



Board of Regents

Ted Strickland, Governor  
Eric D. Fingerhut, Chancellor

University System of Ohio

**DIRECTIVE 2009-006**

February 4, 2009

Re: A JOINT USE AGREEMENT BETWEEN CUYAHOGA COMMUNITY COLLEGE AND THE CLEVELAND MUSEUM OF ART

H.B. 496 includes a specific capital appropriation of \$3,000,000 to Cuyahoga Community College for capital improvements to the Cleveland Museum of Art facility. The Cleveland Museum of Art owns and operates 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. Cuyahoga Community College and the Cleveland Museum of Art 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 Cuyahoga Community College and the Cleveland Museum of Art.

This directive will take effect immediately.

  
Eric D. Fingerhut

Chancellor, Ohio Board of Regents

mlc

Joint Use Agreement between Cuyahoga Community College and the Cleveland Museum of Art

**BACKGROUND**

H.B. 496 includes a specific capital appropriation of \$3,000,000 to Cuyahoga Community College for capital improvements to the Cleveland Museum of Art facility. The Cleveland Museum of Art owns and operates the facility to receive state capital funds. As required by Ohio Administrative Code section 3333-1-03, Cuyahoga Community College submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support the renovation and expansion of the Cleveland Museum of Art, located at 11150 East Boulevard, Cleveland, Ohio.

**REVIEW**

Throughout the entire term of the agreement, the Cleveland Museum of Art will provide the following to Cuyahoga –

- 1) Six (6) to nine (9) in-person guest lecturers per contract year for appropriate College courses on subjects and at times reasonably acceptable to the College and the Museum.
- 2) Access to and secure for permanent residence at the College copies of 4000 slides from the Museum's collection to be selected from those slides which can be permissibly copied and distributed by the Museum at no cost (other than duplication costs).
- 3) Access to the Ingalls Library image catalog for college students and faculty. These images include 280,000 images via the Library's website [www.library.clevelandart.org](http://www.library.clevelandart.org) and on-site in the Ingalls Library to the ARTstor image collection of more than 700,000 images.
- 4) Not less than once per contract year, develop team-taught special topics courses that tie in with major special exhibitions at the Museum when appropriate and at the College's request.
- 5) During each contract year, provide the College students and staff with 30 tickets to all appropriate music concerts at the Museum and a minimum of 120 tickets to selected exhibitions.
- 6) The Museum will allow one (1) faculty member of the College, to be chosen by the College, to serve on the Education Advisory Committee of the Museum's Board of Trustees and one (1) faculty member of the College, to be chosen by the College and who may be the same person, to serve on the Museum's African-American Advisory Committee.
- 7) During each contract year, the Museum will develop cooperative work experiences for five (5) students to work in various CMA departments.
- 8) Access to the Gartner Auditorium or other Museum facilities for the presentation of four (4) to eight (8) cultural arts programs during each contract year.
- 9) Insert College materials into selected Museum program booklets and lobby racks and allow the College to place Museum materials in appropriate College publications and materials.
- 10) An active Museum and College advisory committee consisting of three (3) members from each organization.
- 11) During each contract year, program not less than two (2) experimental performances in outdoor spaces at the Museum.
- 12) A complementary Corporate Membership at the Contributor level.

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 Cuyahoga Community College and the Cleveland Museum of Art.**



Section III:

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

The annual value of the \$230,628 (\$3,000,000 x 20 years x 4.5% interest) on the appropriation is expected to be re-captured within the 15 year term of the College's relationship with the Cleveland Museum of Art. The annual "in-kind" value of \$315,963 over the duration of the 15 year period was established as follows:

	Description	Updated Annual Value
a	Provide six (6) to nine (9) in-person guest lecturers per contract year for appropriate College courses on subjects and at times reasonably acceptable to the College and the Museum.	\$10,644
b	Provide access to and secure for permanent residence at the College copies of 4000 slides from the Museum's collection to be selected from those slides which can be permissibly copied and distributed by the Museum at no cost (other than duplication costs).	\$70,960
c	Provide college students and faculty with access to the Ingalls Library image catalog of 280,000 images via the Library's website www.library.clevelandart.org and provide access on-site in the Ingalls Library to the ARTstor image collection of more than 700,000 images.	\$55,191
d	Provide access for College students and faculty to the Ingalls Library on such terms and conditions as are applicable to other visiting students and faculty.	\$11,827
e	Not less than once per contract year, develop team-taught special topics courses that tie in with major special exhibitions at the Museum when appropriate and at the College's request.	\$4,163
f	During each contract year, provide the College with 30 tickets to all appropriate music concerts at the Museum.	\$14,192
g	Provide the College with a minimum of 120 tickets to selected exhibitions during each contract year for students and staff	\$14,192
h	Allow one (1) faculty member of the College, to be chosen by the College, to serve on the Education Advisory Committee of the Museum's Board of Trustees and one (1) faculty member of the College, to be chosen by the College and who may be the same person, to serve on the Museum's African-American Advisory Committee.	\$8,326
i	During each contract year, develop cooperative work experiences five (5) students to work in various Museum departments.	\$20,815
j	Provide access to Gartner Auditorium or other Museum facilities for the presentation of four (4) to eight (8) cultural arts programs during each contract year. The Museum shall not bear expenses associated with staffing events, any equipment rental beyond that available at the Museum, or any other additional costs associated with the event. The parties shall fully cooperate in scheduling auditorium programs	\$47,307
k	Insert College materials into selected Museum program booklets and lobby racks and allow the College to place Museum materials in appropriate College publications and materials.	\$3,942
l	Maintain an active Museum and College advisory committee consisting of three (3) members from each organization.	\$788
m	During each contract year, program not less than two (2) experimental performances in outdoor spaces at the Museum. The parties shall fully cooperate in scheduling the performances.	\$14,192
n	Provide the College a complimentary Corporate Membership at the Contributor level	\$39,422
	<b>Total Annual Value</b>	<b>\$315,963</b>

## JOINT USE AGREEMENT ANALYSIS

Institutions Involved Cuyahoga Community College/Cleveland Museum of Art  
Project Title Museum Renovation and Expansion  
Capital Bill HB 496 Item C37807 Cleveland Art Museum - Improvements

- 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") made and entered into as of this 18th day of December 2008, by and between Cuyahoga Community College District (hereinafter referred to as the "College"), an institution of higher education and political subdivision of Ohio, and The Cleveland Museum of Art (hereinafter referred to as the "Museum"), an Ohio non-profit corporation.

WHEREAS, the College and the Museum previously entered into the Joint Use Agreement dated September 22, 2000, pursuant to which they established a mutual educational, programmatic, cultural and professional linkage which provided for facility usage for the College and enhancements to the programs of the College and the Museum;

WHEREAS, the College and the Museum amended their 2000 Joint Use Agreement in a "Joint Use Agreement Amendment" dated May 27, 2004;

WHEREAS, the 126<sup>th</sup> General Assembly has since enacted House Bill 530 which includes a specific appropriation of capital improvement resources in the total amount of three million dollars (\$3,000,000), directed to the College for the use and further enhancement of the mutual educational, programmatic, cultural and professional linkage and facility usage for the College and enhancements to the programs of the College and the Museum, all in connection with the proposed expansion, reconstruction and renovation of the Museum;

WHEREAS, capital appropriations released through the Chancellor of the Ohio Board of Regents (hereinafter referred to as the "Chancellor") require compliance with Ohio Administrative Code 3333-1-03(E), which specifically calls for the execution of a joint use agreement;

WHEREAS, the College wishes to utilize the expanded, reconstructed and renovated facilities of the Museum.

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 shall submit to the Chancellor a request for the release of the three million dollar (\$3,000,000) appropriation, of which two million, nine hundred fifty-five thousand dollars (\$2,955,000) will be for the Museum and forty-five thousand dollars (\$45,000) (1.5% of the appropriation) will be for administrative costs to the College. The parties anticipate that the appropriated funds will be released by the Chancellor directly to the College. The Museum shall then submit invoices and related documentation to the reasonable satisfaction of the College, after which the College shall transfer appropriate amounts to the Museum.
2. The Museum covenants that it shall use the funds to expand, reconstruct and renovate the building and facilities commonly known as The Cleveland Museum of Art and located at 11150 East Boulevard, Cleveland, Ohio, in University Circle and specifically the Project (as hereinafter defined). The Museum represents and warrants that it owns the existing facilities and the property where the project will be completed, and that the Museum has sufficiently insured its facilities and the Project.

3. The Museum has adopted a capital improvements budget to be implemented in part with the funds contemplated by this Agreement. The planned project (the "Project"), and the costs associated with it are set forth in Exhibit A which is attached hereto and hereby incorporated into this Agreement.

4. Throughout the period running from the expiration of the Joint Use Agreement Amendment through December 31, 2045, the Museum shall:

- a. Provide six (6) to nine (9) in-person guest lecturers per contract year for appropriate College courses on subjects and at times reasonably acceptable to the College and the Museum.
- b. Provide access to and secure for permanent residence at the College copies of 4000 slides from the Museum's collection to be selected from those slides which can be permissibly copied and distributed by the Museum at no cost (other than duplication costs).
- c. Provide college students and faculty with access to the Ingalls Library image catalog of 280,000 images via the Library's website [www.library.clevelandart.org](http://www.library.clevelandart.org) and provide access on-site in the Ingalls Library to the ARTstor image collection of more than 700,000 images.
- d. Provide access for College students and faculty to the Ingalls Library on such terms and conditions as are applicable to other visiting students and faculty.
- e. Not less than once per contract year, develop team-taught special topics courses that tie in with major special exhibitions at the Museum when appropriate and at the College's request.
- f. During each contract year, provide the College with 30 tickets to all appropriate music concerts at the Museum.
- g. Provide the College with a minimum of 120 tickets to selected exhibitions during each contract year for students and staff.
- h. Allow one (1) faculty member of the College, to be chosen by the College, to serve on the Education Advisory Committee of the Museum's Board of Trustees and one (1) faculty member of the College, to be chosen by the College and who may be the same person, to serve on the Museum's African-American Advisory Committee.
- i. During each contract year, develop cooperative work experiences for five (5) students to work in various Museum departments.
- j. Provide access to Gartner Auditorium or other Museum facilities for the presentation of four (4) to eight (8) cultural arts programs during each contract year. The Museum shall not bear expenses associated with staffing events, any equipment rental beyond that available at the Museum, or any other additional costs associated with the event. The parties shall fully cooperate in scheduling auditorium programs.

- k. Insert College materials into selected Museum program booklets and lobby racks and allow the College to place Museum materials in appropriate College publications and materials.
  - l. Maintain an active Museum and College advisory committee consisting of three (3) members from each organization.
  - m. During each contract year, program not less than two (2) experimental performances in outdoor spaces at the Museum. The parties shall fully cooperate in scheduling the performances.
  - n. Provide the College a complementary Corporate Membership at the Contributor level.
5. The term of this Agreement will commence when approval is indicated by signature of the Ohio Board of Regents, and will extend through December 31, 2045.
6. Either party may terminate this Agreement prior to the expiration of its term by providing notice of the party's intent to terminate this Agreement at least six (6) months prior to the effective date of that termination. In the event of termination, the Museum shall immediately return to the State of Ohio a pro rata portion of the state appropriation to be calculated by dividing the amount of the appropriation by fifteen (15), and multiplying the result by fifteen (15) minus the number of years the Museum provided the benefits during the timeframe established in Section 4 of this Agreement.
7. The Museum shall indemnify and hold harmless the College for all costs (including without limitation attorney fees and other costs of defense), losses, liabilities, and claims that arise from or are attendant to the construction, operation and maintenance costs of the Museum and the Project.
8. The Museum, in connection with the Project, shall use competitive bidding procedures equivalent to those enumerated in relevant provisions of Chapter 153 Ohio Revised Code involving (1) publishing advertisements to seek bids, (2) receiving sealed bids, and (3) awarding contracts to the lowest responsive and responsible bidders.
9. The funds appropriated for the Project by the State of Ohio shall be used only for capital improvements as defined in House Bill 530.
10. The Museum shall comply with all pertinent federal, state, and local laws, including without limitation state administrative provisions.
11. All mailings and notices relating to legal matters involving this Agreement in any way shall be in writing and addressed to the parties at the addresses set forth below or to such other address as either party shall have designated by notice given in accordance with the provisions of this paragraph. All mailings and notices shall be addressed as follows:

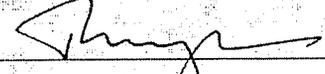
The Cleveland Museum of Art  
11150 East Boulevard  
Cleveland, Ohio 44106-1797  
Attn: Timothy Rub, Director

Cuyahoga Community College District  
Office of the President  
700 Carnegie Avenue  
Cleveland, Ohio 44115  
Attn: General Counsel

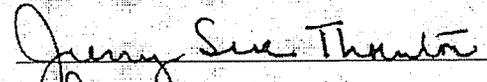
12. Any amendments to this Agreement would require the prior written approval of the College, the Museum and the Chancellor.
13. This Agreement may not be assigned. Any attempted assignment would be null and void.
14. This Agreement sets forth the entire agreement of the parties concerning its subject 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. (The Joint Use Agreement and Joint Use Agreement Amendment remain in effect.)
15. 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.
16. This Agreement shall be construed under and governed by the laws of the State of Ohio.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

**THE CLEVELAND MUSEUM OF ART**

By:   
Title: Mason  
Date: 1-6-09

**CUYAHOGA COMMUNITY COLLEGE DISTRICT**

By:   
Title: President  
Date: 12-18-08

Approved by the Chancellor of the Ohio Board of Regents:

By:   
Date: 2/4/09

EXHIBIT A

**Project Description**

**Estimated Cost**

**Phase I – CMA Renovation, Replacement and Expansion**

**Structural Steel**

**Roofing**

**Fireproofing**

**Est. Total:**

**\$5,000,000**