Ohio | Board of Regents

Ted Strickland Governor
Eric D. Fingerhut Chancellor

University System of Ohio

DIRECTIVE 2010-017

March 18, 2010

RE: JOINT USE AGREEMENT BETWEEN THE CHANCELLOR OF THE OHIO BOARD OF REGENTS AND THE OHIO AEROSPACE INSTITUTE

H.B. 562 includes a specific capital appropriation of $200,000 to the Chancellor of the Ohio Board of Regents for an Ohio Aerospace Institute (OAI) project. OAI 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. The Ohio Aerospace Institute 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 Chancellor of the Ohio Board of Regents and the Ohio Aerospace Institute.

This directive will take effect immediately.

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

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Joint Use Agreement between the Chancellor of the Ohio Board of Regents and the Ohio Aerospace Institute

BACKGROUND

H.B. 562 includes a specific capital appropriation of $200,000 to the Chancellor of the Ohio Board of Regents for an Ohio Aerospace Institute (OAI) project. OAI owns the facility to be improved with state capital funds. As required by Ohio Administrative Code section 3333-1-03 and 3333-1-20, the Ohio Aerospace Institute submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support improvements to the OAI facility located at 22800 Cedar Point Road, Brookpark, Ohio.

REVIEW

Throughout the entire term of the agreement, OAI will provide the following to the Chancellor –

1) Use of the facility by Ohio universities and colleges for the purposes of aerospace education and 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 Chancellor of the Ohio Board of Regents and the Ohio Aerospace Institute.

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:	$ 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. College and university facility use	$ 40,000	15
b. at market valuation	$	
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 following valuation method was used for Section II "Estimated value of use of the facility" item:

a. 2008 room registration/use log maintained by OAI with usual rental rates applied.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Ohio Board of Regents/Ohio Aerospace Institute

Project Title OAI Facility Improvements

Capital Bill HB 562 Item C23531 Ohio Aerospace Institute

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 ("Agreement"), made and entered into this 28th day of December 2009, by and between the Chancellor of the Ohio Board of Regents ("REGENTS") and the Ohio Aerospace Institute ("OAI"), a nonprofit corporation, is for the purpose of delineating the use of the OAI Facility ("INSTITUTE FACILITY"), which is to receive certain improvements, and of further implementing Section 126.14 of the Ohio Revised Code.

RECITALS

WHEREAS, the 127th Ohio General Assembly passed Amended Substitute House Bill No. 562 (Appropriations Act) in 2008 and appropriated two hundred thousand dollars ($200,000) to the REGENTS for INSTITUTE FACILITY: and

WHEREAS, the funds identified as C23531 Ohio Aerospace Institute are to be used for miscellaneous technology upgrades to benefit OAI's capability to offer video and distance learning content among its university and other constituent members, plus other miscellaneous repairs in the FACILITY, as a capital facility for state supported or state assisted institutions of higher education, as provided for in the APPROPRIATIONS ACTS; and

WHEREAS, both the REGENTS and OAI are desirous of establishing mutual educational, scientific, programmatic, and professional linkages which will provide an

atmosphere conducive to achieving the goals of higher education, involving and including state supported or state assisted institutions of higher education; and

WHEREAS, State capital appropriations released through the REGENTS require compliance with the Appropriation Act and Ohio Administrative Rule 3333-1-03 and 3333-1-20, which specifically call for the execution of a joint use agreement.

WHEREAS The Chancellor of the Ohio Board of Regents has concluded that the value of the use of the facility by the Chancellor of the Ohio Board of Regents as provided in this Joint Use Agreement is reasonably related to the amount of the appropriation,

NOW, THEREFORE. In consideration of the mutual covenants, promises, conditions, and terms to be kept and performed, it is hereby agreed between the parties as follows:

Section 1 CAPITAL EXPENDITURES PLAN

The parties agree that the items contained in the February 12, 2008, budget allocation request ("Capital Budget Request", attached hereto as Exhibit A) for the Ohio Aerospace Institute on file at the Chancellor of the Ohio Board of Regents shall be the basis for the capital improvements referenced herein for the INSTITUTE FACILITY, with proportionate modification to reflect the size of the appropriation. The current spending plan for the $200,000 appropriation is attached as Exhibit B.

Section 2 OWNERSHIP AND OAI INSURANCE

The Institute Facility, located at 22800 Cedar Point Road in Brookpark, Ohio, is owned by OAI and will be insured against loss or destruction by OAI consistent with its ordinary policies.

Section 3 EXTENT AND NATURE OF COOPERATION BETWEEN THE REGENTS AND OAI

The INSTITUTE FACILITY funded by this agreement shall be used for the purposes of aerospace education and research. Through the entire term of this Agreement, OAI, through its resources and staff at the INSTITUTE FACILITY, will perform for Ohio universities and colleges or in conjunction with Ohio universities and colleges, one or more of the following:

a. Supervise and coordinate faculty and graduate student research activities;
b. Conduct special graduate level courses;
c. Plan and conduct special summer faculty and student programs;
d. Plan and conduct continuing education programs;
e. Plan and conduct teleconferencing programs;
f. Plan and conduct collaborative projects with focus groups composed of university, government and industry participants.

Section 4 TERM

This agreement shall become effective upon the formal act of approval of this agreement by the Chancellor of the Ohio Board of Regents and execution by the parties

hereto, and shall remain effective until fifteen (15) years after the approval by REGENTS of the release of the capital appropriation described herein.

Section 5 TERMINATION

In the event that either party desires to terminate this Agreement prior to the expiration of its term, written notice of that party's intent to terminate this Agreement shall be given to the other party at least 12 months prior to the effective date of the termination.

Section 6 REIMBURSEMENT TO STATE UPON TERMINATION

In the event that the general right of Ohio state supported and state assisted universities and colleges to utilize the INSTITUTE is terminated by OAI prior to the expiration of the fifteen (15) year term of this agreement, the state shall be reimbursed by OAI as provided in this section. Said reimbursement shall be calculated by dividing the total amount of capital funds contributed under this Agreement by the State for the INSTITUTE FACILITY by fifteen and multiplying that sum by fifteen less the number of full years since the effective date of this Agreement the INSTITUTE FACILITY has been so utilized by Ohio state supported and state assisted universities and colleges. For the purposes of this paragraph, Ohio state supported and state assisted universities' and colleges' utilization of the INSTITUTE shall constitute the use contemplated in Section 3 of this Agreement.

Section 7 INDEMNIFICATION OF REGENTS

The REGENTS shall have no liability for, and OAI shall hold the REGENTS harmless from liability for, any and all costs, liabilities, and claims that arise from or are attendance to the construction, renovation, improvement, operation and maintenance of the INSTITUTE FACILITY.

Section 8 FUNDS TO BE USED FOR CAPITAL IMPROVEMENTS

The State Capital funds appropriated for the INSTITUTE FACILITY, including funds under the Appropriations Act, shall be used only for capital improvements as provided by law.

Section 9 COMPLIANCE WITH LAW

OAI shall comply with all pertinent federal, state and local laws, rules and state administrative regulations. OAI, in connection with Institute Facility renovations, 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). OAI and all contractors and subcontractors working on Institute Facility renovations shall follow all provisions of Ohio's prevailing wage law, Revised Code Chapter 4115.

Section 10 DISTRIBUTION OF FUNDS

Upon execution and approval of the Agreement, the REGENTS shall submit to the Controlling Board a formal request for release of the entire amount of two hundred thousand dollars ($200,000) appropriated for the INSTITUTE FACILITY by the

Appropriations Act. The REGENTS shall forthwith initiate steps to obtain disbursement of the amount requested and upon clearance for disbursement arrange for immediate transmittal of such funds by electronic funds transfer to OAI.

Section 11 NOTICES

All mailings and notices to the parties shall be addressed to the parties at the address set forth below, or to such other address as either party, or its attorney, shall have designated by notice given in accordance with the provisions of this Section. All mailing and notices shall be addressed as follows:

Chancellor of the Ohio Board of Regents	Ohio Aerospace Institute
30 East Broad Street; 36th Floor	22800 Cedar Point Road
Columbus, OH 43266	Cleveland, Oh 44142
Attn: Richard L. Petrick	Attn: Tony H. Smith, Sr.
Vice Chancellor for Finance	VP, Operations and Finance

Section 12 AMENDMENTS

All Amendments to this Agreement shall require the prior approval of the REGENTS and OAI and shall be in writing.

Section 13 BINDING NATURE

This Agreement shall be binding upon and inure to the benefit of OAI and the REGENTS and their respective successors and assigns.

Section 14 ENTIRE AGREEMENT

This Agreement sets forth the entire agreement of the parties concerning the subject matter hereof.

Section 15 SECTIONS AND HEADINGS

Headings in this Agreement are for convenience only and should not be given effect in the interpretation of this Agreement. Unless otherwise indicated, references to Sections are to Sections of this Agreement.

Section 16 GOVERNING LAW

This agreement shall be constructed under and governed by the law of the State of Ohio.

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

OHIO BOARD OF REGENTS	OHIO AEROSPACE INSTITUTE
By _____	By _____
Its Chancellor	Its Vice President

MLC