



Board of Regents

Ted Strickland Governor
Eric D. Fingerhut Chancellor

University System of Ohio

DIRECTIVE 2009-012

April 23, 2009

Re: A JOINT USE AGREEMENT BETWEEN THE UNIVERSITY OF TOLEDO AND ADVOCATES FOR BASIC LEGAL EQUALITY, INC.

H.B. 562 includes a specific capital appropriation of \$1,000,000 to the University of Toledo for capital improvements to the Center for Equal Justice. The Advocates for Basic Legal Equality, Inc. currently owns and operates the facility to be renovated with state 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. The University of Toledo and the Advocates for Basic Legal Equality, Inc. presented a joint use agreement for approval.

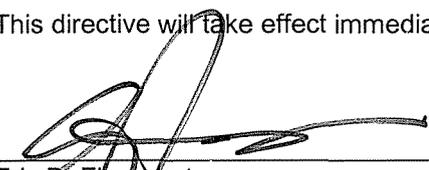
The agreement conforms to Ohio Administrative Code as follows –

- 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 the University of Toledo and the Advocates for Basic Legal Equality, Inc.

This directive will take effect immediately.


Eric D. Fingerhut
Chancellor, Ohio Board of Regents

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Joint Use Agreement between the University of Toledo and Advocates for Basic Legal Equality, Inc.

BACKGROUND

H.B. 562 includes a specific capital appropriation of \$1,000,000 to the University of Toledo for capital improvements to the Center for Equal Justice. The Advocates for Basic Legal Equality, Inc. (ABLE) currently owns and operates the facility to be renovated with state funds. As required by Ohio Administrative Code section 3333-1-03, the University of Toledo submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support improvements to the Center for Equal Justice, located at 525 Jefferson Street, Toledo, Ohio.

REVIEW

Throughout the entire term of the agreement, ABLE will provide the following to the University of Toledo –

ABLE will provide reasonable working space on an as needed basis for –

1. University law students enrolled in Public Service Externships;
2. University law students volunteering time through the College of Law Pro Bono Legal Services Program;
3. College of Law Clinical Professors and other members of the University community.

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 the University of Toledo and the Advocates for Basic Legal Equality, Inc.

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>\$1,000,000</u>
2. Estimated annual debt service on the appropriation:	<u>\$76,876</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 <u>Law students externships</u>	<u>\$ 28,875</u>	<u>15</u>
b. <u>Pro Bono Legal Services</u>	<u>\$ 28,875</u>	<u>15</u>
c. <u>Off. space for college of Law Clinical Prof</u>	<u>\$ 28,875</u>	<u>15</u>
d. <u>UT Fac. space for educational programs</u>	<u>\$ 28,875</u>	<u>15</u>
e. _____	<u>\$ _____</u>	<u>_____</u>

* 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.

ABLE will provide the University of Toledo with 3,850 square feet of space in its Center for Equal Justice building located at 525 Jefferson, Toledo, Ohio 43604. The space will be equipped with state of the art audio visual and internet technology. Comparable space in the Toledo, Ohio area would be available only by remodeling an existing building pursuant to a long term lease. The estimated cost per square foot per year of the remodeled space is \$30.00 for a total annual rental expense of \$115,500. The space at ABLE offers a number of various size work stations and conference rooms that can be flexibly scheduled to meets the needs of the University of Toledo.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved University of Toledo/Advocates for Basic Legal Equality, Inc.

Project Title Center for Equal Justice

Capital Bill HB 562 Item C34047 Center for Equal Justice

- 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
ADVOCATES FOR BASIC LEGAL EQUALITY, INC.
AND
THE UNIVERSITY OF TOLEDO**

THIS JOINT USE AGREEMENT ("Agreement") is made 9th day of February, 2009 between THE UNIVERSITY OF TOLEDO, an Ohio institution of higher education ("University"), and ADVOCATES FOR BASIC LEGAL EQUALITY, INC., an Ohio not for profit corporation ("ABLE").

RECITALS

WHEREAS, the Ohio General Assembly has granted the University \$1,000,000 (Funds) in House Bill No. 562 for the Center for Equal Justice, and

WHEREAS, the University, through this Agreement, distributes those Funds for renovation of the Center for Equal Justice, 525 Jefferson Street, Toledo, Ohio ("Facility") to be used as more particularly described herein; and

WHEREAS, the Center for Equal Justice will be the regional headquarters of ABLE and its partner agency, Legal Aid of Western Ohio, Inc. ("LAWO"); and

WHEREAS, the Funds are to be used by ABLE to renovate the Facility as more particularly described herein so it can be used by ABLE, LAWO, and the University, and

WHEREAS, use of the Funds by ABLE to renovate the Facility necessitates that the University and ABLE enter into a Joint Use Agreement in accordance with Ohio Administrative Rule 3333-1 03(E); and

WHEREAS, the University finds that the creation, commitment and furnishing of working space for University law students enrolled in Public Service Externships, volunteering time through the College of Law Pro Bono Legal Services Program or engaging in other law related public service including College of Law Clinics, along with the commitment to make office space available on an as needed basis for College of Law Clinical Professors and the opportunity for the University to use Facility space for other educational programs, services or

activities on terms more favorable than those offered to the public or to other entities is of a value reasonably commensurate with the amount of the grant.

NOW, THEREFORE, in consideration of the mutual benefits hereunder, it is hereby agreed between the parties as follows:

1. Renovation. The Funds will be used by ABLE to renovate the Facility for use as the regional headquarters of ABLE and LAWO. The Facility will include office space for approximately 100 staff members, a communications network designed to maximize communication and effectiveness of service among 10 offices located across 32 counties of northwest and west central Ohio, and conference room space for meetings, conferences, and training events. In addition, reasonable working space on an as needed basis will be made available for: 1) University law students enrolled in Public Service Externships, volunteering time through the College of Law Pro Bono Legal Services Program or engaging in other law related public service including College of Law Clinics, and; 2) College of Law Clinical Professors and other members of the University community. The Facility will provide student internship opportunities in Law and related areas of assistance to clients of ABLE and LAWO and provide student community service placements. ABLE will use the Funds solely for capital expenditures as defined in the bill appropriating such funds, including but not limited to site preparation, construction management, and building renovation. The Center for Equal Justice is on land owned or leased by ABLE. ABLE currently holds title to and is the owner of the Facility. In the event the Facility is transferred to another entity, ABLE will lease office space in the Facility from such entity for the remaining duration of this Agreement.

2. Renovation Plan/Budget. ABLE has adopted a capital budget for the renovation of the Facility denoting all funds that will be used within this project. The planned project and all costs associated with it are set forth in Exhibit "A", which is attached hereto and made a part hereof.

Upon execution of this Agreement and approval of the budget, the University will submit a request for the release of Funds from the Chancellor of the Ohio Board of Regents ("Chancellor") as appropriate. When such Funds are received, the University will pay same over

to ABLE. Funds paid by the University to ABLE shall be the University's sole contribution to the planning, renovation and operation of the Facility.

3. Insurance. Upon commencement of renovation of the Facility, ABLE shall maintain and pay all premiums for a builder's risk insurance policy insuring both ABLE's and the University's interests in the Facility. Upon completion of the renovation of the Facility and thereafter as long as this Agreement shall be in effect, ABLE 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 the University as an additional insured.

4. Term: Termination Prior to Expiration of Term. The term of this Agreement shall begin on the date of execution of this Agreement by the parties hereto and shall end fifteen (15) years after the date the renovated Facility opens for business. The University shall have the right to terminate this Agreement if any of the material terms or conditions contained herein are breached and such breach is not cured within sixty (60) days after ABLE receives notice of the breach from the University. This Agreement shall automatically terminate if (i) the renovation of the Facility is permanently halted, abandoned, or unable to be completed; (ii) ABLE fails to receive any governmental approval, permit, or license necessary to operate the Facility; (iii) the operation of the Facility ceases; or (iv) the University no longer has the right to use the Facility as provided herein.

5. Reimbursement to the State. In the event that prior to the expiration of this Agreement, (i) the University's right to use the Facility is involuntarily terminated for any reason, (ii) this Agreement is automatically terminated as provided in Section 4 above, or (iii) this Agreement is terminated by ABLE or by the University as a result of a material breach or violation by ABLE of this Agreement as provided in Section 4 above, then ABLE shall remit to 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 the result by fifteen (15) less the number of full years that the Facility was used by ABLE.

6. Funds Used for Capital Improvements. Funds provided under this Agreement shall be used by ABLE only for capital improvements as defined in House Bill 562.

7. Hold Harmless. ABLE shall hold the University, its heirs, successors and assigns, its officers, trustees, and employees and the State of Ohio harmless from any and all obligations, costs, expenses (including attorney fees), damages, liabilities, claims, actions or causes of action arising out of the renovation, use, and operation, and maintenance of the Facility, including but not limited to the failure or alleged failure of such renovation or operation to comply with applicable public bidding requirements or any other federal, state or local law, ordinance, rule, order, directive or regulation.

8. Compliance with Law: Competitive Bidding; Prevailing Wage. ABLE shall comply with all pertinent federal, state, and local laws, rules, and state administrative regulations. ABLE will follow competitive bidding procedures which include, as a minimum, publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidders. This project is subject to O.R.C. Chapter 4115 as well as Chapter 4101:9-4 of the Ohio Administrative Code relating but not limited to the payment of prevailing wage.

9. Reimbursement to the University for Administrative Costs. Out of the Funds appropriated, ABLE shall reimburse the University for administrative costs incurred by the University as a result of the planning and renovation of the Facility. Said reimbursement shall equal one and one-half percent of the amount appropriated by the State of Ohio. Said funds shall be deducted and paid to the University as those funds are released by the State of Ohio.

10. Amendments. Any amendments to this Agreement shall be in writing signed by the parties hereto and shall require approval by the Chancellor.

11. Assignment. Neither ABLE nor the University may assign any right, title, interest, duty or obligation under this Agreement unless the assignment is in writing and approved by the Chancellor.

12. Construction Work: Disbursement Schedule. The Funds will be used by ABLE to perform renovation work on the Facility. After appropriate State of Ohio approvals, the Funds provided for in House Bill No. 562 will be released to the University for payment or reimbursement of invoices related to obligations incurred by ABLE for permitted uses of the appropriated Funds as set forth in this Agreement. Such obligations must be properly documented in accordance with the University's fiscal procedures and Ohio's mechanic's lien statutes.

13. Educational Use of the Facility by the University. The University may use the Facility upon terms and conditions more favorable than that available to the public or any other user of the Facility to the degree that reflects the State's investment. The Chancellor shall, upon written request, be provided with pertinent records of the Facility by ABLE and the University which measure the nature and extent of the use of the Facility by the University and the terms governing such use. The University 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, office and conference room space that will assist the University in meeting its academic goals for its students, in particular students at the College of Law. It is recognized that the proximity of the Facility to the court systems, other law offices, and government agencies in Toledo will enhance the ability of the University, in particular the College of Law, to host an increased range of educational programs, services, and activities.

14. Entire Agreement of the Parties. This Agreement constitutes the entire Agreement of the parties with respect to the subject matter hereof (funds in House Bill No. 562) and supersedes all prior written or oral discussions, negotiations, agreements and undertakings with respect to the matters covered hereby.

15. Records Regarding Facility Use. ABLE shall, upon request by the Chancellor and/or the University, supply the Chancellor and/or the University with all pertinent records in the possession of ABLE that measure the nature and extent of use of the Facility by the University,

the terms and conditions governing such use, and the specific benefits derived by the University under this Agreement.

16. 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.

Joseph R. Tafelski, Executive Director
Advocates for Basic Legal Equality, Inc.
520 Madison Avenue, Suite 740
Toledo, Ohio 43604

Dr. Lloyd Jacobs, M.D., President
The University of Toledo
2800 Bancroft Street
Toledo, Ohio 43606

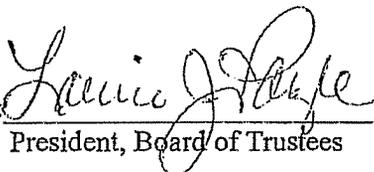
17. Headings. The headings used in this Agreement are inserted only as a matter of convenience and for reference and should not be given effect in the interpretation of this Agreement.

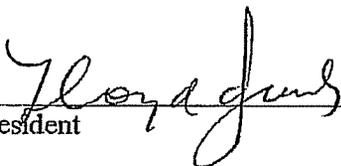
18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

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

ADVOCATES FOR BASIC LEGAL
EQUALITY, INC.

THE UNIVERSITY OF TOLEDO

By: 
President, Board of Trustees

By: 
President

Date: 2-3-09

Date: 2-9-09

The Center for Equal Justice
A project of
ADVOCATES FOR BASIC LEGAL EQUALITY, INC.
State of Ohio Capital Appropriation request

- Scope of the Project:** Advocates for Basic Legal Equality, Inc. (ABLE) and its partner non-profit law firm, Legal Aid of Western Ohio, Inc. (LAWO), are in need of new office space to serve as their regional headquarters. ABLE and LAWO provide free, high quality legal assistance to low income persons in 32 counties in northwest and west central Ohio. Their current office space in downtown Toledo is antiquated and inefficient. The building structure and office arrangements limit ABLE and LAWO's ability to provide legal assistance to clients in an efficient and effective manner. After several years of searching, the ABLE and LAWO Boards of Trustees decided to purchase and renovate the former Western Union Building in downtown Toledo to serve as the firms' regional headquarters. ABLE purchase the building in the fall of 2006 and embarked on a capital campaign to raise the funds needed for the building purchase and renovation. Renovations commenced in the spring of 2008 with completion expected by April 2009. Total costs for purchase and renovation will be \$6.1 million. The \$1,000,000 State of Ohio requested funds would assist with the renovation work on the Center for Equal Justice.
- Summary:** The Center for Equal Justice is important to the clients of ABLE and LAWO, and to the Toledo area, for three reasons. When fully funded and complete, it will make ABLE and LAWO more financially secure. The firms will be able to operate the building for less than they currently pay in rent, and it will provide an asset for the firms. The Center for Equal Justice also will expand ABLE and LAWO's capacity to provide effective and efficient legal services to their clients. Finally, the Center will renovate a building that had been largely vacant for decades and enhance the appearance of downtown Toledo. From the State of Ohio's perspective in favorably responding to this funding request it will provide an opportunity to serve a large number of constituents in an efficient, user friendly and accessible facility.
- Project Schedule:** Renovations are in progress. The work that the State Funds will cover should be completed by April 1, 2009.

Total Project Costs: \$6,100,000

See attached total facilities purchase and renovation budget for more specific revenue and expense information

Drawdown Schedule:

Project Contact:

Joseph R. Tafelski
Executive Director
Advocates for Basic Legal Equality, Inc.
520 Madison Avenue, Suite 640
Toledo, Ohio 43604
(419) 255-0814 (phone)
(419) 259-2880 (fax)
jtafelski@ablelaw.org

**ABLE
The Center for Equal Justice
Budget**

Budget item	Cost Estimate
Building Acquisition (including acquisition cost)	\$ 624,019
Renovations	4,211,781
Architect Fee	240,000
Furniture & Equipment	720,000
Relocation Expenses	104,200
Total Project Subtotal	<u>5,900,000</u>
Fund Raising Expenses	200,000
Grand Total Project	<u><u>\$ 6,100,000</u></u>