



Board of Regents

Ted Strickland Governor
Eric D. Fingerhut Chancellor

University System of Ohio

DIRECTIVE 2009-010

April 17, 2009

Re: A JOINT USE AGREEMENT BETWEEN CUYAHOGA COMMUNITY COLLEGE AND THE HOSPICE OF THE WESTERN RESERVE, INC.

H.B. 562 includes a specific capital appropriation of \$100,000 to Cuyahoga Community College to construct a Hospice of the Western Reserve facility. The Hospice will own and operate the new facility that will 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 Hospice of the Western Reserve, 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 Cuyahoga Community College and the Hospice of the Western Reserve, Inc.

This directive will take effect immediately.

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

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JOINT USE AGREEMENT

This JOINT USE AGREEMENT (the "Agreement") is made and entered into as of this ___ day of March, 2009, by and between Cuyahoga Community College District (hereinafter referred to as the "College"), an institution of higher education and political subdivision of Ohio, and Hospice of the Western Reserve, Inc. (hereinafter referred to as the "Hospice"), an Ohio non-profit corporation.

WHEREAS, the 127th General Assembly enacted House Bill 562 which includes a specific appropriation of capital improvement resources in the total amount of one hundred thousand dollars (\$100,000), directed to the College for the improvements and modifications to facilities of the Hospice:

WHEREAS, capital appropriations released by 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;

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 one hundred thousand dollar (\$100,000) appropriation, of which ninety eight thousand five hundred dollars (\$98,500) will be for the Hospice and one thousand five hundred dollars (\$1,500) (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 Hospice shall then submit invoices and related documentation to the reasonable satisfaction of the College, after which the College shall transfer appropriate amounts to the Hospice.

2. The Hospice covenants that it shall use the funds to construct a 32 bed hospice residential/inpatient facility at 1050 Crocker Road, Westlake, Ohio 44145. The Hospice represents and warrants that it owns the existing facilities and the property where the planned project (the "Project") will be completed, and that the Hospice has sufficiently insured its facilities and the Project.

3. The Hospice has adopted a capital improvements budget to be implemented in part with the funds contemplated by this Agreement. 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. The term of this Agreement will commence when the Chancellor approves the Agreement, and will extend through its anniversary in 2029. During each year of the term, the Hospice shall conduct eight one-hour hospice and/or end-of life healthcare lectures per year, with dates, locations, audiences, and precise topics to be mutually agreed by the parties.

5. 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 Hospice 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 twenty (20), and multiplying the result by twenty (20) minus the number of years the Hospice provided the benefits during the timeframe established in Section 4 of this Agreement.

6. The Hospice 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 Hospice and the Project.

7. The Hospice, in connection with the Project, shall use competitive bidding procedures equivalent to those enumerated in relevant provisions of Chapter 153 Ohio Revised Code involving publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidders.

8. The funds appropriated for the Project by the State of Ohio shall be used only for capital improvements as defined in House Bill 562.

9. The Hospice shall comply with all pertinent federal, state, and local laws, including without limitation state administrative provisions.

10. 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:

Hospice of the Western Reserve, Inc.
300 East 185th Street
Cleveland, Ohio 44119-1330

Cuyahoga Community College District
Office of the President
700 Carnegie Avenue
Cleveland, Ohio 44115
with a copy sent separately to the same address, to the attention of "General Counsel"

11. Any amendments to this Agreement would require the prior written approval of the College, the Hospice and the Chancellor.

12. This Agreement may not be assigned. Any attempted assignment would be null and void.

13. 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.

14. 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.

15. 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.

HOSPICE OF THE WESTERN RESERVE, INC.

By: David Surgen

Title: CEO

Date: 3-9-09

CUYAHOGA COMMUNITY COLLEGE DISTRICT

By: [Signature]

Title: VP, Administration & Finance

Date: 3-17-09

Approved by the Chancellor of the Ohio Board of Regents:

By: [Signature]

Date: 4/17/09

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EXHIBIT A

Project Description	Estimated Cost
Construction of a 32 bed hospice residential/inpatient facility	\$22,300,000

Joint Use Agreement between Cuyahoga Community College and the Hospice of the Western Reserve, Inc.

BACKGROUND

H.B. 562 includes a specific capital appropriation of \$100,000 to Cuyahoga Community College to construct a Hospice of the Western Reserve facility. The Hospice will own and operate the new facility that will 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 building of a 32 bed hospice residential facility that will be located at 1050 Crocker Road, Westlake, Ohio.

REVIEW

Throughout the entire term of the agreement, the Hospice will provide the following to Cuyahoga –

- 1) Eight one-hour hospice and/or end-of life healthcare lectures per year.

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 Hospice of the Western Reserve, Inc.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Cuyahoga Community College/Hospice of the Western Reserve, Inc.
Project Title Hospice Residential/Inpatient Facility
Capital Bill HB 562 Item C37832 Western Reserve Hospice Center

- 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>\$100,000</u>
2. Estimated annual debt service on the appropriation:	<u>\$7,688</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. Eight (8) lectures per year _____	\$ 8,000 _____	20 _____
b. _____	\$ _____	_____
c. _____	\$ _____	_____
d. _____	\$ _____	_____
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.

The annual value of the \$7,688 ($\$100,000 \times 20 \text{ years} \times 4.5\%$) debt service on the appropriation is expected to be re-captured within the 20 year term through annual "in-kind" value of \$8,000 over the duration of the 20 year period as follows:

Hospice of the Western Reserve agrees to provide eight (8) lectures a year starting in 2009. These lectures are valued at \$1,000 each. The location and time of these lectures will be mutually agreed upon by the two parties. There will be four (4) lectures that are each to be repeated once throughout the year. The duration of each lecture will be approximately two (2) hours.