Ohio | Board of Regents

Ted Strickland Governor
Eric D. Fingerhut Chancellor

University System of Ohio

DIRECTIVE 2009-021
June 26, 2009

Re: A JOINT USE AGREEMENT BETWEEN THE UNIVERSITY OF CINCINNATI AND THE CITY OF SHARONVILLE

H.B. 562 includes a specific capital appropriation of $950,000 to the University of Cincinnati for the Sharonville Convention Center. The City of Sharonville 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. The University of Cincinnati and the City of Sharonville 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 Cincinnati and the City of Sharonville.

This directive will take effect immediately.

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

mlc

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Joint Use Agreement between the University of Cincinnati and the City of Sharonville

BACKGROUND

H.B. 562 includes a specific capital appropriation of $950,000 to the University of Cincinnati for the Sharonville Convention Center. The City of Sharonville owns and operates the facility to receive state capital funds. As required by Ohio Administrative Code section 3333-1-03, the University of Cincinnati submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support an expansion to the Sharonville Convention Center, located at 11355 Chester Road, Sharonville, Ohio.

REVIEW

Throughout the term of the agreement, the Center will be available to the University for the following –

- Student Exhibitions
- Educational Conferences
- Educational Seminars
- Any function officially sponsored by the University

The City agrees not to charge rental fees for these events throughout the term of the agreement.

The value of uses derived from this Joint Use Agreement is independent of any values previously derived from prior Joint Use Agreements between the City of Sharonville and the University of Cincinnati.

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 Cincinnati and the City of Sharonville.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved University of Cincinnati/City of Sharonville

Project Title Convention Center Expansion

Capital Bill HB 562 Item C26619 Sharonville Convention 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?

EXHIBIT E

Joint Use Agreement Worksheet

The Ohio Board of Regents

March 11, 2009

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:	$950000
2. Estimated annual debt service on the appropriation:	$73032
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.Student Exhibitions	$18258	20
b.Educational Conferences	$18258	20
c.Educational Seminars	$18258	20
d.Any function officially sponsored by UC	$18258	20
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.

Exhibit E.
Section III.

The City will make space in and use of the Convention Center Expansion available to the University with a fair market equal to $950,000, plus interest at the rate of 4.5% per annum, for a period of twenty (20) years, not to exceed a fair market value of $73,032 inclusive of interest per year, for the following categories of events:

1. Student Exhibitions;
2. Educational Conferences;
3. Educational Seminars; and
4. Any function officially sponsored by the University

JOINT USE AGREEMENT

This Joint Use Agreement (this "Agreement") is entered into by and between City of Sharonville[1] ("Owner"), a public body[2] whose address is 10900 Reading Road[3] and the UNIVERSITY OF CINCINNATI, an instrumentality of the State of Ohio created and existing under Chapter 3361 of the Ohio Revised Code (the "University") whose address is 625 University Pavilion, P.O. Box 210625, Cincinnati, OH 45221-0625.

RECITALS

WHEREAS, the University desires to assist Owner in financing, in whole or part, the cost of planning, designing and/or constructing certain capital improvements generally to consist of design and construction drawings [4] which are more fully described in the attached Exhibit A[5] (the "Project"), to be constructed by Owner in a facility either owned or leased by Owner pursuant to terms described in the attached Exhibit B[6] which include the right of occupancy for the entire term of this Agreement, which facility is located at 11355 Chester Road[7] (the "Facility".)

WHEREAS, the Ohio General Assembly has passed HB 562[8], which provides capital appropriations to the University from the State of Ohio in the amount of $950,000[9] for the Project (the "Funds");

WHEREAS, the release of the Funds by the Office of Management and Budget and/or the Controlling Board to the University requires the recommendation of the Chancellor of the Ohio Board of Regents (the "Board of Regents");

WHEREAS, the Board of Regents has established by rule a requirement that before recommending the release of capital funds to an institution for the improvement of facilities that will be owned or leased by a separate nonprofit organization or a public body the institution shall submit a joint use agreement for approval which shall include the provisions described in Ohio Administrative Code §3333-1-03(E)(1) through (11), which the parties have incorporated herein; and

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

1. **Use of Owner's Facilities and/or Resources by the University**. Owner shall permit the University jointly to use the Facility for a term of twenty (20)[10] years commencing on the date the Project is completed. The parties consent and agree that the extent and nature of the University's right to use the Facility is reasonably related to the amount of the Funds. The extent and nature of the space to which the University is by this Agreement granted rights for use, and the terms and conditions governing such use, are specified in the attached Exhibit C.

2. **Reimbursement of Funds.** If the Owner shall materially breach this Agreement and fail to cure within a reasonable time following notice, or if the University's right to use the Facility as provided herein shall be terminated prior to expiration of the term, then Owner shall reimburse to State of Ohio the Funds on a pro rata basis, with the amount of such reimbursement calculated by multiplying the total amount of the Funds by a fraction the denominator of which is the total number of months in the term described in paragraph 1 above and the numerator of which is the total number of months remaining in the term at the time of breach or termination.

3. **Notation of University Funding.** During the period of construction, the Owner shall provide a conspicuous notation upon or in the presence of the Project and in all publicity relating to the Project that funding is being provided through a joint use agreement with the University.

4. **Use of Funds.** The Owner shall use the Funds only for the capital improvements as defined in the bill appropriating the Funds.

5. **Owner's Compliance With Laws and Regulations.** Owner shall comply with all pertinent federal, state and local laws as well as state administrative regulations including but limited to the requirement that it follow competitive bidding procedures, which shall include, as a minimum, publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidders or, if the Owner is a public body subject to specific competitive bidding requirements, then it shall follow the competitive bidding requirements applicable to such bodies.

6. **Distribution of Funds and Payment of Administrative Costs.** Following the approval of this Agreement by the Board of Regents, the University will request the release of and seek to encumber the Funds to the University for the purpose of programming, planning, designing and/or implementing the capital improvements defined in the bill appropriating the Funds. After release and encumbrance of the Funds, the Owner may obtain payment by submitting to the University an application for payment (not more than once per month) identifying the amounts owing for work and/or materials in connection with the capital improvements, which shall be certified as true and correct by Owner and shall be supported by such other documents reasonably required by the University, and after confirming that the requested amount is due and owing, the University shall cause payment to be made to the Owner. The University shall deduct and retain from the Funds the total amount $14,250[11] constituting 1 ½% of the Funds to compensate it for costs of administration.

7. **Hold Harmless.** The Owner shall indemnify and hold harmless the University, its officers, trustees, and employees from any and all liability arising from the Owner's design, construction, operation, and maintenance of the Facility.

8. **Liability Insurance.** The Owner has and shall maintain for the entire term of this Agreement a comprehensive program of insurance covering the Facility including liability and casualty coverage in an amount reasonably sufficient to indemnify the Owner from claims and any losses relating to the construction, ownership, and operation of the Facility.

9. **Binding Nature.** This Agreement shall be binding upon and inure to the benefit of the Owner and the University and their respective successors and assigns.

10. **Amendments.** Any amendments to this Agreement shall be in writing, signed by the Owner and the University, and shall require approval by the Board of Regents.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement as of the month, day and year signed.

UNIVERSITY OF CINCINNATI

By: _____

Title: _____

Date: April 2, 2009

Monica Rimai
Senior Vice President, Administration and Finance

City of Sharonville [12]

By: _____

Title: Safety Service Director

Date: 2/19/09

EXHIBIT A

(Detailed Description of the Project)

The Sharonville Convention Center has been open since March of 1994. Since that time, it has grown its business to a level where its target market volume exceeds its current capacity. As a result, the Convention Center is turning away more business than it is able to accommodate.

Many of its clients have also outgrown the current facility, while many other organizations have expressed an interest in bringing events to the Convention Center if the facility was made larger.

With the support of the State of Ohio and Hamilton County, Ohio, funding plan has been put in place, primarily with the use of excess hotel occupancy taxes to add a 65,000 sq. ft. total building expansion to include a 20,000 sq. ft. Exhibition Hall, and 8,000 sq. ft. Ballroom and 37,000 sq. ft. of other public and building support space at a cost of approximately $28 million.

The monies received through this Agreement will be used to fund a portion of the costs of the design work of the Convention Center expansion. The remainder of the design work and construction costs will be funded through the use of Hamilton County Hotel Occupancy Taxes.

EXHIBIT B

(Basic Terms of Lease, If Applicable)

No lease, not applicable

EXHIBIT C

(Description of Extent and Nature of Space and Terms and Conditions of Use)

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*Specifically excluded would be use by associations or groups that the University may represent or assist in bringing to Sharonville.

*Scheduling of available dates shall not take place more than 12 months prior to event. Scheduling and contracting can be accomplished only by the proper University authority.

*All event scheduling will be subject to the current Booking Policy, specifically as it relates to booking priorities:

1. First Priority
   *Conventions and Trade Shows of regional, state, National or International origin.
2. Second Priority
   *Large Corporate Events that require a block of hotel rooms.
3. Third Priority
   *Large Public Expositions.
4. Fourth Priority
   *Annual Events.
5. Fifth Priority
   *Events using multiple dates, such as the usage anticipated by the University.
6. Sixth Priority
   *Single day rentals, such as the usage anticipated by the University.
7. Seventh Priority
   *Single Function Private Events.
8. Eighth Priority
   *Conduct of City Business.

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EXHIBIT D

JOINT USE AGREEMENT ANALYSIS

Institution(s) Involved UC/City of Sharonville

Project Title Sharonville Convention Center Expansion

Capital Bill 2009 Item C26619, Section 233.30.40

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