



Board of Regents

Ted Strickland
Eric D. Fingerhut

University System of Ohio

DIRECTIVE 2008-022

October 7, 2008

Re: A JOINT USE AGREEMENT BETWEEN THE UNIVERSITY OF CINCINNATI AND PEOPLE WORKING COOPERATIVELY, INC.

H.B. 496 includes a specific capital appropriation of \$75,000 to the University of Cincinnati for capital improvements to the People Working Cooperatively facility. People Working Cooperatively will own and operate the facility receiving 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 University Of Cincinnati and People Working Cooperatively, Inc. 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 University of Cincinnati and People Working Cooperatively, Inc.

This directive will take effect immediately.

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

m/c

JOINT USE AGREEMENT
Between

PEOPLE WORKING COOPERATIVELY, INC.
AND
UNIVERSITY OF CINCINNATI

This JOINT USE AGREEMENT ("Agreement") is entered into between PEOPLE WORKING COOPERATIVELY, INC., an Ohio not-for-profit corporation ("PWC") and the UNIVERSITY OF CINCINNATI, an instrumentality of the State of Ohio created and existing under Chapter 3544 of the Ohio Revised Code ("UNIVERSITY").

RECITALS

WHEREAS, the UNIVERSITY desires to participate in the programming, planning, and design of certain capital improvements including but not limited to roof replacement to PWC's facility located at 4612 Paddock Road, Cincinnati, Hamilton County, Ohio 45229 ("the PROJECT");

WHEREAS, the Ohio General Assembly passed House Bill No. 699, which appropriated a total sum of \$75,000 ("the FUNDS") for the PROJECT;

WHEREAS, the State of Ohio capital appropriations provides for the release of the FUNDS through the Ohio Board of Regents, which specifically calls for the execution of a Joint Use Agreement; and

WHEREAS, the UNIVERSITY has concluded that the value of the use of the PWC's facilities and resources by the UNIVERSITY 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 UNIVERSITY than to others;

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

1. **Use of PWC's Facilities and Resources by UNIVERSITY.** PWC agrees to provide reasonable access to the completed PROJECT for students, faculty, and staff of the UNIVERSITY, for use as a community site for coordinating volunteer neighborhood improvement activities for a period of 15 years from the date of execution of this Agreement. PWC agrees to reimburse the FUNDS to the state on a pro rata basis should the UNIVERSITY'S right of access provided for herein be terminated prematurely.
2. **Notation of University Funding.** PWC agrees to provide a notation on a section of the PROJECT and in all publicity relating to the PROJECT that funding is being provided through a Joint Use Agreement with the UNIVERSITY.
3. **Records of Usage.** Upon request by the UNIVERSITY, PWC will supply pertinent records which measure the nature and extent of use of the completed PROJECT facilities by both the UNIVERSITY and the public. PWC shall use the FUNDS only for capital improvements as defined in the bill appropriating the FUNDS.

4. **Distribution of FUNDS: Administrative Costs.** Upon execution of this Agreement and approval thereof by the Ohio Board of Regents, the UNIVERSITY will submit to the Ohio Board of Regents a request for release of the appropriation to the UNIVERSITY for the purpose of programming, planning, designing and implementing the Project. After release and encumbrance of the FUNDS, the UNIVERSITY will seek disbursement of the FUNDS. PWC will submit to the UNIVERSITY requests for payment of amounts due accompanied by documentation for contracted work or purchase orders related to obligations incurred by PWC for permitted uses of the FUNDS. From the FUNDS, the UNIVERSITY shall receive administrative costs in the amount of \$1,125 which is equal to one and one-half percent (1½%) of the total amount of the FUNDS.

5. **PWC's Compliance With Laws and Regulations.** PWC shall comply with all pertinent federal, state and local laws as well as state administrative regulations including but not limited to the requirement that it follow competitive bidding procedures described in Ohio Administrative Code 3333-1-03(E)(9).

6. **Hold Harmless:** PWC shall hold the State of Ohio and the UNIVERSITY, its officers, trustees and employees harmless from any and all obligations, expenses, liabilities or claims of any kind and/or the UNIVERSITY, 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) and alleged action or omission of PWC, its officers, trustees or employees, including, but not limited to PWC's failure or alleged failure to comply with any applicable federal, state or local law, ordinance, rule, order, directive or regulation.

7. **Liability Insurance.** PWC has a program of liability insurance under which it is responsible for addressing all claims and loss or damage which may arise at the Project.

8. **Binding Nature.** This Agreement shall be binding upon and insure to the benefit of PWC and the UNIVERSITY, and their respective successors and assigns.

9. **Amendments.** Any amendments to this Agreement shall be in writing, signed by PWC and the UNIVERSITY, and shall require approval by the Ohio Board of Regents.

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

UNIVERSITY OF CINCINNATI

PEOPLE WORKING COOPERATIVELY, INC.

By: Carla A. Gerardi

By: Jack S. [Signature]

Title: CARLA A. GERARDI,
AS
ASSISTANT CONTROLLER, UNIVERSITY

Title: President

Date: 4/28/08

Date: 4/28/08

JOINT USE AGREEMENT ANALYSIS

Institutions Involved _____

University of Cincinnati

Project Title _____ PWC's Capital Request _____

Capital Bill _____ Item _____

- 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?

EXHIBIT E

Joint Use Agreement Worksheet

The Ohio Board of Regents

April 23, 2008

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:	\$75,000
2. Estimated annual debt service on the appropriation:	\$6,984
3. Term of the state bond, in years:	15

Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. Volunteer Days	\$75,000	15
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 annual value of \$75,000 (\$806,175 borrowed for 15 years at 4.5% interest) for the University's use of the People Working Cooperatively's facility is based on the 15 year Joint Use Agreement.

The estimated average cost per volunteer event day is \$1,509.

The estimated number of volunteer event days is 50.

Joint Use Agreement between the University of Cincinnati and People Working
Cooperatively, Inc.

BACKGROUND

H.B. 496 includes a specific capital appropriation of \$75,000 to the University of Cincinnati for capital improvements to the People Working Cooperatively facility. People Working Cooperatively will own and operate the facility receiving state capital funds. As required by Ohio Administrative Code section 3333-1-03, the University of Cincinnati submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State capital funds will support a roof replacement project at 4612 Paddock Road, Cincinnati, Ohio.

REVIEW

Throughout the entire term of the agreement, People Working Cooperatively will provide the following -

- 1) People Working Cooperatively will provide access to the University of Cincinnati to its facility for use as a community site for coordinating volunteer neighborhood improvement activities. The non-profit will provide access to students, faculty, and staff of the University of Cincinnati on terms more favorable to the University of Cincinnati than to others.

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 University of Cincinnati and People Working Cooperatively, Inc.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved University of Cincinnati/People Working Cooperatively, Inc.
Project Title Facility Roof Replacement
Capital Bill HB 496 Item C26618, People Working Cooperatively

- 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:		<u>\$75,000</u>
2. Estimated annual debt service on the appropriation:		<u>\$5,766</u>
3. Term of the state bond, in years:		<u>20</u>

Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. <u>Volunteer Days</u>	<u>\$8,190</u>	<u>15</u>
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.

The annual value of use of the People Working Cooperatively facility is based on a 15 year Joint Use Agreement.

Estimated average cost per volunteer day is \$1,365.

Estimated number of volunteer event days is six.