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June 18, 2007

Robert E. Hickey, Jr.
Associate Vice President for Public Affairs
Wright State University
3640 Colonel Glenn Hwy.
Dayton, OH 45435-0001

Re: Joint Use Agreement between Wright State University and the Dayton-Montgomery
County Port Authority

Dear Mr. Hickey:

The 126th Ohio General Assembly enacted H.B. 699, which includes a specific capital appropriation of \$1,600,000 to Wright State University for the Welcome Stadium Project. As you are aware, Ohio Administrative Code § 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 of the Ohio Board of Regents.

Wright State University and the Dayton-Montgomery County Port Authority have presented a Joint Use Agreement, executed March 30, 2007, for approval by the Chancellor. We have reviewed the agreement and its format is found to be appropriate, its description of extent and nature of use has been specified, and the commitment extends no less than fifteen years, and it is in conformity with Ohio Administrative Code § 3333-1-03. We have also determined based on the Joint Use Agreement worksheet submitted by Wright State University that the value of the use is reasonably related to the amount of the appropriation.

This letter constitutes my approval of the attached Joint Use Agreement, as authorized by Ohio Revised Code § 3333.04, between Wright State University and the Dayton-Montgomery County Port Authority.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric D. Fingerhut", with a long horizontal flourish extending to the right.

Eric D. Fingerhut
Chancellor

Copies to: R. Petrick
D. Gavlik
M. Smydo
J. Nargang

Attachment: Wright State University/Dayton-Montgomery County Port Authority
Agreement

Extent and Nature of Spaces and Uses

The Joint Use Agreement between Wright State University and the Dayton-Montgomery County Port Authority specifies the nature and extent of use for the Welcome Stadium in Montgomery County.

The University shall be entitled to utilize the Welcome Stadium for athletic and other outdoor events approved by the Operating Committee for the Stadium. The Welcome Stadium will provide the University with facilities for various activities and programs and will enhance the ability of the University to host an increased range of programs. The rate structure for the University's use of the Stadium shall reflect only the expenses associated with direct operating and maintenance expenses prorated to the space and actual hours the Stadium is used by the University.

Additionally, Wright State enjoys ongoing partnerships with Dayton Public Schools and numerous other schools and organizations that benefit from the facility, all enhanced by this project. As examples, the University of Dayton and Central State regularly use the stadium. Because Welcome Stadium is a tremendous – and visible – community asset used regularly by organizations that have strong relationships with Wright State, the university will receive a value commensurate with funds appropriated.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Wright State University/Montgomery County Port Authority

Project Title Welcome Stadium

Capital Bill HB 699 Item CAP-136, Welcome Stadium Project

- 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

June, 2007

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: \$ 1,600,00

2. Estimated annual debt service on the appropriation: \$ 123,002

3. Term of the state bond, in years: _____ 20 yrs.

\$ 2,460,0039

Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. Rental for track meets and practices	\$ <u>164,002.46</u>	15 yrs.
b. _____	\$ _____	_____
_____	\$ _____	_____
c. _____	\$ _____	_____
d. _____	\$ _____	_____
e. _____	\$ _____	_____

(* List additional uses on separate page as needed.)

Section III:

Re: Montgomery County Port Authority

Wright State presently has a cross country team (men and women) and track team (women only), but no track. At this time, Welcome Stadium has a wonderful track, used every year for league, district and regional championships, and recently for several years hosted the state championships. It is our hope to use the track to help spotlight our program, perhaps by hosting a meet or two per season and bid for a league championship. At the present time, Wright State is preparing a bid to host the 2008 Horizon League Track and Field Championship meet. It is also our intent to consider sponsoring clinics or junior events to increase the awareness of Wright State's teams as we consider expanding our efforts.

Additionally, Wright State enjoys ongoing partnerships with Dayton Public Schools and numerous other schools and organizations that benefit from the facility, all enhanced by this project. As examples, the University of Dayton and Central State regularly use the stadium. Because Welcome Stadium is a tremendous – and visible – community asset used regularly by organizations that have strong relationships with Wright State, the university will receive a value commensurate with funds appropriated.

JOINT USE AGREEMENT

THIS JOINT USE AGREEMENT ("Agreement"), made and entered into this 30th day of March, 2007, by and between **WRIGHT STATE UNIVERSITY** (hereinafter "University") and the **DAYTON-MONTGOMERY COUNTY PORT AUTHORITY**, (hereinafter "Authority").

WITNESSETH:

WHEREAS, the Ohio General Assembly passed House Bill 699, which was signed into law by the Governor on December 20, 2006, whereby the sum of One Million, Six Hundred Thousand Dollars (\$1,600,000) was appropriated for Welcome Stadium (hereinafter "Stadium"); and

WHEREAS, the University has concluded that the value of the use of the Stadium and the improvements by the University as provided in this agreement is reasonably related to the amount of the appropriations; and

WHEREAS, inasmuch as all State of Ohio capital appropriations released through the Ohio Board of Regents requires the use of a Joint Use Agreement, the parties desire to enter into this "Joint Use Agreement" in order to expressly set forth the parameters for the use of the Stadium by the University.

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:

SECTION 1. EXTENT AND NATURE OF USE OF THE STADIUM BY UNIVERSITY AND OTHER BENEFITS TO THE UNIVERSITY

- a. The University shall be entitled to utilize the Stadium for athletic and other outdoor events approved by the Operating Committee for the Stadium.

- b. The Stadium will provide the University with a large outdoor athletic facility not available on the University's property.
- c. The Stadium has been constructed and will be maintained as a modern, highly-functional, multi-purpose facility which will assist the University to meet its needs.
- d. The Stadium will provide the University with facilities for various activities and programs of the University, including but not limited to credit and non-credit programs, athletic, and other outdoor events.
- e. It is recognized that the Stadium will enhance the ability of the University to host an increased range of programs.
- f. The parties recognize the mutual benefit conferred by the Stadium in that access to the Stadium will assist University faculty, staff, students, and administrators to host athletic and other outdoor events.
- g. The parties further recognize that the Stadium will complement and will not supplement the existing University facilities.
- h. Use of the Stadium by Dayton Public Schools and numerous other schools throughout Southwestern Ohio for athletic activities, contests and ceremonies furthers the partnership that the University has with these schools.
- i. Use of the Stadium by other community organizations and university collaborators furthers the community and the civic engagement mission of the University.
- j. Use of the Stadium by the University of Dayton, a state-assisted university, and by Central State University, a public university, enhances the relationship between the neighboring schools.
- k. The University may use the Stadium upon terms and conditions more favorable than that available to the public or any other user of the Stadium to the degree that reflects the State's investment. The rate structure for the University's use of the Stadium shall reflect only the expenses associated with direct operating and maintenance expenses prorated to the space and actual hours the Stadium is used by the University. In determining operating and maintenance expenses attributable to the University's rate structure, the following costs shall be used: water service, heating and air conditioning service, lighting and electrical service, security, concessions, ticket and

parking personnel and supervisors, a reasonable financial reserve for routine, recurring replacements, which reserve shall not include or be intended to cover major repairs, capital improvements or replacements; and other such reasonable and comparable operating and maintenance expenses of similar facility usage. The rate structure charged the University for facility usage shall be reasonable and comparable for similar facility usage, based upon a comparison of the existing University rate structure for recovering similar operating and maintenance costs for comparable space and use within the University. Upon request, the Board of Trustees (hereinafter defined) will provide to the University and the Ohio Board of Regents all pertinent records which reflect the basis for rates and nature and extent of use of the Stadium by the University. It is expressly agreed that the rate structure for the University's use of the Stadium shall not recapture overhead or administrative costs and shall not be based upon the total costs of operation of the Stadium.

i. in the event of any conflict regarding any scheduled use of the Stadium, the decision of the Operating Committee for the Stadium shall be final. It is further agreed between the parties hereto that in scheduling activities, uses and events for the Stadium, the Stadium shall not be used for or by any person or party in any way or for any purpose which directly or indirectly competes with, conflicts with, or duplicates any educational program of the University.

j. In the event alterations, additions, repairs, replacements or other changes or improvements to the Stadium are required by law, the Authority agrees that such shall be made and that the Authority will bear all expenses connected therewith, and hold the University harmless therefrom.

The Authority agrees to maintain, repair and make necessary improvements, repairs and replacements during the term hereof, and to bear all expenses connected therewith, in order to maintain the availability of the facility to the greatest extent practicable, for the continued and uninterrupted use of University as provided herein.

k. Should any of the building(s) be destroyed by fire or other casualty, or damaged to such an extent that repair would not be permitted by law, the Authority shall, without delay, rebuild the building(s) or any part thereof destroyed, with an amount of floor space and quality substantially equal to that of the original building(s). in

the event the Authority shall fail to comply with this provision, such failure shall be deemed a termination of this Agreement as provided herein. The Authority shall be deemed to comply with this provision if it shall have awarded a contract to immediately commence such building within sixty days from the date of such destruction.

l. It is expressly agreed that the rate structure for the University's use of Stadium shall not include any costs directly or indirectly associated with any improvements, repairs or replacements to the facility except as expressly provided for herein. It is agreed that the University's use of University employees and/or students and/or volunteer personnel in connection with the use of the facility by the University shall be permitted; and that provision therefore shall be included in any collective bargaining agreement involving employees at the facility.

m. It is expressly agreed that nothing herein shall be deemed to require the University to use any specific space or portion of the Stadium. Furthermore, the University shall incur no charges whatsoever in connection with the Stadium, unless such charges result from actual use of the Stadium by the University.

SECTION 2. TERM

Unless earlier terminated, as specified herein, this Agreement shall remain in effect for term of fifteen (15) years.

SECTION 3. COMPLIANCE WITH LAWS

In the operation of Stadium, the Authority shall comply with all pertinent federal, state and local laws, rules and regulations, as well as State Administrative Regulations.

SECTION 4. FUNDS TO BE USED FOR CAPITAL IMPROVEMENTS

The funds appropriated by the State of Ohio shall be used only for capital improvements as defined in the bill appropriating such funds, including purchase and improvement of Stadium and costs reasonably related thereto.

Upon request of the Authority, the University shall submit to the Ohio Board of Regents a formal request for release of the One Million, Six Hundred Thousand

Dollars (\$1,600,000) in funds appropriated for the Stadium by the State of Ohio.

SECTION 5. PROGRAM OF REQUIREMENTS FOR STADIUM

Subject to the terms and conditions of an operating agreement (hereinafter "Operating Agreement") for the use, maintenance, and operation of Stadium, the terms and conditions of which shall be determined and negotiated between the parties subsequently to the approval of this Agreement by the Ohio Board of Regents and subject to the approval of the Ohio Board of Regents, and which terms shall be in accord with this Agreement, the parties hereto agree to as follows:

- a. The Authority will be solely responsible for all aspects of the operation of the Stadium.
- b. The University's sole financial contribution to Stadium shall be the State of Ohio capital appropriation specified in House Bill 699, which capital appropriation shall be a condition precedent to the University's rights, duties and obligations under this Agreement.

SECTION 6. OWNERSHIP

The parties acknowledge that Stadium is located in Dayton, Ohio and is owned and operated by The City of Dayton School District.

Pursuant to House Bill 126, enacted by the Ohio Legislature, the State of Ohio approved the improvement of Stadium with State funds. This award of funds was conditioned on the City of Dayton School District, the University of Dayton, and the Authority reaching an agreement for the accomplishment of the improvements and the operation and maintenance of the Stadium, which agreement has been reached. The use, operation and management of Stadium will be the responsibility of the Authority, the Dayton City School District, and the University of Dayton.

SECTION 7. REIMBURSEMENT TO STATE UPON TERMINATION

Upon the termination of this Agreement for any reason or upon termination of the University's right to use Stadium for any reason prior to the expiration of the fifteen (15) year term of this Agreement, the Authority shall, within thirty (30) days of the date of

termination of this Agreement or the University's right to use the Stadium, reimburse the State of Ohio the prorated share of the State capital funding, as provided for herein totaling One Million, Six Hundred Thousand Dollars (\$1,600,000) as the date of this Agreement (the Reimbursement). Said Reimbursement shall be calculated by dividing the funds contributed by the State of Ohio by fifteen and multiplying that sum by fifteen less the number of full years the facility is utilized by the University.

SECTION 8. INSURANCE

The Authority and the Dayton City School District shall keep the Stadium continuously insured during the term of this Joint Use Agreement with a good and responsible insurance company doing business in the State of Ohio with coverage against loss of damage by fire, lightening, vandalism and malicious mischief, and all other perils covered by standard "extended coverage" or "all risk" policies of insurance. Stadium shall be insured for not less than 100% of the replacement value of Stadium or the highest percentage of coverage available but in any event not less than the amount appropriated by the State of Ohio as limited by the proration set forth herein. Any policy of insurance shall be written so as to not be subject to cancellation without written notice to the University.

SECTION 9. INDEMNIFICATION OF THE UNIVERSITY

The Authority shall pay all costs associated with the operation, repair, maintenance and use of Stadium by parties other than the University. It is understood and agreed that, except as expressly provided for herein, the University shall not be obligated or responsible to pay, share or contribute any costs associated with the operation, repair, maintenance, or use of Stadium by parties other than the University. Except for any damage or injury directly resulting from actions or conduct of the University, the Authority agrees to and shall hold the University harmless from all expenses, costs, damage or liability of any kind, including attorneys' fees, arising out of the use, operation, repair and maintenance of Stadium by the University.

**SECTION 10. REIMBURSEMENT TO UNIVERSITY FOR
ADMINISTRATIVE COSTS**

Out of the funds appropriated, the Authority shall reimburse the University for administrative costs incurred by the University associated herewith for management fees and reimbursable expenses. Said reimbursement of administrative costs shall equal one and one-half percent (1.5%) of the amount appropriated by the State of Ohio. Said reimbursement shall be deducted and paid to the University by the Authority as those funds are released by the State of Ohio.

SECTION 11. AMENDMENTS

All amendments to this Agreement shall be in writing, signed by all parties hereto, and shall further require the express written approval of the Ohio Board of Regents.

SECTION 12. TERMINATIONS

In the event that any party desires to terminate this Agreement prior to the expiration of its terms, written notice of the party's intent to terminate this Agreement shall be given to the remaining parties at least one (1) year prior to the effective date of the termination. However, it is agreed and understood that the assurances set forth in Section 7 of this Agreement shall remain binding and survive any termination herein provided.

SECTION 13. WAIVER

Except as set forth in Paragraph 7 hereof, nothing in this Agreement shall be deemed or construed to be a waiver of any right, privilege or immunity allowed by law of the State. It is further provided that nothing herein shall be deemed or construed to create any rights in or benefits to any third parties.

SECTION 14. NOTICE

All mailings and notices to the parties shall be addressed to the parties at the addresses set forth below, or to such other address as any party, or its attorney, shall have designated by notice given in accordance shall be addressed as follows:

Wright State University
3640 Colonel Glenn Highway
Dayton, OH 45435

Dayton-Montgomery County Port Authority 900
Kettering Tower
Dayton, OH 45401
Attention: President and Executive Director

SECTION 15. BIDDING PROCEDURES

The Authority shall use, where applicable, competitive bidding procedures equivalent to those enumerated in relevant provisions of Chapter 153 of the Ohio Revised Code involving publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidders, and shall comply with all other requirements provided by law.

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

WRIGHT STATE UNIVERSITY

By: Matthew V Felicia
Its: Vice President, Business & Fiscal Affairs

**DAYTON-MONTGOMERY COUNTY PORT
AUTHORITY**

By: Ronald J Parker
Ronald J. Parker
President and Executive Director