



# Board of Regents

Ted Strickland, Governor  
Eric D. Fingerhut, Chancellor

University System of Ohio

## DIRECTIVE 2009-025

July 29, 2009

RE: A JOINT USE AGREEMENT BETWEEN THE UNIVERSITY OF TOLEDO AND MERCY COLLEGE OF NORTHWEST OHIO.

H.B. 562 includes a specific capital appropriation of \$225,000 to the University of Toledo for capital improvements to a Mercy College of Northwest Ohio facility. The project is located in space allocated to Mercy College by St. Vincent Mercy Medical Center, the owner of 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 Toledo and Mercy College of Northwest Ohio 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 Mercy College of Northwest Ohio.

This directive will take effect immediately.

Eric D. Fingerhut  
Chancellor, Ohio Board of Regents

MLC

Joint Use Agreement between the University of Toledo and Mercy College of Northwest Ohio

**BACKGROUND**

H.B. 562 includes a specific capital appropriation of \$225,000 to the University of Toledo for the Mercy College of Northwest Ohio project. The project is located in space allocated to Mercy College by St. Vincent Mercy Medical Center, the owner of the facility to receive state capital 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 Technology and Informatics Center at Mercy College, located at 2221 Madison Avenue, Toledo, Ohio.

**REVIEW**

Throughout the entire term of the agreement, Mercy College of Northwest Ohio will provide the following to the University –

- 1) Reasonable access to the Center of up to 40 hours per week, limited by Mercy College's academic schedule, for students, faculty, and staff of the University.

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 Mercy College of Northwest Ohio.

## 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>\$225,000</u> |
| 2. Estimated annual debt service on the appropriation: | <u>\$17,297</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. Access to 2 open computer labs 40 hr/wk	\$ <u>35,200</u>	<u>15</u>
b. _____	\$ _____	_____
c. _____	\$ _____	_____
d. _____	\$ _____	_____
e. _____	\$ _____	_____

(\* 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.

44 academic weeks (fall and spring semesters at 16 each plus 12 week summer session)  
40 hours access per academic week  
Two computer labs  
Room rental rate of \$10.00/hour

44 weeks x 40 hours x \$10/hour = \$17,600/ yr./room x 2 rooms = \$35,200/ yr.

## JOINT USE AGREEMENT ANALYSIS

Institutions Involved University of Toledo/Mercy College of Northwest Ohio

Project Title Technology and Informatics Center

Capital Bill HB 562 Item C34048 Mercy College Technology and Infomatics 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**  
Between  
**MERCY COLLEGE OF NORTHWEST OHIO**  
AND  
**THE UNIVERSITY OF TOLEDO**

This **JOINT USE AGREEMENT** (herein the "Agreement") is entered into between **MERCY COLLEGE OF NORTHWEST OHIO**, a private, not-for profit institution of higher education in Ohio (herein "Mercy") and **THE UNIVERSITY OF TOLEDO**, an institution of higher education, an instrumentality of the State of Ohio created and existing under Chapter 3364 of the Ohio Revised Code (herein "Toledo").

**RECITALS**

**WHEREAS**, pursuant to Section 233.33.20 of HB 562 of the 127th General Assembly has appropriated funds in appropriation item C34048 in the amount of Two Hundred Twenty Five Thousand Dollars (\$225,000) (herein the "Funds") for the use by Toledo towards the construction and development of a Technology and Informatics Center at Mercy (herein the "Project"); and

**WHEREAS**, Toledo, through this Agreement, agrees to commit the Funds towards the PROJECT, an initiative of MERCY, to be located at 222I Madison Avenue, Toledo, Ohio 43604 (herein the "Facility"); and

**WHEREAS**, the State of Ohio capital appropriation provides for the release of FUNDS through the Chancellor of the Ohio Board of Regents (herein the "Chancellor") for this PROJECT, and specifically calls for the execution of a Joint Use Agreement; and

**WHEREAS**, TOLEDO has concluded that the value of the use of MERCY'S facilities and resources by TOLEDO as provided in this Agreement is reasonably related to the amount of the appropriation, and that the terms of this Agreement are more favorable to TOLEDO than to others;

**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 MERCY to renovate space into the PROJECT at MERCY. A forty-user student computer lab will be developed next to a twenty-user student instructional computer lab. The Health Information Technology (HIT) clinical lab will be expanded and relocated as well as the offices of MERCY's Informational Technology (IT) support personnel will be relocated to the PROJECT area. The PROJECT is located in space allocated to MERCY by St. Vincent Mercy Medical Center, the owner of the building, of which MERCY is a subsidiary corporation.
2. **Budget.** The capital budget for the renovation PROJECT is attached as Exhibit "A".

3. **Use of Mercy's Facilities and Resources by Toledo.** MERCY agrees to provide reasonable access of up to 40 hours per week, limited by MERCY'S academic schedule, to the completed PROJECT for students, faculty, and staff of TOLEDO for a period of 15 years from the date of execution of this Agreement. MERCY agrees to reimburse the FUNDS to the state should TOLEDO'S right of access provided for herein be terminated prematurely, which reimbursement shall be calculated by dividing the FUNDS contributed by the state by fifteen (15) less the number of full years the Facility has been used by TOLEDO.
4. **Funds Used for Capital Improvements.** Funds provided by this Agreement shall be used by MERCY only for capital improvements as defined in HB 562.
5. **Notation of University Funding.** MERCY agrees to provide a notation on a section of the PROJECT and all publicity relating to the PROJECT that funding is being provided through a Joint Use Agreement with TOLEDO.
6. **Records of Usage.** MERCY will provide pertinent records, which measure the nature and extent of use of the completed PROJECT by Toledo.
7. **Distribution of FUNDS: Administrative Costs.** Upon execution of this Agreement and approval thereof by the **Chancellor, TOLEDO will submit to the** Chancellor a request for the release of the appropriation to TOLEDO for the purpose of completing the PROJECT. After release and encumbrance of the FUNDS, TOLEDO will seek disbursement of the FUNDS. MERCY will submit to TOLEDO requests for payment of amounts due accompanied by documentation for contracted work or purchase orders related to obligations incurred by MERCY for permitted uses of the FUNDS. From the FUNDS, TOLEDO shall receive administrative costs in an amount up to \$3,375 which is equal to one and one-half percent (1 ½ %) of the total amount of FUNDS.
6. **MERCY'S Compliance With Laws and Regulations.** MERCY shall comply with all pertinent federal, state, and local laws, rules, and state administrative regulations. MERCY will follow competitive bidding procedures which include, as a minimum, publishing advertisements to seek bids, receive 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.
7. **Hold Harmless:** MERCY shall hold the State of Ohio and Toledo, its officers, trustees, and employees harmless from any and all obligations, expenses, liabilities or claims of any kind and/or TOLEDO, its officers, trustees or employees being named as a defendant or party to any lawsuit or adjudicatory proceedings, if such lawsuit or adjudicatory proceeding arising out of (1) the construction, renovation, operation, or maintenance costs of the PROJECT, (2) and alleged action or omission of MERCY, its officers, trustees or employees, including, but not limited to MERCY'S

failure or alleged failure to comply with any applicable federal, state or local law, ordinance, rule, order, directive or regulation.

8. **Liability Insurance.** MERCY has a program of liability insurance under which it is responsible for addressing all claims and loss or damage which may arise at the PROJECT.
9. **Binding Nature.** This Agreement shall be binding upon and inure to the benefit of MERCY and TOLEDO, and their respective successors and assigns.
10. **Amendments.** Any amendments to this Agreement shall be in writing, signed by MERCY and TOLEDO, and shall require approval by the Chancellor.

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

THE UNIVERSITY OF TOLEDO

By: *[Signature]*

Title: President

Date: 6/2/09

MERCY COLLEGE OF NORTHWEST OHIO

By: *[Signature]*

Title: PRESIDENT

Date: 5/27/09

**Exhibit A**

**Income**

State of Ohio appropriation:	\$250,000.00
Mercy College capital allocation	575,000.00
Total income	\$800,000.00

**Expenses**

Renovation	\$700,000.00
Equipment	100,000.00
Total expenses:	\$800,000.00