Ohio | Board of Regents

Ted Strickland, Governor
Eric D. Fingerhut, Chancellor

University System of Ohio

DIRECTIVE 2010-001
January 7, 2010

RE: JOINT USE AGREEMENT BETWEEN HOCKING COLLEGE, NEW LEXINGTON CITY FIRE DEPARTMENT, AND THE CITY OF NEW LEXINGTON

H.B. 562 includes a specific capital appropriation of $750,000 to Hocking County for the New Lexington City Fire Department project. The City of New Lexington 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. Hocking College, New Lexington City Fire Department, and the City of New Lexington 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 Hocking College, New Lexington City Fire Department, and the City of New Lexington.

This directive will take effect immediately.

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

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Joint Use Agreement between Hocking College, New Lexington City Fire Department, and the City of New Lexington

BACKGROUND

H.B. 562 includes a specific capital appropriation of $750,000 to Hocking County for the New Lexington City Fire Department project. The City of New Lexington owns the facility to be improved with state capital funds. As required by Ohio Administrative Code section 3333-1-03, Hocking College submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support improvements to the New Lexington City Fire Department facility, located at 215 South Main Street, New Lexington, Ohio.

REVIEW

Throughout the entire term of the agreement, the New Lexington City Fire Department will provide the following to the College –

1) Fire and EMT Training

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 Hocking College, New Lexington City Fire Department, and the City of New Lexington.

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:	$750,000.00
2. Estimated annual debt service on the appropriation:	$57,700.00
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. Fire and EMT Training	$57,700.00	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:

The value to Hocking College of the New Lexington Fire and EMT facility is based upon use by Hocking College as a training laboratory for Fire Science and EMT by the Hocking College New Lexington campus.

It is anticipated that Hocking College will have classes scheduled each term in the facility. Additionally, individual student practicum, internships and other direct student use will be made of the facility

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Hocking College/New Lexington City Fire Department/City of New Lexington

Project Title New Firehouse

Capital Bill HB 562 Item C36314 New Lexington Public Safety Training Facility

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.)?

Waived 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

This **JOINT USE AGREEMENT** made and entered into this 18th day of November, 2009, by New Lexington City Fire Department, with its principal place of business at 125 South Main Street, New Lexington, Ohio, 43764, by its duly authorized Chief, Robert Stallings, and by the City of New Lexington, with its principal place of business at 125 South Main Street, New Lexington, Ohio, 43764, by its duly authorized Administrator, Scott Bryant, and by Hocking College, with its principal place of business at 3301 Hocking Parkway, Nelsonville, Ohio, 45764-9704, by its duly authorized Senior Vice President, Dr. Roy Palmer.

RECITALS:

Whereas, the New Lexington City Fire Department has outgrown its current facility and is in need of a new firehouse that will house both the New Lexington City Fire Department and EMS, and including but not limited to its equipment, supplies, and meeting space; and

Whereas, the Ohio General Assembly passed House Bill Number 562, which appropriated a total sum of Seven Hundred and Fifty Thousand Dollars ($750,000.00) to Hocking College to be used by the City of New Lexington Fire Department for a new firehouse; and

Whereas, Hocking College provides to its students in Perry County and surrounding counties educational programs, degrees and/or certifications that require and/or will benefit from hands-on training made available through a new firehouse for the New Lexington City Fire Department; and

Whereas, the City of New Lexington desires to build and/or improve, and to use and maintain, a facility that will suit both the respective needs of New Lexington City Fire Department and EMS and of Hocking College as set forth above and/or as those needs may develop hereafter; and

Whereas, New Lexington City Fire Department and Hocking College desire to make application for any monies available to assist them in jointly meeting their respective needs as set forth above and/or as those needs may develop hereafter.

NOW THEREFORE, the parties hereto agree as follows:

1. Location: The facility shall be located within Perry County, Ohio, and within and/or contiguous to, the City of New Lexington. Selection of location shall be made by New Lexington City Fire Department, and with the approval of New Lexington City Council. The location chosen is 215 South Main St. New Lexington, OH 43764

a. Building Plans: An appropriate architectural firm has commenced, namely JBA Architects, 1000 Sharon Valley Road, Newark, OH 43055.

2. Ownership of the Property: The property shall be owned or leased in the name of the City of New Lexington. Should this Agreement terminate for any reason, the City of New Lexington shall have the right to maintain its Fire Department and EMS at the facility and ownership of the property shall remain with the City of New Lexington.

3. Use of Facility: The City of New Lexington, by its Fire Department and EMS shall have use of the facility at all times. Hocking College shall have use of the facility for training and educational purposes, at such times as reasonably designated and agreed to by Hocking College and the City of New Lexington Fire Department and EMS, and coordinated so as not to interfere with the necessary emergency-type operations and business of the Fire Department and EMS. Use of the facility by Hocking College shall be second only to the City of New Lexington Fire Department and EMS and shall have priority over any other public or private person or entity that may make use of the facility.

4. Management Committee: A management committee is hereby appointed, consisting of City of New Lexington Administrator, 125 South Main Street, New Lexington, Ohio, 43764, City of New Lexington Fire Chief, 125 South Main Street, New Lexington, Ohio, 43764, and director of Perry Campus Hocking College or other designated officer, Perry Campus Hocking College, 5454 St. Rt. 37 E., New Lexington, Ohio, 43764. The committee is charged with the acquisition, development, building and/or improvement of the property/facility pursuant to this agreement, with commensurate powers and duties, and subject of course to those powers and duties inherent to, respectively, the City and the College through which said are employed.

5. Funds

   a. Deposit and Disbursement/Payment Procedure: All funds state-obtained for the purpose of this agreement and for the development/building/ improvement of the property and/or joint use facility shall be drawn upon and paid directly to a respective authorized and approved contractor upon submission of invoice and completion of work covered within such invoice, and pursuant to the request/direction/authorization of the management committee for the purposes of the joint use facility, including without limitation payments to pay other costs, expenses, and obligations for the building of and/or improvement of the joint use facility.

   b. Capital Improvements: State-obtained funds shall be used for capital improvements only and shall not be used for the operation or maintenance of the joint use facility. All capital improvements provided by state funding will be amortized over the term of this agreement – 20 years.

c. Operation and Maintenance Expenses: Expenses for operation and/or maintenance shall be the responsibility of City of New Lexington Fire Department, and city of New Lexington Fire Department shall pay and hold Hocking College harmless for all such operation and/or maintenance costs.

d. Administration and Administration Fee: Administration of state-obtained funds shall be the responsibility of Hocking College; administration fee therefore is expressly waived by Hocking College.

6. Compliance with Laws: The parties hereto shall each comply with all federal, state and local laws and rules.

7. Competitive Bidding: In building and/or improving facilities and in all actions appurtenant thereto, the parties hereto shall each comply with any and all competitive bidding or other such requirements applicable to or mandated upon the City of New Lexington, whether by City Charter, Ordinance and/or applicable laws of the State of Ohio.

8. Accounts, Reports and Records: The management committee shall keep proper records of the transactions of the management committee and operations of the joint use facility and shall maintain complete and accurate accounts of the property, rights, funds, including Hocking College designated funds and financial transactions of the joint use facility and of each entity's participation therein. All such records and accounts shall be made available to each party hereto within fourteen (14) days of a request therefore, and at such other times as the management committee or parties may require, the management committee shall furnish written financial reports to the parties. Further, at the end of each calendar quarter, and at such other times as the parties may require, the management committee shall furnish to each of the parties a written report of the activities and plans of the joint use facility venture, together with the committee's assessment of the joint use facility's prospects.

9. Amendment: This agreement may be amended by written agreement of the parties. All amendments to this agreement will be subject to approval by the Chancellor of the Ohio Board of Regents.

10. Insurance: City of New Lexington Fire Department shall at all times maintain in full force and effect a policy of insurance against loss or damage by fire or other casualty or cause of the land and/or building/facility in an appropriate amount agreed to and established by the management committee. In the event of loss or damage, this Agreement shall not be affected and insurance proceeds shall be applied to the repair and/or rebuild of the building/facility. Insurance against loss or damage by fire or other casualty to equipment/furniture/personal of Hocking College shall be the sole responsibility of Hocking College. Each party hereto shall further maintain in full force and effect a policy of insurance covering

liability to others, in an amount agreed to and established by the management committee.

11. Value of Use: The parties hereto specifically acknowledge and agree that the value of their respective use of this joint facility is reasonable and relative to the amount of funds they will or may receive and/or appropriate therefore. As an active, operating fire station, the facility will have a value in excess of $57,700.00 per year for college level training applications.

12. Termination: The joint use facility venture shall terminate twenty (20) years from the date of this agreement unless sooner terminated by written agreement of the parties, or by mutually agreed extension of the joint use facility venture. The term of the joint use facility venture may be extended for successive terms of ten (10) years, each extension to be executed by written agreement of the parties.

13. Reimbursement to the State: In the event that prior to the expiration of this Agreement, (1) Hocking College's right to use the facility is involuntarily terminated for any reason, or (2) this agreement is terminated as provided in section 12 above, then the City of New Lexington 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 the result by twenty (20) less the number of full years that the facility was used by Hocking College.

14. Agreement Binding: This agreement is binding on the parties and their personal representatives, successors, and assigns.

WITNESS our signatures.

City of New Lexington

By Scott Bryant, Administrator

Hocking College

By William J. Hill, Ph.D.
Chief Financial Officer

City of New Lexington Fire Department and EMS

By Robert Stallings, Chief