



Board of Regents

Ted Strickland Governor
Eric D. Fingerhut Chancellor

University System of Ohio

DIRECTIVE 2008-015

July 16, 2008

Re: A JOINT USE AGREEMENT BETWEEN THE UNIVERSITY OF CINCINNATI AND HEBREW UNION COLLEGE-JEWISH INSTITUTE OF RELIGION

H.B. 496 includes a specific capital appropriation of \$350,000 to the University of Cincinnati for the design and construction of a gallery/exhibition at The Jacob Rader Marcus Center of the American Jewish Archives. Hebrew Union College will own and operate the facility to receive state capital funds.

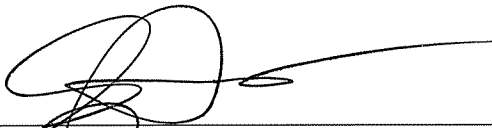
The Ohio Board of Regents' Rule 3333-1-03 requires that a joint use agreement between the institution for which funds are appropriated and the organization which will own or lease and operate facilities to be constructed or improved with such funds must be approved by the Chancellor. The University of Cincinnati and Hebrew Union College 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 Hebrew Union College.



Eric D. Fingerhut
Chancellor, Ohio Board of Regents

mlc

JOINT USE AGREEMENT ANALYSIS

Institutions Involved University of Cincinnati/Hebrew Union College Archive

Project Title Hebrew Union College - Jewish Institute of Religion

Capital Bill HB699

Item C26606

- 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

University of Cincinnati and Hebrew Union College-Jewish Institute of Religion

January 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: \$ 350,000
2. Estimated annual debt service on the appropriation: \$ 26,907
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. <u>After Hours Access to Exhibits</u>	\$ <u>3,107</u>	<u>20</u>
b. <u>Access to Videoconferencing Center</u>	\$ <u>20,400</u>	<u>20</u>
c. <u>Access to Electronic Classroom</u>	\$ <u>3,400</u>	<u>20</u>
d. <u>Total</u>	\$ <u>26,907</u>	<u>20</u>

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

RECEIVED

FEB 06 2008

Construction Management

Section III:

Analysis of Value

The annual value of \$26,907 ($\$350,000 \times 20$ yrs at 4.5% annual interest) for the University's use of the Cincinnati Convention Center is based on the 20 year Joint Use Agreement. The State will although be servicing the debt over a 20 year period at an annual estimated cost of \$26,907. After hours access to the exhibits at the Jacob Rader Marcus Center is a service not available to the general public and the value estimates the cost of opening the exhibits outside of regular school hours. While the majority of the facilities at the Jacob Rader Marcus Center are open to the public free of charge, the Videoconferencing Center and the Electronic classroom are services for which the general public must pay. In particular, the Videoconferencing Center will cost a member of the general public \$120 per hour of use.

Listed below are the service description and the estimated annual uses of each:

- After Hours Access to Exhibits 4 Events
- Access to Videoconferencing Center 170 Hours
- Access to Electronic Classroom 3 Events

Joint Use Agreement between the University of Cincinnati and Hebrew Union
College-Jewish Institute of Religion

BACKGROUND

H.B. 699 includes a specific capital appropriation of \$350,000 to the University of Cincinnati for the design and construction of a gallery/exhibition at The Jacob Rader Marcus Center of the American Jewish Archives. The Hebrew Union College will own and operate the facility to receive 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 funds will support the construction of The Jacob Rader Marcus Center of the American Jewish Archives at 3101 Clifton Avenue, Cincinnati, Ohio 45220.

REVIEW

Throughout the term of the agreement, the University shall have after hours access to the exhibits at the Jacob Rader Marcus Center. They will also have access to the videoconferencing center and access to the electronic classroom. While the majority of facilities are open to the public free of charge, the videoconferencing center and the electronic classroom are services for which the general public must pay.

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 Hebrew Union College-Jewish Institute of Religion.

JOINT USE AGREEMENT

Between

HEBREW UNION COLLEGE-JEWISH INSTITUTE OF RELIGION

and

UNIVERSITY OF CINCINNATI

THIS JOINT USE AGREEMENT (this "Agreement") is by and between HEBREW UNION COLLEGE - JEWISH INSTITUTE OF RELIGION ("HUC"), an Ohio not for profit corporation, and the UNIVERSITY OF CINCINNATI, an instrumentality of the State of Ohio created and existing under Chapter 3544 of the Ohio Revised Code (the "University").

RECITALS

WHEREAS, the University desires to participate in the design and construction of the gallery/exhibition at The Jacob Rader Marcus Center of the American Jewish Archives (the "AJA"), a facility wholly-owned by HUC and located at 3101 Clifton Avenue, Cincinnati, Ohio 45220, which will consist of an exhibition that will provide educational resources for students of all ages and educational needs (more fully described in attached Exhibit A attached hereto), which is referred to herein as the "Project";

WHEREAS, the Ohio General Assembly has passed House Bill Number 699, which provides for capital appropriations in the amount of \$350,000 for the Project (the "Funds");

WHEREAS, the State of Ohio has appropriated the Funds through the Ohio Board of Regents (the "Board of Regents"), which has specifically called for the execution of a joint use agreement between HUC and the University as a condition to the release of the Funds to the University; and

WHEREAS, the University has concluded that the value of the use of the AJA'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 sufficiently favor the University over the general public;

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

1. **Use of HUC and the AJA's Facilities and Resources by the University.**

HUC agrees to provide access to the completed Project and the AJA Professionals, as defined in Exhibit A, to the students, faculty, and staff of the University for all educational opportunities reasonably related to the Project, such opportunities to include any related learning activities such as seminars and presentations, for a term of twenty (20) years commencing upon the execution of this Agreement. The extent of such access to the Project by the students, faculty, and staff of the University shall not exceed the extent of access to the Project available to the students, faculty and staff of HUC. HUC agrees to reimburse the Funds to State of Ohio on a pro rata basis should the University's right of access provided herein be terminated prematurely, such reimbursement to be calculated by dividing the funds contributed by the State of Ohio by twenty (20) and multiplying that sum by twenty (20) less the number of full years the facility has been utilized by the University.

2. **Notation of University Funding.** HUC agrees to provide a conspicuous notation upon or in the presence 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, HUC will supply pertinent records which measure, within reason, the nature and extent of use of the completed Project facilities by both the University and the general public. HUC 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 Board of Regents, the University will submit to the Controlling Board a request for release of the appropriation to the University for the purpose of design and construction of the Project. After release and encumbrance of the funds, HUC will submit to the University requests for reimbursement of amounts paid to Project contractors/vendors accompanied by documentation of the payments. The University shall then voucher the payment requests through the State accounting system and upon receipt of funds from the State make disbursements to HUC for the amounts requested from the Funds. From the Funds, the University shall be entitled to administrative costs in the amount of one and one-half percent (1 ½ %) of the total amount of the Funds, which is \$5,172.00.
5. **HUCs Compliance With Laws and Regulations.** HUC 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, which include, as a minimum, publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidders, pursuant to Ohio Administrative Code, Section 3333-1-03 (E)(9).
6. **Hold Harmless.** HUC shall hold the State of Ohio and the University, its officers, trustees and employees harmless from any obligations, expenses, liabilities or claims in

connection with a lawsuit or adjudicatory proceeding in which the University, its officers, trustees and/or employees are named as a defendant or party, if and only if such lawsuit or adjudicatory proceeding arises out of both (1) the construction, renovation, operation, or maintenance of the Project, and (2) an alleged action or omission of HUC, its officers, trustees or employees, including, but not limited to HUC's failure or alleged failure to comply with any applicable federal, state or local law, ordinance, rule, order, directive or regulation.

7. **Liability Insurance.** HUC has a program of liability insurance under which it is responsible for addressing all claims and any loss or damage which may arise at the Project.
8. **Binding Nature.** This Agreement shall be binding upon and inure to the benefit of HUC and the University and their respective successors and assigns.
9. **Amendments.** Any amendments to this Agreement shall be in writing, signed by HUC and the University, and shall require approval by the Board of Regents.

Blank

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

UNIVERSITY OF CINCINNATI

JACOB RADER MARCUS CENTER

OF THE AMERICAN JEWISH

ARCHIVES AT HEBREW UNION

COLLEGE-JEWISH INSTITUTE OF

RELIGION

By: Carol A. Gratzke

Title: _____

Date: 2/18/08

By: _____
Title: _____
Date: _____