Ohio | Board of Regents

Ted Strickland Governor
Eric D. Fingerhut Chancellor

University System of Ohio

DIRECTIVE 2009-033
September 9, 2009

RE: A JOINT USE AGREEMENT BETWEEN THE OHIO STATE UNIVERSITY AND THE RESEARCH INSTITUTE AT NATIONWIDE CHILDREN'S HOSPITAL.

H.B. 562 includes a specific capital appropriation of $2,500,000 to The Ohio State University for the Research Institute at Nationwide Children's Hospital (Nationwide) project. Nationwide will own the equipment purchased 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. The Ohio State University and the Research Institute at Nationwide Children's Hospital 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 Ohio State University and the Research Institute at Nationwide Children's Hospital.

This directive will take effect immediately.

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

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Joint Use Agreement between The Ohio State University and the Research Institute at Nationwide Children's Hospital

BACKGROUND

H.B. 562 includes a specific capital appropriation of $2,500,000 to The Ohio State University (OSU) for the Research Institute at Nationwide Children's Hospital (Nationwide) project. Nationwide will own the equipment purchased with state capital funds. As required by Ohio Administrative Code section 3333-1-03, The Ohio State University submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support the purchase of equipment for use by OSU faculty at Nationwide's facility, located at 700 Children's Drive, Columbus, Ohio.

REVIEW

Throughout the entire term of the agreement, Nationwide will provide the following to OSU –

1) Access to equipment for use by OSU faculty appointed as principal investigators that will assist them in the development and execution of their research.

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 Ohio State University and the Research Institute at Nationwide Children's Hospital.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Research Institute at Nationwide Children's Hospital and The Ohio State University

Project Title Nationwide Children's Hospital Capital Equipment

Capital Bill H.B. 562 Item C315U7

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 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

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: $ 2,500,000
2. Estimated annual debt service on the appropriation: $ 192,190
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. Research Institute at Nationwide Children's Hospital	$ 200,000	20
b.	$	
c.	$	
d.	$	
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.

Section III: Value Analysis

As the pediatric arm of The Ohio State University (OSU) College of Medicine, Nationwide Children's Hospital's principal investigators hold faculty appointments at the University. The equipment purchased through this project is intended for the use of OSU faculty appointed as principal investigators at Nationwide Children's Hospital, to assist them in the development and execution of their research.

The equipment purchased will be utilized only by OSU College of Medicine personnel for research activities. The total estimated value to the University is equal to $2.5 million or $125,000 per year for a period of twenty (20) years. In addition, approximately 50 graduate students from OSU College of Medicine are actively engaged in research conducted at Nationwide Children's Hospital. For each of these students Nationwide Children's Hospital pays an average stipend of $24,000/yr for a total of $1.2 million in stipend costs. The graduate students will be provided use of the proposed capital equipment for an estimated 6-7% of their time, which translates to approximately $75,000 per year. Therefore, the total benefit to OSU includes an annual equipment benefit of $125,000 plus an annual student benefit of $75,000 for a total annual benefit of $200,000 per year.

Furthermore, this capital purchase will promote the University's mission to address issues and problems of global dimension that are affecting the quality of the human condition. Research conducted with the aid of this capital equipment purchase will advance University efforts to address issues such as health and disease and in turn will provide an immeasurable value to all of humanity.

JOINT USE AGREEMENT

This joint use agreement (this "Agreement") is made and entered into as of the 22ND day of June, 2009 by and between The Ohio State University (the "University"), acting under the provisions of Chapter 3335 of the Revised Code of Ohio, and the Research Institute at Nationwide Children's Hospital ("Nationwide"), a non-profit corporation organized and existing under the laws of the State of Ohio.

RECITALS

WHEREAS, the General Assembly has appropriated funds to the University for the following project (the "project"):

Project Name: Nationwide Children's Hospital Capital Equipment
Legislation: House Bill 562
Capital Appropriation: C315U7
OSU Project Number: # OSU-090499

In the total amount of Two Million and Five hundred thousand dollars ($2,500,000.00), (the "Appropriation").

WHEREAS, in 2008 the Ohio General Assembly appropriated state capital funds in the amount of $ 2,500,000.00 to The Ohio State University for the Nationwide Children's Hospital Capital Equipment and The Ohio State University College of Medicine to provide for the purchase of equipment for the use of The Ohio State University faculty appointed as principal investigators, to assist them in the development and execution of their research.

WHEREAS, capital appropriations released by the Chancellor of the Ohio Board of Regents (the "Chancellor") require compliance with Ohio Administrative Code 3333-1-03(E), which specifically calls for the execution of a joint use agreement.

WHEREAS, the University has concluded that the value of the use of the facilities by the University as provided in this agreement is reasonably related to the amount of the appropriation.

NOW, THEREFORE, in furtherance of the above, and in consideration of the mutual covenants, promises, conditions and terms to be performed by each, the University and Nationwide hereby agree as follows:

AGREEMENT

1. Commitment. Nationwide commits to the University that the monies for the project will be used to purchase equipment for the use of The Ohio State University faculty appointed as principal investigators, to assist them in the development and execution of their research.

2. Term. The term of this Agreement shall commence as of the date of its approval by the Chancellor and shall expire twenty (20) years from the date thereafter. In the event that this Agreement is terminated prior to its expiration, Nationwide shall reimburse the State of Ohio with an amount calculated by (a) dividing the amount of the appropriation actually paid to Nationwide under the Agreement by twenty (20), and (b) multiplying the resulting amount by (i) twenty (20), less (ii) the number of full years the project has been utilized by the University in accordance with the Agreement (the "Reimbursement Amount"). The Reimbursement Amount shall be paid in cash.

3. Compliance with Laws. On this project Nationwide shall comply with all pertinent federal, state and local laws as well as state administrative regulations including those relating to competitive bidding and prevailing wage.

4. Funds used for Capital Improvements. Except for the funds used to cover the University's administrative costs, the funds provided under this Agreement shall be used by Nationwide only for purchase of equipment for the use of The Ohio State University faculty appointed as principal investigators with The Ohio State University College of Medicine, Nationwide Children's Hospital located at Nationwide Children's Hospital, 700 Children's Drive, Columbus, Ohio 43205 and shall not be used for operating expenses. Nationwide, in connection with the Agreement, 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 seek bids, (2) receiving sealed bids, and (3) awarding contracts to the lowest, responsive and responsible bidders.

5. Nationwide Children's Hospital and Insurance. Nationwide's facility located at 700 Children's Drive, Columbus, Ohio 43205 is a non-profit corporation organized and existing under the laws of the State of Ohio, and is fully insured.

6. Hold Harmless. The University shall have no liability for, and Nationwide shall indemnify and hold the University harmless from, all construction, operation and maintenance costs of the project.

7. Distribution of Funds and Administrative Costs. Upon execution of this Agreement, the University shall submit to the Chancellor a formal request for the release of the Appropriation. The University shall be paid for administrative costs incurred as a result of the construction of the project. Such administrative costs shall be $ 37,500.00 which is equal to 1.5% of the appropriation and shall be paid by the University to itself concurrently with the University's payment to Nationwide. Nationwide shall submit a draw request of permitted use of funds to the University in the amount of $ 2,462,500.00 as soon as practicable upon the signing of this Agreement; but not longer than eleven months from the date of the signing of this Agreement. The University shall, within 30 calendar days after State of Ohio Office of Budget and Management Controlling Board approval for release of funds, disburse the Appropriation.

8. The terms and conditions of such use by the University 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 University's investment in the facility. The Chancellor shall, upon request, be provided with pertinent records by Nationwide and the University that measure the nature and extent of the collaboration between Nationwide and the University, and the terms and conditions governing such collaboration.

9. Validity. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be illegal, invalid or unenforceable because of judicial construction, then the remaining terms, covenants and conditions of this Agreement or their application to persons or circumstances other than those held invalid or unenforceable shall not be affected thereby; and each term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

10. Assignment. This Agreement may not be assigned in any form or to any extent by either party without the written consent of the other party.

11. Notices. Any notice required or permitted to be given under this Agreement shall be given either by: (i) first-class certified mail, return receipt requested, addressed to the party at the address shown below, or (ii) personal delivery at the then-current address of such party; in either event, with a copy given by either manner to the person designated below to receive a copy. Such notice shall be effective when delivered to both persons. The current addresses of the parties and the persons to receive copies are, respectively, as follows:

To the University:

Christopher M. Culley
General Counsel
Office of Legal Affairs
The Ohio State University
1590 North High Street
Suite 500
Columbus, Ohio 43210-2178

To Nationwide:

Aaron Ufferman
Nationwide Children's Hospital
700 Children's Drive
Columbus, Ohio 43205

Katherine Milem, Vice President
Nationwide Children's Hospital
700 Children's Drive
Columbus, Ohio 43205

With a copy to:

Dr. John Barnard
ED 4th Floor
Nationwide Children's Hospital
700 Children's Drive
Columbus, Ohio 43205

11. Governing Law. This Agreement shall be subject to and interpreted in accordance with the laws of the State of Ohio, and any action brought pursuant to this Agreement shall be brought in a court of competent jurisdiction within the State of Ohio.

12. Amendments. Any amendment to this Agreement will not be effective unless and until approved in writing by the parties hereto and by the Chancellor.

13. 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

THE OHIO STATE UNIVERSITY

By: _____
~~William J. Shkurti~~
~~Senior Vice President, Business & Finance~~
Jeff Kaplan
Senior Vice President, Administration & Planning,
and Special Assistant to the President

NATIONWIDE CHILDREN'S HOSPITAL

By: _____
Katherine Milem
Vice President