



# Board of Regents

Ted Strickland, Governor  
Eric D. Fingerhut, Chancellor

University System of Ohio

## DIRECTIVE 2009-014

May 27, 2009

### Re: A JOINT USE AGREEMENT BETWEEN CLEVELAND STATE UNIVERSITY AND THE CLEVELAND HEARING AND SPEECH CENTER

H.B. 562 includes a specific capital appropriation of \$125,000 to Cleveland State University for the construction of new headquarters for the Cleveland Hearing and Speech Center. The Center will own and operate the new facility that will receive 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. Cleveland State University and the Cleveland Hearing and Speech Center 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 Cleveland State University and the Cleveland Hearing and Speech Center.

This directive will take effect immediately.

  
Eric D. Fingerhut  
Chancellor, Ohio Board of Regents

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Joint Use Agreement between Cleveland State University and the Cleveland Hearing  
and Speech Center

**BACKGROUND**

H.B. 562 includes a specific capital appropriation of \$125,000 to the Cleveland State University for the construction of new headquarters for the Cleveland Hearing and Speech Center. The Cleveland Hearing and Speech Center will own and operate the facility to receive state capital funds. As required by Ohio Administrative Code section 3333-1-03, Cleveland State University submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support the construction of new headquarters for the Cleveland Hearing and Speech Center at 11635 Euclid Avenue in Cleveland, Ohio.

**REVIEW**

Throughout the entire term of the agreement, the Cleveland Hearing and Speech Center will provide the following to the University –

- 1) Guest lecturers to the Department of Health Sciences.
- 2) Free admission for up to eight persons, two times per year, to seminars, lectures, or symposia sponsored by the Center.
- 3) Opportunities for student training with Augmentative/Alternative and/or Speech Generating Equipment.

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 Cleveland State University and the Cleveland Hearing and Speech Center.**

## 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:	\$125,000
2. Estimated annual debt service on the appropriation:	\$9,610
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. Guest lecturer 4 hours per year	\$ 680	15
b. Admit 8 guests 2 times/year to seminars	\$4,960	15
c. Equipment & conf. room use 5 days/year	\$2,175	15
d. Approx 10 referrals to early child program	\$5,000	15
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.*

All costs below assume a general annual inflationary increase of 3% based on long-term historical trends.

- a. Over the 15-year period, the benefit to the University for a masters-level lecturer is approximately \$155 per hour and for a doctorate-level lecturer approximately \$186 per hour. The blended average of these benefits is \$170 per hour.
- b. Over the 15-year period, the average benefit for a University faculty or student to attend a one-day seminar is approximately \$310.
- c. Over the 15-year period, the average benefit to the University for the use of high technology equipment, including the use of a conference room is approximately \$435 per day.
- d. The estimated benefit of one referral to the University's Early Intervention clinic is \$500 per referral.

## JOINT USE AGREEMENT ANALYSIS

Institutions Involved Cleveland State University/The Cleveland Hearing and Speech Center

Project Title New CHSC Headquarters

Capital Bill HB 562 Item C26051 Cleveland Hearing and Speech Center

- 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 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  
BETWEEN  
THE CLEVELAND HEARING AND SPEECH CENTER  
AND  
CLEVELAND STATE UNIVERSITY**

THIS JOINT USE AGREEMENT (“Agreement”) is between THE CLEVELAND HEARING AND SPEECH CENTER, an Ohio non-profit corporation (“CHSC”) and CLEVELAND STATE UNIVERSITY, an instrumentality of the State of Ohio created and existing under Chapter 3544 of the Ohio Revised Code (“University”).

**RECITALS**

WHEREAS, the University’s mission is to provide an education of high quality to students with diverse backgrounds, experiences, and educational needs, as well as serve as a catalyst, leader, and partner in the ongoing enhancement of the quality of life and economic viability of the region and the State of Ohio; and further, whereas CHSC’s mission is to serve, advocate for, and empower individuals with diverse communication abilities and to increase public awareness and sensitivity about hearing loss, deafness, speech-language and related literacy issues, it is the intention of this Agreement to continue the educational relationship that will be mutually beneficial to both parties; and

WHEREAS, the Ohio General Assembly passed House Bill Number 562, which appropriates a total sum of One Hundred Twenty Five Thousand Dollars (\$125,000.00) (“Funds”) to University to be used by CHSC for capital construction; and

WHEREAS, the State of Ohio capital appropriations released through the Chancellor of the Ohio Board of Regents (“Chancellor”) require compliance with Administrative Rule 3333-1-03(E), which specifically calls for the execution of a joint use agreement; and

WHEREAS, the University has concluded that the value of the use of CHSC'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 CHSC's Facilities and Resources by University.

- a. Upon request of the University, CHSC will provide guest lecturers to the University's Department of Health Sciences with the expectation that the guest lecturers will be available for up to four (4) hours of lecturing per year. University will cooperate with CHSC in scheduling guest lecturers.
- b. Upon request of the University, CHSC will provide free admission for up to eight (8) persons of the University's choosing up to two (2) times per year in seminars, lectures, or symposia that CHSC hosts. If CHSC has not scheduled these events in a given year, CHSC is under no obligation to provide one for CSU.
- c. Upon request of the University, CHSC will provide opportunities for student training with Augmentative/Alternative and/or Speech Generating Equipment, up to five (5) days per year in a conference room in CHSC's facility. The training sessions with this equipment will be provided by University faculty or staff, unless otherwise arranged. University will schedule these sessions at a mutually convenient time with CHSC.
- d. Further, CHSC agrees to include the University's Early Intervention Clinic on referral lists that CHSC provides to families through CHSC's Regional

Infant Hearing Program outreach services, provided CHSC has an active contract with the Ohio Department of Health for the Regional Infant Hearing Program.

e. Throughout the term of this Agreement, further uses and opportunities may be explored and put into place through the Implementation Committee.

2. Implementation Committee. The University and CHSC agree to form an Implementation Committee that consists of two University representatives who are appointed by the University's Chair of the Department of Health Sciences and two CHSC representatives who are appointed by CHSC's chief clinical officer to implement and monitor the uses and benefits described in item (1) above. The Implementation Committee shall meet at least semi-annually to review and monitor implementation of the parties' commitments under this Agreement. A written report shall be prepared following each meeting, and submitted to each party's board of trustees, and the Chancellor upon request.
3. Annual Reports. Each annual report issued by CHSC during the term of this Agreement shall (1) include a description of the University-CHSC relationship created by this Agreement, and (2) mention that the funds were provided via a state appropriation made to the University.
4. Term: Termination Prior to Expiration of Term. The term of this Agreement shall commence as of the date of execution set forth below and shall end fifteen (15) years thereafter. If any of the material terms or conditions contained in this Agreement are breached by CHSC, then University shall have the right to terminate this Agreement



upon forty-five (45) days' written notice to CHSC, provided that CHSC does not cure the breach within 45-day period.

5. Reimbursement of State upon Termination. In the event that this Agreement is terminated for any reason prior to fifteen (15) years from the commencement date, CHSC 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 fifteen (15) and multiplying that sum by fifteen (15) less the number of full years that CHSC's obligations under this Agreement were fulfilled.
6. Compliance with Laws. CHSC shall comply with all pertinent federal, state and local laws as well as state administrative regulations, applicable to the use of funds hereunder and to the operation of the Capital Improvement.
7. Funds Used Only for Capital Improvements. The Funds provided under this Agreement shall be used by CHSC only for capital improvements, including, but not limited to, the construction of a new 48,000 square foot headquarters located at 11635 Euclid Avenue, Cleveland, OH (the "Project").
8. Ownership of CHSC Insurance. The Project will be owned by The Cleveland Hearing and Speech Center, and will be fully insured by CHSC. University will be added as an additional insured.
9. Competitive Bidding. CHSC, in connection with the expenditure of funds for the Project, shall, to the extent required by law, follow the competitive bidding procedures for educational facilities construction identified in Ohio Revised Code Chapter 153, including, but not limited to, publishing advertisements to seek bids, and awarding contracts to the lowest responsive and responsible bidder.

10. Hold Harmless. CHSC 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 arising out of the construction, renovation, operation, or maintenance of the Project, 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 arises out of an action or omission or an alleged action or omission of CHSC, its officers, trustees or employees, including, but not limited to CHSC's failure or alleged failure to comply with applicable public bidding requirements or any other federal, state or local law, ordinance, rule, order, directive or regulation.
11. Amendments. Any amendments to this Agreement shall be in writing, signed by CHSC and University, and shall require approval by the Chancellor.
12. Records of University Use. Upon request by the Chancellor and/or the University, CHSC shall supply the Chancellor and/or the University with all pertinent records, including financial records, which measure the nature and extent of use of CHSC's facilities by the University, the terms and conditions governing such use and the specific benefits derived by the University under this Agreement.
13. Distribution of Funds; Administrative Costs. Upon execution of this Agreement, University shall submit to the Chancellor a formal request for the release of the Funds. After the release of the Funds, CHSC shall submit to University requests for payment of amounts along with documentation of contractor invoices or purchase orders related to obligations incurred by CHSC for permitted uses of the Funds. A tentative disbursement schedule is attached hereto as **Exhibit A**. From the Funds,

University shall receive administrative costs in the amount of One Thousand Eight Hundred Seventy Five Dollars (\$1,875.00), which is equal to one and one-half percent (1½ %) of the total amount of the Funds.

14. Notices. All notices to the parties shall be sent by registered or certified mail, postage prepaid and addressed to the parties at the addresses set forth below, or to such other address as either party shall have designated by prior notice.

The Cleveland Hearing and Speech Center  
11635 Euclid Avenue  
Cleveland, OH 44106  
Attn: Executive Director

Cleveland State University  
2121 Euclid Avenue AC 333  
Cleveland, Ohio 44115  
Attn: Provost

With a copy to: University Legal Counsel  
Cleveland State University  
2121 Euclid Avenue AC327  
Cleveland, Ohio 44115

15. Binding Nature. This Agreement shall be binding upon and inure to the benefit of and the University and their respective successors and assigns.
16. Entire Agreement. This Agreement sets forth the entire agreement of the parties hereto relating to the subject matter of this Agreement.
17. Heading. The headings used in this Agreement are inserted only as a matter of convenience and for reference and should not be given effect in the interpretation of this Agreement.
18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

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

**THE CLEVELAND HEARING  
AND SPEECH CENTER**

By: Bernard P. Henri  
Bernard P. Henri, Ph.D.  
Executive Director

Date: 4.8.09

**CLEVELAND STATE  
UNIVERSITY**

By: Michael Schwartz  
Michael Schwartz  
President

Date: 4/3/09

RECEIVED  
APR 14 2009  
OFFICE OF  
UNIVERSITY LEGAL COUNSEL

**EXHIBIT "A"**

**DISBURSEMENT SCHEDULE**

The Cleveland Speech and Hearing Center requests a one-time distribution of the entire appropriation (\$125,000.00) less the one and one half percent administrative fee (\$1,875.00), a total disbursement of \$123,125.00.