Ohio | Board of Regents

Ted Strickland, Governor
Eric D. Fingerhut, Chancellor

University System of Ohio

DIRECTIVE 2009-031
August 25, 2009

RE: A JOINT USE AGREEMENT BETWEEN SINCLAIR COMMUNITY COLLEGE AND THE NATIONAL CENTER FOR COMPOSITE SYSTEMS TECHNOLOGY.

H.B. 562 includes a specific capital appropriation of $750,000 to Sinclair Community College for a National Center for Composite Systems Technology (Center) project. The Center owns the facility to be improved with 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. Sinclair Community College and the National Center for Composite Systems 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 Sinclair Community College and the National Center for Composite Systems.

This directive will take effect immediately.

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

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Joint Use Agreement between Sinclair Community College and the National Center for Composite Systems Technology

BACKGROUND

H.B. 562 includes a specific capital appropriation of $750,000 to Sinclair Community College for a National Center for Composite Systems Technology (Center) project. The Center owns the facility to be improved with state capital funds. As required by Ohio Administrative Code section 3333-1-03, Sinclair Community College submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support the purchase of capital equipment and improvements to the National Composite Center Building at 2000 Composite Drive, Kettering, Ohio.

REVIEW

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

1) Up to five (5) market analysis consulting hours per month to ensure resources and collaboration activity is targeted appropriately based on market demand;
2) Up to twelve (12) consulting hours per month in support of Sinclair's Workforce Development initiatives;
3) Access and utilization of Center capital equipment, including one technician, for up to four hours at no cost;
4) A Center and College Advisory committee consisting of up to three (3) members from each organization.

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 Sinclair Community College and the National Center for Composite Systems Technology.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Sinclair Community College/National Center for Composite Systems Technology

Project Title NCC Tools and Molds

Capital Bill HB 562 Item C37709 National Composite 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

December, 2008

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.

Section I: State appropriation information.

1. Amount of state appropriation provided:	$750,000
2. Estimated annual debt service on the appropriation	$57,657
3. Term of the state bond, in years:	20 Years

Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. Market Analysis Consulting Hours	$12,000	20
b. Consulting Hours: Workforce Development	$24,000	20
c. Access to Equipment and Labs	$17,280	20
d. Advisory Committee	$4,800	20

(*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.

Section III – Analysis of Value of JUA between NCC and Sinclair Community College
*Analysis is calculated to meet annual debt service over a 20-year agreement

College Use Area	Hours per month	Hours per Year	Dollars per Hour	Total Value Per Year	Total Value Contract Life
NCC to provide up to five (5) market analysis consulting hours per month to ensure resources and collaboration activity is targeted appropriately based on market demand.	5	60	$200	$12,000	$240,000
NCC to provide up to twelve (12) consulting hours per month in support of various activities associated with Sinclair's Workforce Development initiatives.	12	144	$166.67	$24,000	$480,000
NCC to provide for access and utilization of NCC capital equipment in support of Sinclair's Workforce Development initiatives/activities in the Miami Valley Region.	4	48	$360	$17,280	$345,600
Develop an NCC and College Advisory committee consisting of up to three (3) members from each organization to further monitor and amend this agreement if necessary during the duration of the agreement.	2	24	$200	$4,800	$96,000
		Totals		**$58,080**	**$1,161,600**

JOINT USE AGREEMENT

This JOINT USE AGREEMENT (the "Agreement") is made and entered into as of this 2nd day of January, 2009 by and between Sinclair Community College, (hereinafter referred to as the "College") and the National Center for Composite Systems Technology, an Ohio non-profit corporation, (hereinafter referred to as "NCC").

WITNESSETH THAT:

WHEREAS, the 127th General Assembly has since enacted House Bill 562, which includes a specific appropriation of capital improvement resources in the total amount of seven hundred fifty thousand dollars ($750,000), directed to the NCC for the enhancement of its technology projects and programs in the area of advanced composites and materials; and

WHEREAS, the State of Ohio capital appropriations released by the Chancellor of the Ohio Board of Regents (the "Chancellor") require compliance with Ohio Administrative Code Rule 3333-1-03, which specifically calls for the execution of a Joint Use Agreement, and

WHEREAS, the College has concluded that the value of its use of, and exposure to, the NCC facility and its tools and equipment as provided in this agreement, as enhanced by the acquisitions that will be made possible by this appropriation, is reasonably related to the amount of the appropriation, and

WHEREAS, the College wished to utilize the expanded, reconstructed and renovated facilities and equipment and tools of the NCC in connection with programs identified in the Joint Use Agreement and, therefore, wishes to enter into this 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 will submit to the Chancellor, a request for the release of seven hundred and fifty Dollars ($750,000) of the appropriation identified in this Agreement, seven hundred thirty eight thousand seven hundred and fifty Dollars ($738,750) for the NCC and eleven thousand two hundred and fifty Dollars ($11,250), which is equal to 1.5% of the appropriation, for administrative costs to the College.

2. The NCC will expend the funds in accordance with the preliminary budget allocation set forth in Exhibit A, which is attached hereto and made a part hereof and, for the purposed hereof, constitute the "Project". All aspects of the Project shall be performed at the National Composite Center Building, 2000 Composite Drive, Kettering, Ohio 45420

3. That throughout the entire term of this Agreement, the NCC will do the following:

    a. Provide up to five (5) market analysis consulting hours per month to ensure resources and collaboration activity is targeted appropriately based on market demand.

    b. Provide up to twelve (12) consulting hours per month in support of Sinclair's Workforce Development initiatives.

c. Provide for access and utilization of NCC capital equipment including one technician, for up to four hours at no cost, in support of Sinclair's Workforce Development initiatives/activities in the Miami Valley Region. Raw materials and tooling if required, will be not be provided free of cost. Usage to be coordinated with NCC.

d. Develop an NCC and College Advisory committee consisting of up to three (3) members from each organization to further monitor and amend this agreement if necessary during the duration of the agreement.

4. The terms and conditions of such use by the College shall be more favorable than the terms and conditions of use by any other entity to a degree that reasonably reflects the magnitude of the College's investment in the facility. The Chancellor, shall, upon request, be provided with pertinent records of the facility that measure the nature and extent of the use of the facility by the College, and the terms and conditions governing such use.

5. That the term of this Agreement shall commence upon its execution by the parties and extend through calendar year 2029.

6. That in the event either party desires to terminate this agreement prior to the expiration of its term, written notice of either party's intent to terminate this agreement shall be given to the other party at least six (6) months prior to the effective date of that termination. Should the project not be completed or should the College's right to involvement in the Project be terminated prior to the term of this agreement, NCC shall return to the State of Ohio a pro rata portion of the State appropriation to be calculated by dividing the amount of its state appropriation by twenty (20) years and multiplying the result by twenty (20), minus the number of years of the College's involvement in the Project.

7. The NCC shall hold the College harmless from liability for any and all costs, liabilities, and claims that arise from or are attendant to the construction, operation, and maintenance costs of the NCC.

8. The NCC, in connection with the Project, but only as to the portions thereof identified on Exhibit A, shall use where applicable competitive bidding procedures equivalent to those enumerated in relevant provisions of Chapter 153 Ohio Revised Code involving (1) publishing advertisements to see bids, (2) receiving sealed bids, and (3) awarding contracts to the lowest, responsive and responsible bidders.

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

10. The NCC shall comply with all pertinent rules, regulations, and laws of the federal, state, and local government.

11. All mailing and notices to the parties shall be addressed to the parties at the addresses set forth below or to such other address as either shall have designated by notice given

in accordance with the provisions of this paragraph. All mailings and notices shall be addressed as follows:

National Composite Center
2000 Composite Drive
Dayton, Ohio 45420
Attn: Lisa Novelli, President

Sinclair Community College
444 West Third Street
Dayton, Ohio 45402
Attn: Jeffrey A. Miller, Director of Business Services

12. All Amendments to the Agreement shall require the prior approval of the College and NCC, as well as the express prior approval of the Chancellor.

13. This Agreement shall be binding upon and inure to the benefit of the NCC and the College and their respective successors and assigns.

14. This Agreement sets forth the entire agreement of the parties concerning the 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.

15. 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.

16. This Agreement shall be construed under and governed by the laws of the State of Ohio.

17. That after appropriate state approvals, the funds provided in House Bill 562 will be released to the College and subsequently transferred by the College to NCC after presentation of an invoice by NCC to the College. All expenditures must be conducted in accordance with State of Ohio guidelines.

18. The NCC represents and warrants that it owns the facility that will be renovated and improved and carries full general liability insurance for the building, equipment and contents.

IN WITNESS WHEREOF, the parties have hereunto set their hands on this 30 day of April 2009.

THE NATIONAL CENTER FOR COMPOSITE SYSTEMS TECHNOLOGY

By: [signature]

By: Lisa A. Novelli

Date: 4/30/09

SINCLAIR COMMUNITY COLLEGE

By: _____

By: Jeffrey A. Miller Director Business Services

Date: 7/16/09

EXHIBIT A

1. Approximately $738,750 will be spent on tools and molds for AMT Dayton facility, tool room and equipment for AMT Dayton and miscellaneous future capital expenditures.

2. $11,250 of the funds will pay the College's administrative fee.