



Board of Regents

Ted Strickland, Governor
Eric D. Fingerhut, Chancellor

University System of Ohio

DIRECTIVE 2009-005

February 4, 2009

Re: A JOINT USE AGREEMENT BETWEEN SINCLAIR COMMUNITY COLLEGE AND THE MONTGOMERY COUNTY BOARD OF COUNTY COMMISSIONERS

H.B. 496 includes a specific capital appropriation of \$1,500,000 to Sinclair Community College for capital improvements to a Montgomery County Board of County Commissioners' facility. The Montgomery County Board of County Commissioners 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. Sinclair Community College and the Montgomery County Board of County Commissioners 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 Sinclair Community College and the Montgomery County Board of County Commissioners.

This directive will take effect immediately.

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

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Joint Use Agreement between Sinclair Community College and the Montgomery County
Board of County Commissioners

BACKGROUND

H.B. 496 includes a specific capital appropriation of \$1,500,000 to Sinclair Community College for capital improvements to a Montgomery County Board of County Commissioners' facility. The Montgomery County Board of County Commissioners will own and operate the facility to receive state capital funds. As required by Ohio Administrative Code section 3333-1-03, Sinclair Community College submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support renovations to a county facility located at 460 Vantage Point, Miamisburg, Ohio.

REVIEW

Throughout the entire term of the agreement, the Montgomery County Board of County Commissioners will provide the following to Sinclair –

- 1) Use of the Montgomery County Sheriff's Office Range Facility for two hundred and thirty (230) hours during Sinclair's Fall and Spring Quarter.
- 2) Twenty-four (24) hours of K9 tactics training per year. Training to be four (4) to six (6) hours per class (four times per year).
- 3) Co-development of curriculum around Criminal Justice courses on an as needed basis.
- 4) Two (2) training seats at each Dispatch Training Course taught by the Montgomery County Sheriff's Office.
- 5) Use of the Montgomery County Sheriff's Office Range Facility for Sinclair Campus Police for mandatory qualification sessions on an as needed basis. Sinclair will provide a training coordinator and ammunition.
- 6) Up to one hundred (100) ride-along opportunities per year for Police Academy cadets and Criminal Justice students.
- 7) A guest lecturer for Criminal Justice Training Academy as a subject matter expert on an as needed basis.
- 8) Cooperative placement for one Criminal Justice student per quarter (unpaid stipend).
- 9) Continued participation on the Criminal Justice Training Academy Advisory Board.
- 10) Use of the Montgomery County Sheriff's Office Range Facility for chemical agents training for basic cadet's class.

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 Sinclair Community College and the Montgomery County Board of County Commissioners.

Joint Use Agreement Worksheet

The Ohio Board of Regents

April, 2005

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 \$5,000,000. The annual debt service paid by the state on this appropriation is about \$390,000 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 \$390,000 per year for 20 years.

Section I: State appropriation information.

1. Amount of state appropriation provided:	\$1,500,000
2. Estimated annual debt service on the appropriation:	\$115,314
3. Term of the state bond, in years:	20

Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. Utilization of Office Range Facility (general use)	\$46,000	20
b K9 Tactics Training	\$3,600	20
c Co-development of Curriculum	\$600	20
d Training Seats for Dispatch Courses	\$3,000	20
e Utilization of Office Range Facility (qualification sessions)	\$1,000	20
f. Ride-along Opportunities	\$40,000	20

Use(s) of the facility*	Annual value of use	# of years
g. Guest Lecturer Services	\$8,750	20
h. Cooperative Placement for Students	\$11,000	20
i. Participation in Advisory Board	\$600	20
j. Utilization of Office Range Facility (chemical agents training)	\$1,000	20

Section III:

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

Section III – Analysis of Value of JUA between Montgomery County and Sinclair Community College

College Use Area	Hours per month	Hours per Year	Dollars per Hour	Total Value Per Year	Total Value Contract Life
Provide use of the Montgomery County Sheriff's Office Range Facility for two hundred thirty (230) hours during Sinclair's Fall and Spring Quarter. Actual usage days/times to be collaboratively developed.	variable	460	\$100	\$46,000	\$920,000
Provide twenty-four (24) hours of K9 tactics training per year. Training to be four (4) to six (6) hours per class (four times per year). Actual usage days/times to be collaboratively developed.	variable	24	\$150	\$3,600	\$72,000
Co-develop curriculum around Criminal Justice courses on an as needed basis.	1	12	\$50	\$600	\$12,000
Provide two training seats per Dispatch Training Courses taught by the Montgomery County Sheriff's Office	Variable	120	25	\$3,000	\$60,000
Provide use of the Montgomery County Sheriff's Office Range Facility for Sinclair Campus Police mandatory qualification sessions on an as needed basis, approximately three times per year. A session involves training of all Sinclair Campus Police officers.	variable	10	\$100	\$1,000	\$20,000
Provide up to one hundred (100) ride-along opportunities per year for Police Academy cadets and Criminal Justice students	variable	400	\$100	\$40,000	\$800,000
Provide guest lecturer for Criminal Justice Training Academy as a subject matter expert on an as needed basis. Engagements to be developed collaboratively.	variable	50	\$175	\$8,750	\$175,000
Provide cooperative placement for one Criminal Justice student per quarter (unpaid stipend)	Variable	550	\$20	\$11,000	\$220,000
Continue participation on the Criminal Justice Training Academy Advisory Board	1	12	\$50	\$600	\$12,000
Provide use of the Montgomery County Sheriff's Office Range Facility for chemical agents training for basic cadet's class.	variable	10	\$100	\$1,000	\$20,000
Totals				\$115,550	\$2,311,000

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Sinclair Community College/Montgomery County Board of Commissioners
Project Title Consolidated Dispatch Services
Capital Bill HB 496 Item C37708 Consolidated Community Project - Montgomery

- 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

This JOINT USE AGREEMENT (the "Agreement") is made and entered into as of this 26th day of September, 2008 by and between Sinclair Community College, (hereinafter referred to as the "College") and Montgomery County Board of County Commissioners (hereinafter referred to as the "County").

WITNESSETH THAT:

WHEREAS, the 126th General Assembly has since enacted House Bill 699, that has been re-appropriated under House Bill 496, which includes a specific appropriation of capital improvement resources in the total amount of one million five hundred thousand dollars (\$1,500,000), directed to Montgomery County for the consolidation of a communications project; and

WHEREAS, the State of Ohio capital appropriations released by the Chancellor of the Ohio Board of Regents (the "Chancellor") require compliance with Ohio Administrative Code Rule 3333-1-03, which specifically calls for the execution of a Joint Use Agreement, and

WHEREAS, the College has concluded that the value of its use of, and exposure to, the Montgomery County Sheriff's facility and its tools and equipment as provided in this agreement, as enhanced by the acquisitions that will be made possible by this appropriation, is reasonably related to the amount of the appropriation, and

WHEREAS, the College wished to utilize the resources of the Montgomery County Sheriff's Facilities in connection with programs identified in the Joint Use Agreement and, therefore, wishes to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual covenants, promises, conditions and terms to be kept and performed, it is hereby agreed between the parties hereto as follows:

1. The College will submit to the Chancellor, a request for the release of one million five hundred thousand dollars (\$1,500,000) of the appropriation identified in this Agreement. Sinclair agrees to waive the 1.5% administrative cost associated with the appropriation. Upon approval of the Joint Use Agreement, Sinclair will process a Capital Request in order to facilitate the full transfer of funds to Montgomery County for this initiative.
2. Montgomery County will expend the funds in accordance with the preliminary budget allocation set for on Exhibit A, which is attached hereto and made a part hereof and, for the purposed hereof, constitute the "Project". All aspects of the Project shall be performed at 460 Vantage Point, Miamisburg, OH 45343.
3. Montgomery County will utilize 460 Vantage Point, Miamisburg, OH 45343 as the central hub to coordinate Consolidated Dispatch Services for numerous municipalities in the Miami Valley Region. The facility will house furniture and technology equipment to support Montgomery County employees charged with operating the Consolidated Dispatch Center.

4. That throughout the entire term of this Agreement, the County will do the following:
 - a. Provide use of the Montgomery County Sheriff's Office Range Facility for two hundred thirty (230) hours during Sinclair's Fall and Spring Quarter. Actual usage days/times to be collaboratively developed in advance.
 - b. Provide twenty-four (24) hours of K9 tactics training per year as long as the Sheriff's Office has a K9 program. Training to be four (4) to six (6) hours per class (four times per year). Actual usage days/times to be collaboratively developed.
 - c. Co-develop curriculum around Criminal Justice courses on an as needed basis.
 - d. Provide two training seats per Dispatch Training Courses taught by the Montgomery County Sheriff's Office.
 - e. Provide use of the Montgomery County Sheriff's Office Range Facility for Sinclair Campus Police mandatory qualification sessions on an as needed basis, approximately three times per year. A session involves training of all Sinclair Campus Police officers. Training coordinator and ammunition to be provided by Sinclair.
 - f. Provide up to one hundred (100) ride-along opportunities per year for Police Academy cadets and Criminal Justice students.
 - g. Provide guest lecturer for Criminal Justice Training Academy as a subject matter expert on an as needed basis. Engagements to be developed collaboratively in advance.
 - h. Provide cooperative placement for one Criminal Justice student per quarter (unpaid stipend).
 - i. Continue participation on the Criminal Justice Training Academy Advisory Board.
 - j. Provide use of the Montgomery County Sheriff's Office Range Facility for chemical agents training for basic cadet's class.
5. The terms and conditions of such use by the College shall be more favorable than the terms and conditions of use by any other entity to a degree that reasonably reflects the magnitude of the College's investment in the facility. The Chancellor, shall, upon request, be provided with pertinent records of the facility that measure the nature and extent of the use of the facility by the College, and the terms and conditions governing such use.
6. That the term of this Agreement shall commence upon its execution by the parties and extend through calendar year 2028.
7. That in the event either party desires to terminate this agreement prior to the expiration of its term, written notice of either party's intent to terminate this agreement shall be

given to the other party at least six (6) months prior to the effective date of that termination. Should the project not be completed or should the College's right to involvement in the Project be terminated prior to the term of this agreement, the County shall return to the State of Ohio a pro rata portion of the State appropriation to be calculated by dividing the amount of its state appropriation by twenty (20) years and multiplying the result by twenty (20), minus the number of years of the College's involvement in the Project.

8. The County shall hold the College harmless from liability for any and all costs, liabilities, and claims that arise from or are attendant to the construction, operation, and maintenance costs of the County.
9. The County, in connection with the Project, but only as to the portions thereof identified on Exhibit A, shall use where applicable competitive bidding procedures equivalent to those enumerated in relevant provisions of Chapter 153 Ohio Revised Code involving (1) publishing advertisements to see bids, (2) receiving sealed bids, and (3) awarding contracts to the lowest, responsive and responsible bidders.
10. The funds appropriated for the Project by the State of Ohio shall be used only for capital improvements as defined in the House Bill 699 and the subsequent re-appropriation House Bill 496.
11. The County shall comply with all pertinent rules, regulations, and laws of the federal, state, and local government.
12. All mailing and notices to the parties shall be addressed to the parties at the addresses set forth below or to such other address as either shall have designated by notice given in accordance with the provisions of this paragraph. All mailings and notices shall be addressed as follows:

Montgomery County
451 West Third Street
Dayton, Ohio 45422
Attn: Tim Nolan

Sinclair Community College
444 West Third Street
Dayton, Ohio 45402
Attn: Jeffrey A. Miller, Manager

13. All Amendments to the Agreement shall require the prior approval of the College and County, as well as the express prior approval of the Chancellor.
14. This Agreement shall be binding upon and inure to the benefit of the County and the College and their respective successors and assigns.
15. This Agreement sets forth the entire agreement of the parties concerning the subject matter and any and all other oral or written agreements, discussions, representations, promises and understandings made or arrived at prior to or contemporaneously with this Agreement are hereby mutually revoked, withdrawn, rescinded and rendered null and void by the parties.

16. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
17. This Agreement shall be construed under and governed by the laws of the State of Ohio.
18. That after appropriate state approvals, the funds provided in House Bill 699 will be released to the College and subsequently transferred by the College to the County after presentation by the County to the College of invoices related to obligations incurred by the County for permitted uses of the appropriated funds. Such obligations must be properly documented to the reasonable satisfaction of the College.
19. The County represents and warrants that it owns the facility that will be renovated and improved and carries full general liability insurance for the building, equipment and contents.

IN WITNESS WHEREOF, the parties have hereunto set their hands on this 11th day of Dec, 2008.

WITNESS:

**BOARD OF COUNTY COMMISSIONERS OF
 MONTGOMERY COUNTY, OHIO**

By _____
 Judy Dodge, President
 By _____
 Dan Foley
 By _____
 Deborah A. Lieberman

Carol H. Havitt

OR
 By *Deborah A. Feldman*
 Deborah A. Feldman
 Montgomery County Administrator

WITNESS:

Patricia Turcotte

CONTRACTING AGENCY

By _____
 Sinclair Community College

APPROVED AS TO FORM:
 MATHIAS H. HECK, JR.
 Prosecuting Attorney for Montgomery County, Ohio

BY *Mathias H. Heck, Jr.*
 Assistant Prosecuting Attorney

Date 12/8/08

EXHIBIT A

Necessary equipment, furniture and electrical as noted below:

Reconfigure Harris Microwave Infrastructure	\$500,000
Networking Equipment	\$230,757
Liebert Battery Backup	\$125,000
Liebert Backup Air Unit	\$125,000
Electrical for 3 rd and 4 th floor	\$ 29,605
Dispatch Furniture	\$294,638
Diesel Generator, 500kW	<u>\$195,000</u>
Total	\$1,500,000