue for a period of fifteen (15) years terminating on October 31, 2023 (herein the "Term"). Owens shall have the right to terminate this Agreement if SAFS breaches any of the material terms or conditions contained herein and such breaches are not cured within thirty (30) days after the date Owens sends written notice to SAFS of such breach. This Agreement shall automatically terminate if, (i) the construction of the Facility is halted, abandoned, or unable to be completed; (ii) SAFS fails to receive any governmental approval, permit, or license necessary to construct or operate the Facility; (iii) the operation of the Facility ceases; (iv) Owens no longer has the right to use the Facility as provided herein; or (v) SAFS breaches any term or condition in this Agreement and fails to cure it within thirty (30) days.
4. **Use of Funds.** Funds provided under this Agreement shall be used by SAFS only for capital improvements as defined in House Bill No. 496, and used solely by SAFS for the Project. Use of the Funds shall be supported by a detailed written record of the use of such Funds in connection with the Project which shall be maintained by SAFS, detailing contracts, invoices, vouchers, paid receipts and other data as appropriate, documenting the costs incurred and paid by SAFS in completing the Project as set forth in Exhibit A. The use of the Funds must be properly documented in accordance with Owens' fiscal procedures and Ohio's mechanics liens laws. If the Funds are not expended in accordance with the terms, conditions and time period set forth in this Agreement and the Scope of Work and Project Budget in Exhibit A, the amounts improperly expended or not expended shall be returned to Owens within thirty (30) days after the effective date of the expiration or termination of this Agreement. In the event that the Project does not become operational and/or is abandoned, all Funds not expended by Grantee at the time of the Project's failure to become operational and/or becomes abandoned, shall be remitted to Owens by SAFS within thirty (30) days after such event has occurred.

5. **Insurance.** Upon commencement of construction of the Facility, SAFS shall maintain and pay all premiums for a builder's risk insurance policy insuring both the SAFS's and Owens' interests in the Facility. Upon completion of the renovation of the Facility and thereafter as long as this Agreement shall be in effect, SAFS shall obtain, maintain, and pay all premiums for a comprehensive business policy including public liability insurance in an amount of not less than \$2 million for each occurrence, which shall include Owens as an additional insured.
6. **Reimbursement to the State.** In the event that Owens' right to use the Facility be terminated by SAFS prior to the expiration of the fifteen (15) year Term of this Agreement, then SAFS shall reimburse the State of Ohio a prorated portion of the Funds, which shall be calculated by dividing the Funds contributed by the State of Ohio by fifteen (15) and multiplying that sum by fifteen (15) less the number of full years that the Facility was used by Owens.
7. **Indemnification/Hold Harmless.** SAFS shall indemnify and hold Owens, the State of Ohio, their elected officials, employees, officers, trustees, harmless from any and all obligations, costs, expenses (including attorney fees), damages, liabilities, claims, actions or causes of action arising out of the design, construction, renovation, maintenance and operation of the Facility, including but not limited to, the failure or alleged failure of such construction, renovation, maintenance or operation to comply with applicable public bidding requirements or any other federal, state or local law, ordinance, rule, order, directive or regulation. Except for any damage or injury directly resulting from actions or conduct of Owens, SAFS agrees to indemnify and shall hold Owens and the State of Ohio harmless from all expenses, costs, damages, or liability of any kind, including attorney fees, arising out of the use, operation, repair and maintenance of the Facility. Except as provided herein and except for its own conduct, Owens' participation on any board or committee entrusted with the operation of the Facility shall not result in any liability, cost or contribution arising out of the construction, renovation, operation, repair, maintenance or use of the Facility by parties other than Owens.
8. **Reimbursement to Owens for Administrative Costs.** Out of the Funds appropriated, SAFS shall reimburse Owens for administrative costs incurred by Owens as a result of the planning and construction of the Facility. Said reimbursement shall be equal one and one-half percent (1.5%) of the amount appropriated by the State of Ohio. Said reimbursement shall be deducted and paid to Owens as the Funds are released by the State of Ohio.
9. **Amendments.** Any amendments to this Agreement shall be in writing, signed by the Parties hereto, and shall require approval of the Chancellor of the Ohio Board of Regents.
10. **Assignment.** Neither SAFS nor Owens may assign any right, title, interest, duty or obligation under this Agreement unless the assignment is in writing and approved by the Chancellor of the Ohio Board of Regents.
11. **Entire Agreement of the Parties.** This Agreement constitutes the entire Agreement of

the Parties with respect to the subject matter hereof, and supersedes all prior written or oral discussions, negotiations, agreements and undertakings with respect to the matters covered hereby.

12. **Records Regarding Facility Use.** SAFS shall, upon request by the Chancellor of the Ohio Board of Regents and/or Owens, supply the Chancellor of the Ohio Board of Regents and/or Owens, with all pertinent records in SAFS's possession which measure the nature and extent of use of the Facility by Owens, the terms and conditions governing such use, and the specific benefits derived by Owens under this Agreement.

13. **Notices.** All notices to the parties given under this Agreement shall be in writing, sent by registered or certified mail (return receipt requested) and addressed to the parties at the addresses set forth below, or to such other address as either party shall have designated by prior notice.

If to SAFS:

Dennis Boyle, Board Chairman
Sylvania Area Family Services, Inc.
5440 Marshall Road
Sylvania, Ohio 43560

Copy to:

Jason Robertson, Executive Director
Sylvania Area Family Services, Inc.
5440 Marshall Road
Sylvania, Ohio 43560
mailto:dirsafs@ambt.net

If to Owens:

John Satkowski, Executive Vice President, Treasurer
Owens Community College
30335 Oregon Road
Perrysburg, Ohio 43551.

Copy to:

Thomas Horrall, Director of Capital Planning
Owens Community College
30335 Oregon Road
Perrysburg, Ohio 43551

Christopher Bauerschmidt, Director of Business Services
Owens Community College
30335 Oregon Road
Perrysburg, Ohio 43551

14. **Headings.** The headings used in this Agreement are inserted only as a matter of convenience and for reference and should not be given effect in the interpretation of this Agreement.

15. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

SYLVANIA AREA FAMILY SERVICES, INC.

OWENS STATE COMMUNITY COLLEGE

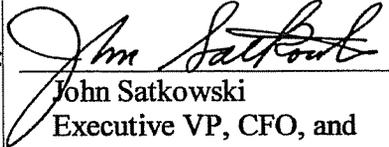
By: _____


Dennis Boyle
Board Chairman

Date: _____

11/13/08

By: _____


John Satkowski
Executive VP, CFO, and
Treasurer

Date: _____

11-5-08

EXHIBIT A

SYLVANIA AREA FAMILY SERVICES CENTER

**A program of
SYLVANIA AREA FAMILY SERVICES, OHIO**

State of Ohio Capital Appropriation request

Project Scope:

The Sylvania Area Family Services Inc., Located in Sylvania, Lucas County, Ohio has strong community roots with a commitment to serve residents, businesses and local community agencies. Located in the City of Sylvania, Sylvania Family Services Community Center has provided educational and social services to young and adult residents of the community for 40 years. These services are provided to any family within the Sylvania School District that meet either the low income or at risk guidelines. Servicing both the City and Township community, the Community Center provides fundamental support to a diverse population, ranging from the working poor to the senior community, living on fixed incomes.

The Sylvania Family Service's current facility consists of two aging buildings, one of which would be more costly to repair than to replace. Proposed renovations would allow the Center to expand and more effectively provide their food distribution and social services. Additional expansion would support youth diversion and after school programs for area youth, as well as Community Activities. Proposed renovations would include expanding the center garage and client parking, as well as building renovations to heating and mechanical systems. Upon completion renovation will provide a cleaner, brighter and safer facility to offer these valuable community services.

This project is important to the Sylvania Area Family Services as it strives to service its business and residential community. From the State of Ohio's perspective in favorably responding to this funding request, this agreement will provide an opportunity to serve a large number of constituents in an efficient, user friendly and accessible facility.

Project Budget:

The following estimate of probable cost is based on accepted industry standards for cost estimating and experience with similar projects. Costs may vary depending on the economic conditions at the time of bidding, final program and materials selected.

<u>ACTIONS</u>	<u>ESTIMATED COSTS</u>
Construction	
General Requirements	0
Site Improvement	0
Building Construction	\$ 375,000.00
Specialties	
Furnishings	
Mechanical	\$ 65,000.00
Electrical	\$ 55,000.00
Subtotal	
Contingency (10%)	\$50,000.00
Total Construction	
Other Project Costs	
Furniture	Unknown/Already secured
Professional Services	\$26,880.00
Reimbursables, Permits Etc.	\$4,500.00
Total Other Costs	N/A
Total Estimated Costs	<u>\$576,380.00</u>

Project Resources:

<u>SOURCE</u>	<u>AMOUNT</u>
State of Ohio	\$ 250,000
Sylvania Area Family Services	\$326,380
Total	<u>\$ 576,380.000</u>

Project Schedule:

The current project is actively in progress at this time with the schedule to follow. The total project through Phase IV should be completed in the April 30, 2009.

