



Board of Regents

Ted Strickland, Governor
Eric D. Fingerhut, Chancellor

University System of Ohio

DIRECTIVE 2009-002

January 16, 2009

Re: A JOINT USE AGREEMENT BETWEEN OHIO UNIVERSITY AND THE GRANDVIEW FOUNDATION.

H.B. 496 includes a specific capital appropriation of \$450,000 to Ohio University for capital improvements to the Nixon Research facility. The Grandview Foundation will use state capital funds to support construction of a new facility or renovations to a facility leased for at least 15 years.

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. Ohio University and the Grandview Foundation 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 Ohio University and the Grandview Foundation.

This directive will take effect immediately.

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

mlc

Joint Use Agreement between Ohio University and The Grandview Foundation

BACKGROUND

H.B. 496 includes a specific capital appropriation of \$450,000 to Ohio University for capital improvements to the Nixon Research facility. The Grandview Foundation will own or lease the facility to be renovated with state capital funds. As required by Ohio Administrative Code section 3333-1-03, Ohio University submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State capital funds will support construction of a new facility or renovations to a facility leased for at least 15 years. The facility will be located near Lebanon, Ohio.

REVIEW

Throughout the entire term of the agreement, The Grandview Foundation will provide the following to Ohio University -

- 1) Assignable space in the facility dedicated for use by one medical student and one medical resident full time.
- 2) A licensed physician to supervise the Ohio University College of Osteopathic Medicine students, residents, and interns who are assigned to the medical services operation.

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 Ohio University and The Grandview Foundation

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 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>\$450,000</u> |
| 2. Estimated annual debt service on the appropriation: | <u>\$ 34,594</u> |
| 3. Term of the state bond, in years: | <u>20 years</u> |

Section II: Estimated value of use of the facility.

Use (s) of the facility*	Annual value of use	# of years
a. <u>Faculty, residents & research space</u>	<u>\$ 66,000</u>	<u>15</u>
b. <u>Physician and professional supervision</u>	<u>\$ 200,000</u>	<u>15</u>

(* 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.

OU/Grandview Foundation Project Worksheet
Ohio University College of Osteopathic Medicine

1). Physical Facility Use

10% X 35,000 gsf = 3,500 gsf

Construction \$225/gsf

Lease @ \$22/nasf x 3000 x 15 yrs. = \$990,000

Projected Use

1 student

> Full Time @ Facility

1 resident

Residency Program Advisory Committee Quarterly

2) Professional Supervision

Full Time Supervision of the above by licensed physician; cost avoidance \$100/hour =
\$200K/yr. (x 15 years = 3,000,000)

3) Mission Enhancement

A part of the Mission of OUCOM is to provide high value care to non-urban areas.

This facility will be a place for education, programs, research, clinical precepting, and student training.

* Provided by Pam Callahan, University Planner, Building 19, Suite 200, The Ridges, Ohio University, Athens, OH 45701.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Ohio University/The Grandview Foundation
Project Title Kettering Medical Center – Nixon Research Facility
Capital Bill HB 496 Item C30055 Kettering Medical Center – Nixon

- Yes 1. Is the facility to be built/improved identified specifically by address or location?
- No 2. Does the non-profit organization now own the property or have a long term lease? If not, when will it control the property? (*Foundation will own or lease a facility at a future point*)
- 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? (need to amend agreement)
- 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?
- 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

Ohio University And The Grandview Foundation

This Joint Use Agreement (the "Agreement") is made and entered into this 9th day of December 2008 by and between Ohio University (hereinafter referred to as the "University") and The Grandview Foundation, an Ohio, charitable, non-profit corporation (hereinafter referred to as the "Foundation").

WITNESSETH, THAT:

WHEREAS, the 126th General Assembly of Ohio has enacted House Bill 16, which includes a specific appropriation of capital improvement resources directed to the University for the benefit of the Foundation in the total amount of four hundred and fifty thousand dollars (\$450,000); and

WHEREAS, the University desires to participate with the Foundation through the University's College of Osteopathic Medicine to collaborate in high value medical education programs, research, clinical precepting, and student training in a non-urban setting (The "Mission"); for these and other purposes, a facility is needed, to be located near Lebanon, Ohio and funded in part through the present appropriation; and

WHEREAS, the University's participation with the Foundation will allow the University to expand its existing osteopathic medicine curriculum, expand recruitment opportunities in Ohio and become a center of excellence in various clinical and medical practice disciplines; and

WHEREAS, the University has concluded that the value of its use of the facility, other resources, and numerous mutually beneficial collaborations resulting from its participation with the Foundation in the described endeavors is reasonably related to the amount of the appropriation; and

WHEREAS, the University and the Foundation desire to facilitate the goals of higher education by allowing the University access to the Foundation's resources, including the Lebanon facility and specialized equipment; and

WHEREAS, the State of Ohio capital appropriations released through the Chancellor of the Ohio Board of Regents (hereinafter referred to as the "Chancellor") require compliance

with Ohio Administrative Rule 3333-1-03, which specifically calls for execution of a Joint Use Agreement,

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 as follows:

1. That the University will submit to the Chancellor a request for the release of Four Hundred Fifty Thousand Dollars (\$450,000) of the appropriation identified in this Agreement. The University will collect an administrative fee of \$6,750, which is equal to one and one half percent of the total appropriation.
2. The Foundation will expend the funds to either build or substantially modify, equip, improve, and secure a facility located near Lebanon, Ohio, which will house a medical services operation to promote rotation of Ohio University College of Osteopathic Medicine students, residents, and interns and to conduct clinical research and training in furtherance of the Mission (the "Facility"). The parties acknowledge that plans and specifications for the Facility are in their preliminary stages as of the date of this Agreement, however, the parties anticipate that the Facility will include:
 - a. Classrooms and meeting rooms
 - b. Laboratory space
 - c. Student work areas
 - d. Staff and medical offices
 - e. Diagnostic equipment
 - f. Clinical work areas
3. Throughout the term of this agreement, the Foundation shall:
 - a. Provide space in the Facility for a medical services operation dedicated to the Ohio University College of Osteopathic Medicine to promote rotation of students, residents, and interns and to conduct clinical research and training. The amount of dedicated space for a medical services operation will be jointly determined by the Ohio University College of Osteopathic Medicine and the Foundation.
 - b. Provide a licensed physician to supervise the Ohio University College of Osteopathic Medicine students, residents, and interns who are assigned to the medical services operation.
4. The Foundation will own or lease the Facility for 15 years from a third party ("Owner") so that the Foundation will be able to fulfill its obligations pursuant to this Agreement. The Foundation will fully insure the facility for the term of the agreement.
5. Subject to all applicable laws and regulations governing medical practices and clinical research requirements, the Foundation agrees to make the Facility and resources available to the University faculty, staff, and students participating in collaborative teaching, research, clinical and development activities consistent with the mission,

including teaching of curriculum developed for purposes consistent with executing said mission throughout the term of this Agreement.

6. To the extent the Foundation or the Owner, as applicable, charges tenants or users of the Facility rental fees related to the use of the Facility, the Foundation shall charge or shall cause the Owner, as applicable, to charge the University a rate for such rental or use which considers the benefits of this Agreement to both the Foundation and the University. The Chancellor shall, upon request, be provided with pertinent records of the Facility that measure the nature and extent of the use of the Facility by the University, and the terms and conditions governing such use and the University shall cooperate with the Foundation in developing and maintaining such records.
7. That the terms of this Agreement shall be fifteen (15) calendar years commencing upon occupancy of a new Facility or executing a lease agreement.
8. Either party may terminate this Agreement for any reason or no reason prior to the expiration of its terms, upon providing written notice of such party's intent to terminate this Agreement to the other party at least six (6) months prior to the effective date of the termination. In the event this Agreement is terminated: (i) by the University pursuant to Section 6 of this Agreement; (ii) by the Foundation prior to the expiration of the term; or (iii) by the University as a result of the Foundation's use of the funds in connection with a Facility that is not completed in a way that permits the University to substantially prosecute the Mission, then the Foundation shall return to the State of Ohio a pro rata portion of the state appropriation to be calculated by: (i) dividing the amount of the state appropriation received by the Foundation by fifteen (15); multiplied by: (ii) the result of fifteen (15), minus the number of years, complete or partial, of the term that have transpired since the effective date of this Agreement.
9. That the Foundation shall hold the University harmless from liability for any and all costs, liabilities, and claims that arise from or are attendant to the construction, operation and maintenance costs of the Facility.
10. That the Foundation use where applicable competitive bidding procedures equivalent to those enumerated in relevant provisions of Chapter 153 Ohio Revised Code involved (1) publishing advertisements to seek bids, (2) receiving sealed bids, and (3) awarding contracts to the lowest, responsive and responsible bidders.
11. That the funds appropriated for the project by the State of Ohio shall be used only for capital improvements as defined in the House Bill 16, 126th General Assembly.
12. That after appropriate state approvals, the funds provided in House Bill 16 will be released to the University and subsequently transferred by the University to the Foundation after presentation by the Foundation to the University of invoices related to obligations incurred for permitted uses of the appropriated funds. Such obligations must be properly documented to the reasonable satisfaction of the University.

13. That the Foundation shall comply with all pertinent rules, regulations, and laws of the federal, state, and local government.
14. That 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 either party shall have designated by notice given in accordance with the provisions of this paragraph. All mailings and notices shall be addressed as follows:

Nicolette Dioguardi
Office of Legal Affairs
Ohio University
Athens, OH 45701

Kelly Fackel, Vice President for Development
The Grandview Foundation
405 Grand Avenue
Dayton, OH 45405

15. That all amendments to this Agreement shall require the prior approval of the University and the Foundation, as well as the express prior approval of the Chancellor.
16. That this Agreement shall be binding upon and inure to the benefit of the University and the Foundation and their respective successors and assigns.
17. That this Agreement sets forth the entire agreement of the parties concerning the subject matter and any and all other oral or written agreements, discussions, representations, promises and understandings made or arrived at prior to or contemporaneously with this Agreement are hereby mutually revoked, withdrawn, rescinded and rendered null and void by the parties.
18. That the invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
18. That this Agreement shall be construed under and governed by the laws of the State of Ohio.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the later date below written.

The Grandview Foundation

By: Kelli Fackel
Its: Vice President for Development

Ohio University

By: W. Callahan
Its: University Planner

DATE: 12/12/08