Ohio | Board of Regents

Ted Strickland, Governor
Eric D. Fingerhut, Chancellor

University System of Ohio

DIRECTIVE 2009-040
November 18, 2009

RE: A JOINT USE AGREEMENT BETWEEN COLUMBUS STATE COMMUNITY COLLEGE, THE INTERNATIONAL PAINTERS AND ALLIED TRADES DISTRICT COUNCIL 6, JOINT APPRENTICESHIP, TRAINING AND RESEARCH TRUST FUND, AND THE PAINTERS AND DECORATORS BUILDING CORPORATION.

H.B. 562 includes a specific capital appropriation of $500,000 to Columbus State Community College for the Painters and Decorators Building Corporation (PDBC) and the International Painters and Allied Trades District Council 6, Joint Apprenticeship, Training and Research Trust Fund (DC6JATRTF) project. PDBC will own 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. Columbus State Community College, the Painters and Decorators Building Corporation (PDBC) and the International Painters and Allied Trades District Council 6, Joint Apprenticeship, Training and Research Trust Fund (DC6JATRTF) 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 Columbus State Community College, the Painters and Decorators Building Corporation (PDBC) and the International Painters and Allied Trades District Council 6, Joint Apprenticeship, Training and Research Trust Fund (DC6JATRTF).

This directive will take effect immediately.

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

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Joint Use Agreement between Columbus State Community College, the International Painters and Allied Trades District Council 6, Joint Apprenticeship, Training and Research Trust Fund, and the Painters and Decorators Building Corporation

BACKGROUND

H.B. 562 includes a specific capital appropriation of $500,000 to Columbus State Community College for the Painters and Decorators Building Corporation (PDBC) and the International Painters and Allied Trades District Council 6, Joint Apprenticeship, Training and Research Trust Fund (DC6JATRTF) project. PDBC will own the facility to be improved with state capital funds. As required by Ohio Administrative Code section 3333-1-03, Columbus State Community College submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support the purchase of a Painters and Decorators Building Corporation facility, located at 8700 Memorial Drive, Plain City, Ohio.

REVIEW

Throughout the entire term of the agreement, PDBC and DC6JATRTF will provide the following to Columbus State –

1) At least four courses per quarter of instruction with the use of (1) one 1200 sq. ft. classroom and one (1) 6500 sq. ft. work/lab space for apprenticeship training;
2) In-kind instruction for the Apprenticeship Program for the first two years of study for each cohort group;
3) In-kind classroom materials needed to support the instruction of the Apprenticeship Program.

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 Columbus State Community College, the International Painters and Allied Trades District Council 6, Joint Apprenticeship, Training and Research Trust Fund, and the Painters and Decorators Building Corporation.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Columbus State Community College/Painters and Decorators Building Corp

Project Title Painters Union Building

Capital Bill HB 562 Item C38412 Painters Apprenticeship Council

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

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:	$ $500,000
2. Estimated annual debt service on the appropriation:	$ 38,438
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. Classroom and Lab space	$ 13,500	20
b. In-kind instruction	$ 6,392	20
c. In-kind materials	$ 10,000	20
d. Academic Support	$ 11,000	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.

The agreement provides for use of one 1200 sq ft classroom and one 6500 sq ft work/lab space for apprenticeship training. We estimated we would use the classroom more frequently than the lab, and calculated the value of the space we would use at 1500 sq ft multiplied by $9.00. $9.00 per square foot represents a typical rental fee amount between non-profits.

DC6JATRTF agrees to provide instruction to 30-40 students per year spread across four programs: Painting, Drywall, Glazier, and Sign and Display. The instruction will include approximately 13 contact hours per year. Our normal rate for adjunct instructors is $44.70 per contact hour over an eleven week quarter. Thus value of instruction was calculated as $44.70 * 13 * 11 = $6392 per year.

DC6JATRTF will also provide academic support services for learners for the equivalent of 10 hours per week during the academic quarter, providing general direction, workforce information, and access to resources on location, and employment and academic consultation. At a rate of $25 per hour, for ten hours during 44 weeks per year (four 11-week quarters), this is valued at $11,000.

In-kind materials include materials needed to support instruction in the four programs (Painting, Drywall, Glazier, Sign and Display) as well as program and promotional materials.

JOINT USE AGREEMENT
BETWEEN
PAINTERS & DECORATORS BUILDING CORP.
AND
PAINTERS JOINT APPRENTICESHIP TRUST FUND
AND
COLUMBUS STATE COMMUNITY COLLEGE

THIS JOINT USE AGREEMENT ("Agreement") is between INTERNATIONAL PAINTERS AND ALLIED TRADES DISTRICT COUNCIL 6, JOINT APPRENTICESHIP, TRAINING AND RESEARCH TRUST FUND (DC6JATRTF), an Ohio non-profit corporation; PAINTERS AND DECORATORS BUILDING CORP (PDBC), an Ohio non-profit corporation, and COLUMBUS STATE COMMUNITY COLLEGE (COLLEGE), an instrumentality of the State of Ohio created and existing under Chapter 3358 of the Ohio Revised Code.

RECITALS

WHEREAS, the COLLEGE'S mission is to provide quality educational programs that meet the life-long learning needs of its community. Through its dynamic curriculum and commitment to diverse learners, the COLLEGE will serve as a catalyst for creating and fostering linkages among the community, business and educational institutions. The COLLEGE will proactively respond to the changing needs of our community and its role in the global economy through the use of instructional and emerging technologies; and further, whereas and PDBC's and DC6JATRTF'S mission is to provide the finest craftsmanship in the finishing trades industry, I.U.P.A.T. District Council 6 seeks to fashion a marketplace in which labor/management cooperation brings added value to our union employers while enhancing the lives of our locals, members by ensuring job security, safety, training and the wages and benefits they deserve, it is the intention of this Agreement to develop an educational relationship that will be mutually beneficial to the parties.

WHEREAS, the Ohio General Assembly passed House Bill Number 562 which appropriated a total sum of Five Hundred Thousand Dollars ($500,000.00) to COLLEGE to be used by PDBC and DC6JATRTF for capital construction; and

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

WHEREAS, the COLLEGE has concluded that the value of the use of PDBC's and DC6JATRTF'S facilities and resources by the COLLEGE 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 the COLLEGE than to others;

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

1. Use of PDBC'S and DC6JATRTF's Facilities and Resources by COLLEGE.

A. PDBC will provide COLLEGE for at least four courses per quarter of instruction with the use of (1) one 1200 sq. ft. classroom and one (1) 6500 sq. ft. work/lab space for apprenticeship training in accordance with the Apprenticeship Standards approved by the Ohio State Apprenticeship Council (hereinafter referred to as "the Apprenticeship Program.")

At the time this Agreement is executed, those hours are:

- Painter, sign and display and glazier program: four (4) year apprenticeship @ 144 hours per year x 4 years = 576 hours per student
- Drywall finisher program: three (3) year apprenticeship @ 144 hours x 3 years = 432 hours per student
- Additional hours for Journeyman upgrade classes as defined in individual collective bargaining agreements which definitions are expressly incorporated into the Agreement by reference.

B. DC6JATRTF will provide in-kind instruction to COLLEGE for the Apprenticeship Program for the first two years of study for each cohort group. The cohort groups are expected to be comprised of no more than forty (40) learners each.

C. DC6JATRTF will provide the required in-kind classroom support materials needed to support the instruction of the Apprenticeship Program.

2. Joint Committee. A Joint Committee comprised of DC6JATRTF'S representatives and representatives of COLLEGE'S ALLIED TRADES ACADEMIC DEPARTMENT will develop the details and guidelines for implementation of programs referenced in item (1) above. The Joint Committee shall meet at least semi-annually to review and monitor implementation of the parties' commitments under this Agreement. A written report shall be prepared following each meeting, and submitted to each party's board of trustees, and the Board of Regents upon its request.

3. Annual Reports. Each annual report issued by DC6JATRTF during the term of this Agreement shall (1) include a description of the COLLEGE-DC6JATRTF relationship created by this Agreement, and (2) mention that the funds were provided via a state appropriation made to the COLLEGE.

4. Term; Termination Prior to Expiration of Term. The term of this Agreement shall commence as of the date of execution set forth below and shall end twenty (20) years thereafter.

If any of the material terms or conditions contained in this Agreement are breached by PDBC or DC6JATRTF or COLLEGE, then COLLEGE or DC6JATRTF or PDBC shall have the right to terminate this Agreement upon forty-five (45) days' written notice to the other Parties provided the other Parties do not cure the breach within such 45 day period.

5. Reimbursement of State upon Termination. In the event that this Agreement is terminated for any reason prior to twenty (20) years from the commencement date, PDBC shall remit to 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 twenty (20) and multiplying that sum by twenty

(20) less the number of full years that PDBC and DC6JATRTF'S obligations under this Agreement were fulfilled.

6. Compliance with Laws. DC6JATRTF shall comply in all material respects with all pertinent federal, state and local laws as well as state administrative regulations applicable to the use of funds hereunder and to the operation of the Capital Improvement.

7. Funds Used Only for Capital Improvements. The Funds provided under this agreement shall be used by PDBC and DC6JATRTF only for capital improvements as provided in HB 562, including, but not limited to purchasing of a training and instruction center which will enable DC6JATRTF to provide hands on instruction in allied trades, which will be located at 8700 Memorial Drive Plain City, Ohio 43064.

8. Insurance. The building will be owned by Painters and Decorators Building Corporation (PDBC), which will lease the facility to DC6JATRTF and will be fully insured in accordance with current minimum guidelines by the Chancellor and/or COLLEGE.

9. Competitive Bidding. PDBC and DC6JATRTF in connection with the expenditure of Funds for the Project shall to the extent required by Ohio law follow the competitive bidding procedures for educational facilities construction including but not limited to publishing advertisements to seek bids and awarding contracts to the lowest responsive and responsible bidder.

10. Hold Harmless.

(a) PDBC and DC6JATRTF shall hold the State of Ohio and COLLEGE, its officers, trustees and employees harmless from any and all obligations, expenses, liabilities or claims of any kind and/or the COLLEGE, 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 of the Project; (2) an alleged action or omission of PDBC or DC6JATRTF, its officers, trustees or employees including but not limited to PDBC's or DC6JATRTF'S failure or alleged failure to comply with applicable public bidding requirements or any other federal, state or local law, ordinance, rule, order, directive or regulation.

11. Amendments. Any amendments to this Agreement shall be in writing, signed by PDBC and DC6JATRTF and COLLEGE and shall require approval by the Chancellor.

12. Records of COLLEGE Use. Upon request by the Chancellor and/or the COLLEGE, PDBC and DC6JATRTF shall supply the Chancellor and/or the COLLEGE with all pertinent records including financial records which measure the nature and extent of use of PDBC facilities by the COLLEGE, the terms and conditions governing such use and the specific benefits derived by the COLLEGE under this Agreement.

13. Distribution of Funds; Administrative Costs. Upon execution of this Agreement COLLEGE shall submit to the Chancellor a formal request for the release of the Funds. After the release of the Funds, PDBC and/or DC6JATRTF shall submit to COLLEGE requests for payment of amounts along with documentation of contractor invoices or purchase orders related to obligations incurred by PDBC and/or DC6JATRTF for permitted uses of the Funds. A tentative disbursement schedule is attached hereto as **Exhibit A**. From the Funds, COLLEGE shall receive administrative costs in the amount of Seven Thousand Five Hundred Dollars ($7,500.00), which is equal to one and one-half percent (1½ %) of the total amount of the Funds.

14. Notices. All notices to the parties shall be sent by registered or certified mail, postage prepaid 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.

Painters and Decorators Building Corporation
8257 Dow Circle W
Cleveland, Ohio 44136
Attn: Terry Conroy
Trustee

Painters and Allied Trades District Council 6, Joint Apprenticeship
8257 Dow Circle W
Cleveland, Ohio 44136
Attn: Terry Conroy
Business Manager

Columbus State Community College

550 East Spring Street
Columbus, Ohio 43215
Attn: Tom Erney
Dean of Instructional Services

15. Binding Nature. This Agreement shall be binding upon and inure to the benefit of PDBC and DC6JATRTF and the COLLEGE and their respective successors and assigns.

16. Entire Agreement. This Agreement sets forth the entire agreement of the parties hereto relating to the subject matter of this Agreement.

17. Heading. 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.

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

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

PAINTERS APPRENTICESHIP TRUST FUND

By: _____
Terry Conroy
Business Manager

Date: 9-1-09

PAINTERS AND DECORATORS BUILDING CORPORATION

By: _____
Terry Conroy
Trustee

Date: 9-1-09

COLUMBUS STATE COMMUNITY COLLEGE

By: M. Valeriana Moeller
Valeriana Moeller, PhD.
President

Date: 9/14/09

Exhibit A

PROPOSED DISBURSEMENT SCHEDULE

PDBC and DC6JATRTF request an immediate disbursement of the entire $500,000 appropriation, less $7,500 in administrative costs to which the COLLEGE is entitled.