



Board of Regents

Ted Strickland, Governor
Eric D. Fingerhut, Chancellor

University System of Ohio

DIRECTIVE 2009-007

February 4, 2009

Re: A JOINT USE AGREEMENT BETWEEN CUYAHOGA COMMUNITY COLLEGE AND THE PLAYHOUSE SQUARE FOUNDATION

H.B. 496 includes a specific capital appropriation of \$750,000 to Cuyahoga Community College for capital improvements to a Playhouse Square Foundation facility. The Playhouse Square Foundation 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 Playhouse Square Foundation 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 Playhouse Square Foundation.

This directive will take effect immediately.

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

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Joint Use Agreement between Cuyahoga Community College and the Playhouse Square Foundation

BACKGROUND

H.B. 496 includes a specific capital appropriation of \$750,000 to Cuyahoga Community College for capital improvements to a Playhouse Square Foundation facility. The Playhouse Square Foundation 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 to the Hanna Theatre, located at 2067 East 14th Street, Cleveland, Ohio.

REVIEW

Throughout the entire term of the agreement, the Playhouse Square Foundation will provide the following to Cuyahoga –

- 1) Twenty-five (25) parking passes per year in the Playhouse Square Garage for meetings during the day.
- 2) Access to the Hanna Theatre for the presentation of not less than eight and not fewer than ten cultural programs.
- 3) From the Great Lakes Theater Festival, Inc. (which will operate out of the Hanna Theater):
 - a. Fifty (50) tickets to the Director's/Playnotes/Guest Speaker series for students, staff, and/or faculty.
 - b. A minimum of 300 tickets to designated theatrical productions at the Great Lakes Theatre Festival for use by students, faculty, and/or staff.
 - c. Membership in, and all associated benefits of, the Shakespeare Society.
 - d. Four (4) tickets to the Opening Night series for students, faculty, and/or staff.
 - e. Not less than ten (10), and not more than twenty (20), in-person guest lectures for appropriate College courses
 - f. The equivalent of \$3,000 worth of costume rental charges for costumes for College productions.
 - g. One hosted outreach tour (by Great Lakes Theater Festival, Inc.) at a College site.

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 Playhouse Square Foundation.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Cuyahoga Community College/Playhouse Square Foundation

Project Title Hanna Theatre Renovation

Capital Bill HB 496 Item C37825 Playhouse Square Center - Hannah Theatre

- 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 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:	<u>\$750,000</u>
2. Estimated annual debt service on the appropriation:	<u>\$57,657</u>
3. Term of the state bond, in years:	<u>20 years</u>

Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. Performance tickets (various)	\$ 29,034	15
b. Membership	\$ 3,337	15
c. Guest lectures	\$ 4,005	15
d. Costume rentals	\$ 4,005	15
e. Outreach tour	\$ 1,335	15
f. Parking passes	\$ 334	15
g. Hanna Theatre access	\$ 34,907	15

(* 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.

The annual value of the \$57,657 ($\$750,000 \times 20 \text{ years} \times 4.5\% \text{ interest}$) on the appropriation is expected to be re-captured within the 15 year term of the College's relationship with the Playhouse Square. The annual "in-kind" value of \$76,957 over the duration of the 15 year period was established as follows:

1. Provide the College with 50 tickets to the Director's/Playnotes/Guest Speaker series for students, staff and/or faculty (average annual value of \$4,338)
2. Provide the College with a minimum of 300 tickets to designated theatrical productions at the Great Lakes Theatre Festival for use by students, faculty and staff (average annual value of \$22,026)
3. Provide the College with 4 tickets to the Opening Night series for students, faculty and/or staff (average annual value of \$2,670)

Total Value of Performance Tickets (items 1 – 3): \$29,034

4. Membership and benefits of in the Shakespeare Society (average annual value of \$3,337)
5. Provide (10) ten to (20) twenty in person guest lecturers for appropriate college courses (average annual value of \$4,005)
6. Provide costume rental charges annually for costumes for College productions (average annual value of \$4,005).
7. Host one (1) outreach tour at a College site annually (average annual value of \$1,335).
8. Playhouse Square is able to offer up to 25 parking passes per year in the Playhouse Square Garage, for meetings during the day (average annual value of \$334)
9. Provide access to the Hanna Theatre for the presentation of eight (8) to (10) cultural programs annually (average annual value of \$34,907)

Joint Use Agreement

This Joint Use Agreement made and entered into this 18th day of December, 2008 (the "Effective Date"), by and between Cuyahoga Community College District (the "College"), and the Playhouse Square Foundation (the "Foundation").

Witnesseth:

WHEREAS, the 126th General Assembly has enacted House Bill 699 (as amended by House Bill 67) which includes a specific appropriation of capital improvement resources directed to the College for improvements and modifications to the facilities of the Foundation in the total amount of \$750,000, and

WHEREAS, the College and Foundation desire to facilitate the goals of higher education by allowing the College to utilize space at Foundation facilities, and

WHEREAS, State of Ohio capital appropriations released through the Chancellor of the Ohio Board of Regents (the "Chancellor") require compliance with Ohio Administrative 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 the use of the Foundation facilities by the College as provided in this agreement is reasonably related to the amount of the appropriation,

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. That the College will submit to the Chancellor, a request for the release of \$750,000 of the appropriation identified in this agreement, \$738,750 for the Foundation and \$11,250 for the administrative costs to the College, which is 1.5% of the appropriation. 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. That the Foundation will use the funds to renovate the Hanna Theatre which is owned by the Playhouse Square Center and located at 2067 East 14th Street, Cleveland, Ohio 44115. The Foundation represents and warrants that through the term of this agreement it shall sufficiently insure its property, including without limitation the Hanna Theater and its improvements.
3. That the Foundation has adopted a capital improvement budget to be implemented during the course of this Joint Use Agreement. The planned project, and the costs associated with it, are set forth in Exhibit A which is attached hereto and made a part hereof.
4. That during each year of this agreement, the Foundation shall, upon request by the College:

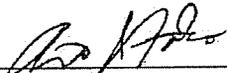
- a. Provide 25 parking passes per year in the Playhouse Square Garage, for meetings during the day.
 - b. Provide access to the Hanna Theatre for the presentation of not less than eight and not fewer than ten cultural programs.
 - c. Obtain from Great Lakes Theater Festival, Inc. (which will operate out of the Hanna Theater) and provide to the College:
 - i. Fifty tickets to the Director's/Playnotes/Guest Speaker series for students, staff, and/or faculty.
 - ii. A minimum of 300 tickets to designated theatrical productions at the Great Lakes Theatre Festival for use by students, faculty, and/or staff.
 - iii. Membership in, and all associated benefits of, the Shakespeare Society.
 - iv. Four tickets to the Opening Night series for students, faculty, and/or staff.
 - v. Not less than ten, and not more than twenty, in-person guest lectures for appropriate College courses.
 - vi. The equivalent of \$3000 worth of costume rental charges for costumes for College productions.
 - vii. One hosted outreach tour (by Great Lakes Theater Festival, Inc.) at a College site.
5. The terms and conditions of such use by the College shall be more favorable than the terms and conditions of use by the public or by other, similar entities, to a degree that reasonably reflects the magnitude of the College investment in the Foundation. The Chancellor shall, upon request, be provided such pertinent records by the Foundation and the College which 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 the Effective Date and extend until its fifteenth anniversary.
7. Either party may terminate this agreement prior to the expiration of its term by providing written notice of termination to the other party at least six (6) months prior to the effective date of the termination; provided that in the event of any termination, the Foundation 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 fifteen (15) and multiplying the result by fifteen (15), minus the number of years this agreement was in effect.

8. That the Foundation 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 of the Foundation.
9. That the Foundation 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.
10. That the funds appropriated for the project by the State of Ohio shall be used only for capital improvements as defined in House Bill 699.
11. That the Foundation shall comply with all pertinent rules, regulations, and laws of the federal, state and local governments.
12. That 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 party shall have designated by notice given in accordance with the provisions of this paragraph:
 - a. Playhouse Square Foundation
1501 Euclid Avenue
Cleveland, Ohio 44115
Attn: Patricia A. Gaul, V.P Finance/Administration and General Counsel
 - b. Cuyahoga Community College District
700 Carnegie Avenue
Cleveland, Ohio 44115
attn: Brian Bethune, and
cc: General Counsel
13. That any amendment to this Agreement would require the written approval of the College, Foundation, and the Chancellor.
14. That this Agreement shall be binding upon and inure to the benefit of the Foundation and the College and their respective successors and assigns.
15. That 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. That 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. That this Agreement shall be construed under and governed by the laws of the State of Ohio.
18. That for the purposes of this agreement a full day assigned to the College is to be considered by the Foundation as the entire day and no portion of it may be transferred to another entity without the approval of the College.
19. That this agreement may not be assigned. Any attempted assignment would be null and void.
20. That any conflict between a provision of this agreement and the Foundation's Standard License Agreement between the parties will be resolved in favor of the provision in this agreement.

In Witness Whereof, the parties hereto have executed this agreement as of the Effective Date.

PLAYHOUSE SQUARE FOUNDATION

By: 

Date: 1/5/09

CUYAHOGA COMMUNITY COLLEGE DISTRICT

By: Jerry Sue Thornton

Date: 12-18-08

Approved By The Chancellor Of The Ohio Board Of Regents:

By: 

Date: 2/4/09

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EXHIBIT A

Project Description

Estimated Cost

Renovate the Hanna Theater at The Playhouse
Square Center

\$738,750