Ohio | Board of Regents

Ted Strickland, Governor
Eric D. Fingerhut, Chancellor

University System of Ohio

DIRECTIVE 2009-027
August 14, 2009

RE: A JOINT USE AGREEMENT BETWEEN OWENS STATE COMMUNITY COLLEGE AND THE CITY OF PERRYSBURG, OHIO.

H.B. 562 includes a specific capital appropriation of $200,000 to Owens State Community College for the City of Perrysburg project. The City of Perrysburg owns 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. Owens State Community College and the City of Perrysburg, 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 Owens State Community College and the City of Perrysburg, Ohio.

This directive will take effect immediately.

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

MC

30 East Broad Street • 36th Floor • Columbus, Ohio 43215-3414 • 614 | 466-6000 • Fax: 614 | 466-5866
www.regents.state.oh.us

Joint Use Agreement between Owens State Community College and the City of Perrysburg, Ohio

BACKGROUND

H.B. 562 includes a specific capital appropriation of $200,000 to Owens State Community College for the City of Perrysburg project. The City of Perrysburg owns the facility to receive state capital funds. As required by Ohio Administrative Code section 3333-1-03, Owens State Community College submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support improvements to the Police Pistol and Rifle Range at 330 Walnut Street, Perrysburg, Ohio.

REVIEW

Throughout the entire term of the agreement, the City of Perrysburg will provide the following to the College –

1) Owens shall have use of the Range, with priority over all other outside users, for up to one hundred and fifty hours per year at no cost.

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 Owens State Community College and the City of Perrysburg, Ohio.

Joint Use Agreement Worksheet Between
Owens Community College and
The City of Perrysburg, Ohio
The Ohio Board of Regents
June 16, 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 $ 250,000. The annual debt service paid by the state on this appropriation is about $ 19,219 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 $ 19,219 per year for 20 years.

Section I: State appropriation information.

1. Amount of state appropriation provided:	$ 200,000
2. Estimated annual debt service on the appropriation:	$ 15,375
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.	150 Firing Range Hours of Use per Year	$ 20,500	15
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.

Owens Community College has developed an active and recognized Law Enforcement Program in conjunction with the local Police Academy. With the current development of the Center for Emergency Preparedness the College has advanced its position as a regional resource to local Police and First Time Responders. To support the training requirements of such programs, the proposed Joint Use Agreement and collaborative use of the Perrysburg Police Firing Range would offer significant value and support to the College's programs. For the purpose of establishing "in-kind" value for the aforementioned appropriation, use of the proposed facility and accommodations was considered. The facility would provide specialized accommodation for the fire arm training of the academy cadets and students of the College's Law Enforcement Program. With a reasonable value of approximately $140.00 per hour for range use and personnel supervision, the annual "in-kind" value for the College's support is sufficiently satisfied.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Owens State Community College/City of Perrysburg, Ohio

Project Title Police Pistol and Rifle Range

Capital Bill HB 562 Item C38815 City of Perrysburg & Owens Community College Firing Range

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
CITY OF PERRYSBURG, OHIO
AND
OWENS STATE COMMUNITY COLLEGE

THIS JOINT USE AGREEMENT (herein the "Agreement") is made this 16th day of June, 2009 by and between **OWENS STATE COMMUNITY COLLEGE**, a political subdivision of the State of Ohio created and existing under Chapter 3358 of the Ohio Revised Code (herein "Owens"), and the **CITY OF PERRYSBURG**, a municipal corporation within the State of Ohio (herein after the "City").

RECITALS

WHEREAS, pursuant to House Bill No. 562 of the 127th General Assembly, the Ohio General Assembly has appropriated funds in the amount Two hundred Thousand Dollars ($200,000) (herein the "Funds") for the use by Owens towards the construction and development by the City of a Police Firing Range, to be located on 330 Walnut Street, Perrysburg, Ohio 43551 (herein the "Project"); and

WHEREAS, Owens, through this Agreement, agrees to commit the Funds towards the construction of the Police Pistol and Rifle Range to be located at 330 Walnut Street, Perrysburg, Ohio 43551 (herein the "Facility"), to be used as is more particularly described herein; and

WHEREAS, the renovated Facility will provide a controlled and safe facility for police officer pistol and rifle training and will be used by the Perrysburg Police Division and other authorized officers; and

WHEREAS, the granting of the Funds by Owens to the City to construct the Facility necessitates that Owens and the City enter into a Joint Use Agreement in accordance with the provisions of Ohio Administrative Code Section 3333-1-03(E); and

WHEREAS, Owens finds that the value of the use of the Facility by Owens is reasonably related to the amount of the grant of Funds and that the terms of use of the Facility are favorable to Owens.

NOW THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein stated, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Construction of the Facility.**

   a. **Owens Contribution.** Owens will contribute the Funds to the City as set forth herein, to be used by the City solely towards the design and construction of the Project.

b. **City of Perrysburg's Role.** The City will use the Funds solely for capital expenditures as defined in H.B. 562, appropriating such Funds for such purposes as architectural fees, site preparation, construction management, and building construction on the land owned by the City. The City of Perrysburg will hold title to and be the owner of the Facility and shall be solely responsible for designing, bidding, contracting, and paying for all fees, costs and expenses in connection with the Project. The City shall also be solely responsible for any and all costs of operation and maintenance of the Facility.

c. **Facility Budget**. The City has adopted a capital budget for the construction of the Project, denoting all funds planned for use on this Project. The planned Project and all costs associated with the Project are set forth in Exhibit "A" which is attached hereto and incorporated herein by reference.

d. **Disbursement of Funds**. Upon execution of this Agreement and approval of the Project budget, Owens will submit a request for the release of Funds as appropriate. After appropriate State of Ohio approvals and release of the Funds to Owens, Owens will transfer the Funds to the City for use in payment of eligible Project expenses. Funds paid by Owens to the City shall be Owens' sole contribution and participation in the design, planning, construction, renovation, maintenance and operation of the Facility. The City hereby represents and warrants that it will be solely responsible for financing the balance of all costs and expenses for the Facility that exceed the Funds given by Owens to the City, and that the City will secure or has secured the funding required to successfully complete the Facility.

e. **Compliance**. The City shall comply with all pertinent federal, state and local laws, rules and state administrative regulations in the design and construction of the Facility. Furthermore, the City shall follow the competitive bidding procedures identified in Ohio Revised Code Chapter 153 including, but not limited to, publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidder(s). The City and all contractors and subcontractors working on the construction of the Facility, shall follow all provisions of Ohio's prevailing wage law, Revised Code Chapter 4115.

2. **Joint Use of the Facility**.

a. **Shared Use of the Facility**. The City and Owens shall share in the use of the Facility for purposes including, but not limited to, accommodations for fire arm and/or police training Owens Police training or associated programs. In consideration of the Funds contributed by Owens, Owens shall have the use of the Facility, with priority over all other outside users, for up to One Hundred and Fifty (150) hours per year at no cost. Such rights to usage shall not accrue from year-to-year, shall be based on a schedule agreed-upon by the City and Owens, and shall be subordinate to the City's first right to use the facility for training its

own personnel. Failure by Owens to use the full amount of time to which it is entitled under this agreement shall not be considered a breach by the City.

b. **Terms of Use by Owens.** In consideration of the Funds contributed by Owens, Owens shall have use of the Facility upon such terms and conditions as are generally applicable to users of the Facility, as are stated in this Agreement, and as may be agreed to, in writing, by Owens and the City.

i. Owens shall comply with the terms and conditions applicable to all other users of the Facility, absent written agreement to additional or different terms by the City and Owens.

ii. Such additional or different terms may be more favorable than those available to other users of the Facility to the degree that reflects the State's investment.

iii. Owens shall be entitled to use the Facility for educational programs, services or activities based on mutually agreed upon scheduling of space and time as otherwise stated in Paragraph 2.a. hereto, and it is recognized that the proximity of the Facility to the population of Lucas and Wood Counties will enhance the ability of Owens to host an increased range of educational programs, services and activities for this community.

iv. The City agrees that the Facility shall be constructed and maintained as a modern, highly functional, multi-purpose facility which will assist Owens in meeting its academic goals for the citizens of Lucas and Wood Counties and the remainder of Owens' service district.

3. **Term and Termination.** The term of this Agreement shall commence June 16, 2009 and shall continue for a period of fifteen (15) years terminating on June 15, 2024 (herein the "Term"). Owens shall have the right to terminate this Agreement if the City breaches any of the material terms or conditions contained herein, or of any otherwise applicable term and condition of the use of the facility, and such breaches are not cured within thirty (30) days after the date Owens sends written notice of the breach to the City. The City shall have the right to terminate this Agreement if Owens breaches the applicable terms and conditions of its use of the Facility and if this breach is not remedied within thirty (30) days after the City provides written notice of the breach to Owens. This Agreement shall automatically terminate if, (i) the construction of the Facility is halted, abandoned, or unable to be completed; (ii) the City fails to receive any governmental approval, permit, or license necessary to construct or operate the Facility; (iii) the operation of the Facility ceases; (iv) Owens no longer has the right to use the Facility as provided herein; or (v) the City breaches any term or condition in this Agreement and fails to cure it within thirty (30) days.

4. **Use of Funds.** Funds provided under this Agreement shall be used by the City only for capital improvements as defined in House Bill No. 562, and used solely by the City for

the Project. Use of the Funds shall be supported by a detailed written record of the use of such Funds in connection with the Project which shall be maintained by the City, detailing contracts, invoices, vouchers, paid receipts and other data as appropriate and documenting the costs incurred and paid by the City in completing the Project as set forth in Exhibit A. The use of the Funds must be properly documented in accordance with Owens' fiscal procedures and Ohio's mechanics liens laws. If the Funds are not expended in accordance with the terms, conditions and time period set forth in this Agreement and the Scope of Work and Project Budget in Exhibit A, the amounts improperly expended or not expended shall be returned to Owens within thirty (30) days after the effective date of the expiration or termination of this Agreement. In the event that the Project does not become operational and/or is abandoned, all Funds not expended by Grantee at the time of the Project's failure to become operational and/or becomes abandoned, shall be remitted to Owens by the City within thirty (30) days after such event has occurred.

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

6. **Reimbursement to the State.** In the event that Owens' right to use the Facility be terminated by the City prior to the expiration of the fifteen (15) year Term of this Agreement, then the City shall reimburse 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 that sum by fifteen (15) less the number of full years that the Facility was used by Owens.

7. **Indemnification/Hold Harmless.** The City shall indemnify and hold Owens, the State of Ohio, their elected officials, employees, officers, trustees, harmless from any and all obligations, costs, expenses (including attorney fees), damages, liabilities, claims, actions or causes of action arising out of the design, construction, renovation, maintenance and operation of the Facility, including but not limited to, the failure or alleged failure of such construction, renovation, maintenance, repair, operation, or to comply with applicable public bidding requirements or any other federal, state or local law, ordinance, rule, order, directive or regulation. Except as provided herein and except for its own conduct, Owens' participation on any board or committee entrusted with the operation of the Facility shall not result in any liability, cost or contribution arising out of the construction, renovation, operation, repair, maintenance or use of the Facility by parties other than Owens.

8. **Reimbursement to Owens for Administrative Costs.** Out of the Funds appropriated, the City shall reimburse Owens for administrative costs incurred by Owens as a result of the planning and construction of the Facility. Said reimbursement shall be equal one and one-half percent (1.5%) of the amount appropriated by the State of Ohio. Said reimbursement shall be deducted and paid to Owens as the Funds are released by the

State of Ohio.

9. **Amendments.** Any amendments to this Agreement shall be in writing, signed by the parties hereto, and shall require approval of the Chancellor of the Ohio Board of Regents.

10. **Assignment.** Neither the City nor Owens may assign any right, title, interest, duty or obligation under this Agreement unless the assignment is in writing and approved by the Chancellor of the Ohio Board of Regents.

11. **Entire Agreement of the Parties.** This Agreement constitutes the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior written or oral discussions, negotiations, agreements and undertakings with respect to the matters covered hereby.

12. **Records Regarding Facility Use.** The City shall, upon request by the Chancellor of the Ohio Board of Regents and/or Owens, supply the Chancellor of the Ohio Board of Regents and/or Owens, with all pertinent records in the City's possession which measure the nature and extent of use of the Facility by Owens, the terms and conditions governing such use, and the specific benefits derived by Owens under this Agreement; however, absent a breach of this Joint Use Agreement by the City (including a failure by the City to comply with mutually agreed upon schedule for Owens' usage pursuant to Paragraph 2.a above), neither Owens, the Chancellor of the Ohio Board of Regents, nor any other party may be entitled to recover from the City any amount of the Funds in the event that Owens' chooses not to use the Facility in a manner equal to the debt service.

13. **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.

If to the City:

Nelson Evans, Mayor
City of Perrysburg
201 West Indiana Avenue
Perrysburg, Ohio 43551

Copy to:
Richard Gilts, Chief of Police
City of Perrysburg
330 Walnut Street
Perrysburg, Ohio 43551

If to Owens:

John Satkowski, Executive Vice President, Treasurer
Owens Community College
30335 Oregon Road
Perrysburg, Ohio 43551

Copy to:

Thomas Horrall, Director of Capital Planning
Owens Community College
30335 Oregon Road
Perrysburg, Ohio 43551

14. **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.

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

SIGNATURE PAGE

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

THE CITY OF PERRYSBURG, OHIO

By: _____
Nelson Evans
Mayor

By: _____
David D. Creps
Finance Director
Ordinance Number 52-2009

Date: 6/23/09

OWENS STATE COMMUNITY COLLEGE

By: _____
John Satkowski
Executive VP, CFO, and Treasurer

Date: 6-15-09

EXHIBIT A

CITY OF PERRYSBURG, OHIO

A program of
PERRYSBURG POLICE DIVISION

State of Ohio Capital Appropriation request

Project Scope:

In August of 2004 the City of Perrysburg opened its new Police Division headquarters building at 330 Walnut Street. The new facility incorporated space in the lower level for an indoor pistol and rifle range. Due to budgetary considerations, the City was not able to proceed with completion of the range portion of the project.

The proposed indoor police firearms training facility will provide the Police Division with the resources to train Division officers under controlled conditions. Basic and advanced skills can be taught without transporting equipment, ammunition, training aids, and personnel several miles to a remote location. Firearms instruction can also be conducted at various times of the day or night. Because of the controlled conditions and bullet recovery system, there are few environmental threats and the quality of life in areas surrounding the facility is not disturbed. In collaboration with Owens Community College, the facility will also be available for use by the College's law enforcement officers and students in the law enforcement training program.

The Perrysburg/Owens College Indoor Firing Range Project consists of the following elements:

1. Installation of a ventilation and filtration system whereby outside air is fed into the range and is exhausted through appropriate filtering to the outside.

2. Preparation of the concrete walls with acoustic materials.

3. Preparation of the concrete floor to ensure that the range is protected from water damage and cleaning of shooting byproducts is easily performed.

4. Installation of a remote controlled moving target system for up to 5 participants.

5. Installation of an effective decelerator bullet trap suitable for 40 caliber pistol ammunition, up to and including 5.56 mm rifle ammunition which is used in patrol rifles and carbines.

6. Construction on the range of a control room for all of the following systems:
    - Lights
    - Ventilation and air handling
    - Targets
    - Range communications
    - Range security
    - Armory and storage

7. Construction of a work room behind the control room to be used for routine weapon cleaning, maintenance and minor repairs which are typically performed before during and after shooting sessions.

8. Construction of a secure weapons armory and storage room.

9. Installation of gear to hold personal items and articles of clothing after arriving at the range.

10. Construction and installation of armored baffling for the range ceiling.

This project remains important to the City of Perrysburg, in that it will provide valuable training to Police and Safety personnel in a convenient safe environment. Current accommodations are such that training must take place at a remote location, thereby limiting such training opportunities. From Owens and the State of Ohio's perspective in favorably responding to this funding request, this agreement will provide an opportunity to serve a large number of constituents in an efficient, user friendly and accessible facility.

Project Budget:

The following estimate of probable cost is based on accepted industry standards for cost estimating and experience with similar projects. Costs may vary depending on the economic conditions at the time of bidding, final program and materials selected.

ACTIONS	ESTIMATED COSTS
Construction	
General Requirements	4,000
Site Improvement	N/A
Building Construction	32,000
Specialties	167,500
Furnishings	0
Mechanical	102,000
Electrical	30,000
Subtotal	335,500
Contingency (10%)	33,500
Total Construction	**$ 369,000**
Other Project Costs	
Furniture	N/A
Professional Services	28,000
Reimbursables, Permits Etc.	0
Owens CC Admin Fee.	3000
Total Other Costs	**$ 31,000**
Total Estimated Costs	**$ 400,000**

Project Resources:

SOURCE	AMOUNT
State of Ohio	$ 200,000
City of Perrysburg	$ 200,000
Total	**$ 400,000**

Project Schedule:

The current project is actively in progress at this time with the schedule to follow: now and the work that the State Funds will cover should be completed by September 30, 2009. The total project through Phase IV should be completed in the November 30, 2009.

ACTIVITY	DURATION
Design and Preparation of Construction Documents	1 Month
Reviews and Permitting	0.5 Months
Bidding and Contract Approval	1.0 Months
Construction	3 Months
Total Estimated Project Duration	5.5 Months

Anticipated Drawdown Schedule:

September 30, 2009 $ 200,000.00

Project Contact:

Stephen J. Herwat, P.E.
Engineering Consultant
City of Perrysburg
201 West Indiana Ave.
Perrysburg, Ohio 43551
sherwat@ci.perrysburg.oh.us

Daniel Paez, Acting Chief of Police
City of Perrysburg
330 Walnut Street
Perrysburg, Ohio 43551
dpaez@ci.perrysburg.oh.usphen J. Herwat, P.E.