



Board of Regents

University System of Ohio

Ted Strickland Governor

Eric D. Fingerhut Chancellor

DIRECTIVE 2008-017

July 16, 2008

Re: A JOINT USE AGREEMENT BETWEEN THE UNIVERSITY OF CINCINNATI AND CLERMONT COUNTY

H.B. 496 includes a specific capital appropriation of \$300,000 to the University of Cincinnati (UC) for construction, modifications, and additions to the Clermont County Emergency Operations Center. Clermont County 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 Clermont County 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 Clermont County.

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

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JOINT USE AGREEMENT ANALYSIS

Institutions Involved Board of Clermont County Commissioners

Project Title Clermont County Emergency Operations Center

Capital Bill HB 699 Item CAP-359

- 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?
- No* 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?

*Amendments are not provided for in the agreement.

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: \$ 300,000
2. Estimated annual debt service on the appropriation: \$ 30,750
3. Term of the state bond, in years: 15 Years

Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. <u>Occasional specialized classroom use.</u>	\$ <u>18,250</u>	<u>15</u>
b. <u>Real-time observation of BOC.</u>	\$ <u>7,500</u>	<u>15</u>
c. <u>UC Clermont direct participation in activation incident.</u>	\$ <u>5,000</u>	<u>15</u>
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

Joint Use Agreement Values

Occasional specialized classroom use – The Emergency Operations Center is a very specialized facility that could not feasibly be replicated at UC's campus. Providing for such a facility for an in class experience will be potentially useful in the criminal justice program and other public safety programs offered by UC. Valued at \$1,216.67 assuming 15 times a year.

Real time observation of OEC – Providing for observation of activated EOC either for a simulation or a real emergency can not be replicated on campus. Valued at \$3,750 assuming twice a year.

Direct Participation in Incident Activation – The Emergency Operations Center in cases of incidents that may involve the UC Clermont campus provides a resource and function otherwise unavailable to the University. The ability to coordinate emergency response to any level of emergency that may affect the UC Clermont campus provides almost immeasurable value when it is needed. Valued at \$5,000 per year.

Joint Use Agreement between the University of Cincinnati and Clermont County

BACKGROUND

H.B. 699 includes a specific capital appropriation of \$300,000 to the University of Cincinnati (UC) for construction, modifications, and additions to the Clermont County Emergency Operations Center. Clermont County 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 construction, modifications, and additions at the Clermont County Emergency Operations Center located at 2279 Clermont Center Drive, Batavia, Ohio.

REVIEW

Throughout the term of the agreement, the University shall have occasional specialized classroom use. Providing for such a facility for an in-class experience will be potentially useful in the criminal justice program and other public safety programs offered by UC. Also, UC shall participate in a real time observation of the Emergency Operations Center and will have direct participation in incident activation.

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 Clermont County.

AGREEMENT

This Agreement is made and entered into this 20th day of February, 2008 by and between the UNIVERSITY OF CINCINNATI, (hereinafter referred to as the "University") and CLERMONT COUNTY, OHIO, (hereinafter referred to as the "County").

WITNESSETH:

WHEREAS, the University desires to participate in the implementation of construction of modifications and additions to the Clermont County Emergency Operations Center located at 2279 Clermont Center Drive, Batavia, Ohio, which is referred to herein as the ("EOC").

WHEREAS, the 126th Ohio General Assembly enacted H.B. 699, which includes Line Item CAP-359 appropriating Three Hundred Thousand Dollars (\$300,000.00) in capital improvement monies to the University for a Project involving the implementing of the Consolidated Communications Project of Clermont County (the "Project"); and

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

WHEREAS, both the University and the citizens of the County continue to enjoy mutual educational, programmatic, cultural and professional linkages; and

WHEREAS, both the University and the County seek to further their partnership and to continue to forge new educational, cultural, and economic opportunities; and

WHEREAS, the University of Cincinnati Clermont College campus directly benefits from an improved Emergency Operations Center during times of emergency including natural disasters; and

WHEREAS, the County is undertaking other capital improvements to provide better access to the University of Cincinnati Clermont College campus, improving both safety and accessibility;

NOW THEREFORE, IT IS AGREED by and between the parties hereto as follows:

1. The term of this Agreement will be for fifteen years from the date of execution of this Agreement by both parties.
2. 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 implementing the Project, and if (and only if) such funds are received, will pay them over to the County.
3. The County shall prepare and deliver to the University a Drawdown Schedule containing the estimated amount, purposes and dates of requested draws against the appropriation.
4. After release and encumbrance of the funds, the University may seek disbursement of the funds. The County will make periodic payments to contractors for allowable expenses of the Project upon submission by the payees of a requisition for payment in a manner approved by the County. The County will request reimbursement from the University for expenses of the Project that are eligible for reimbursement pursuant to Paragraph 4 hereof. Each reimbursement request shall specify that the work has been performed on the Project in conformance with this Agreement, and that the County is entitled to be reimbursed for the amount requested pursuant to the terms hereof. Copies of paid vouchers will accompany requests for reimbursement, which are submitted by the County to the University. The University shall forthwith initiate steps to obtain disbursement of the amount requested (subject to the provisions for reimbursement of the costs of the University's administrative services provided below) and upon receipt of such monies shall immediately transmit such funds to the Clermont County Treasurer. The County will provide wire instructions to complete the transmission. The County agrees that the University shall deduct and retain from the appropriated funds for reimbursement of the administrative costs incurred as a result of the Project, the amount of \$4,433.50 equal to one and one-half percent (1½%) of the total amount appropriated.
5. The funds appropriated by the State of Ohio shall be used only for capital improvements as defined in the bill appropriating such funds, including the construction and completion of the Project and costs reasonably related thereto.
6. The parties acknowledge that the Clermont County Emergency Operations Center (the Project Site) is owned solely by the County and that the use, operation, maintenance and management of the Project site is the responsibility of the County.
7. The County agrees to follow competitive bidding procedures for all contracts let for the Project which include as a minimum, publishing advertisements to seek bids, receiving

sealed bids, and awarding contracts to the lowest and best bidders pursuant to the Ohio Revised Code.

8. The County agrees that it has an obligation to keep the University informed as to the progress of the construction of the Project and to inform the University of any concerns or problems pertaining to the project, which could affect the University. The County shall also comply with any State of Ohio requirements applicable to this Project, including, but not limited to, the requirements of the Ohio Board of Regents set forth at 3333-1-03 of the Ohio Administrative Code, particularly as it or any other rule or directive may be adopted or amended to apply specifically to this and similar projects, and shall comply with all pertinent federal, state and local laws as well as state administrative regulations.
9. No provision of this Agreement shall be deemed to impose upon the University any responsibility for design, construction, improvement or renovation costs, operating costs, maintenance costs, debt costs, or any other costs, of the County or of the Project, or for the creation and approval of the necessary plans, specifications or other construction activities, including but not limited to, any required permits or approvals for the Project. The County acknowledges and assumes responsibility for costs or expenses associated with the planning, design, construction, operation and maintenance costs of the Project and for costs and expenses resulting from liens issued against the Project by any contractors, subcontractors, materialmen or laborers, except where the laws of Ohio may provide otherwise.
10. The County shall hold the University harmless from liability for construction, operation and maintenance cost of the Project to the extent allowed by law.
11. Should the University's right to use and benefit from the Project be terminated by the County prior to the expiration of this Agreement, the State shall be reimbursed on a prorated basis. Such reimbursement shall be calculated by dividing the funds contributed by the State by 15 and multiplying that sum by 15 less the number of full years the facility is available to the University.
12. The County shall cause the Project to be continuously insured during the term of this Agreement with a good and responsible insurance company licensed to do business in the State of Ohio with both liability coverage and coverage against loss or damage by fire, lightning, vandalism and malicious mischief, and all other perils covered by standard "extended coverage" or "all risk" policies of insurance. After completion of the Project, any physical assets constituting the Project shall be insured for not less than 100% of the replacement value thereof or the highest percentage of coverage available but not in any event less than the amount appropriated by the State of Ohio. The County shall provide evidence of property insurance including the University as loss payee as its interests may appear and evidence of General Liability insurance including the University as additional insured for liability arising out of County's negligence. University will be provided advance written notice of cancellation of insurance evidenced hereunder. County shall not be required to obtain general liability insurance after completion of the Project.

13. The Project will consist of expansion of the Clermont County Emergency Operations Center as well as enhancement of the functionality of the County's emergency communications capability. The University will benefit directly from these enhancements through its participation in the County's Emergency Operations Plan and through direct participation at the Emergency Operations Center upon its activation when either directly or indirectly impacting UC Clermont College campus. In addition, the expanded EOC will be made available to UC Clermont to be used as a classroom and/or for observation of real time emergency incident command in conjunction with the University's Criminal Justice Program.
14. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be illegal, invalid or unenforceable because of judicial construction, the remaining terms, covenants and conditions of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
15. Both parties agree that this Agreement shall not be binding or become effective unless or until it is approved by the Ohio Board of Regents, which approval shall be evidenced by an appropriate signature hereon.
16. This Agreement shall inure to the benefit of the University and the County alone, and its provisions shall be enforceable only by them; it is not intended to benefit any other person or entity, public or private, whatsoever.

THEREFORE, the parties have hereunto executed this Agreement as of the day and year first above written.

UNIVERSITY OF CINCINNATI

BOARD OF COUNTY COMMISSIONERS
CLERMONT COUNTY, OHIO

By: Carla A. Chabirfe

Robert L. Proud
Robert L. Proud, President

CARLA A. CHABIRFE
AS
ASSISTANT CONTRACTING OFFICER

Attest: _____

Mary C. Walker
Mary C. Walker, Vice President

APPROVED AS TO FORM:
OFFICE OF Donald W. White,
Clermont County Prosecuting Attorney

by: Jim M. Hunt
Ass't Proc. 02/19/08

R. Scott Croswell III
R. Scott Croswell III

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The Ohio Board of Regents

April, 2005

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b. <u>Real-time observation of EOC.</u>	\$ <u>7,500</u>	<u>15</u>
c. <u>UC Clermont direct participation in activation incident.</u>	\$ <u>5,000</u>	<u>15</u>
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

Company: Clermont County
Project Name: EOC Plan
Start Date: Wednesday, January 02, 2008
Finish Date: Tuesday, September 22, 2009

ID	Task Name	Duration	Start	Finish
1	EOC / Comm Center Project	441 days	1/2/08	9/22/09
2	Building Additions / Construction	441 days	1/2/08	9/22/09
3	Part 1 - Plan Development	48 days	1/2/08	3/11/08
4	Develop Plan Options	47 days	1/2/08	3/10/08
5	BCC Review Draft Plans	1 day	3/11/08	3/11/08
6	Part 2 - Plan Approval	77 days	3/12/08	6/27/08
7	Secure Funding	2 days	3/12/08	3/13/08
8	Execute MSA Phase 2 Contract	5 days	3/14/08	3/20/08
9	Develop Final Plans	60 days	3/21/08	6/13/08
10	Design Development (DD)	20 days	3/21/08	4/17/08
11	Construction Documents (CD)	40 days	4/18/08	6/13/08
12	MSA Delivers Final Plans	0 days	6/13/08	6/13/08
13	Review Plans	5 days	6/16/08	6/20/08
14	BCC Approval	1 day	6/23/08	6/23/08
15	TTD Activity	5 days	6/23/08	6/27/08
17	Part 3 - Construction Bid Process	42 days	6/24/08	8/21/08
18	Pre-Bid Meeting	1 day	6/24/08	6/24/08
19	Bid Submission Process	25 days	6/25/08	7/30/08
20	Permits	25 days	6/24/08	7/29/08
21	Bid Reviews	10 days	7/31/08	8/13/08
22	Bid Recommendations to BCC	5 days	8/14/08	8/20/08
23	Construction Contract Development	5 days	8/14/08	8/20/08
24	Award Contracts	1 day	8/21/08	8/21/08
25	Part 4 - Project Construction	240 days	8/22/08	7/30/09
26	Contractor Coordination / Mobilization	15 days	8/22/08	9/12/08
27	Construction	225 days	9/15/08	7/30/09
28	Phase 1	180 days	9/15/08	5/28/09
29	Site Prep	5 days	9/15/08	9/19/08
30	Excavation	10 days	9/22/08	10/3/08
31	EOC Shell	35 days	10/6/08	11/24/08
32	EOC Completed	130 days	11/25/08	5/28/09
33	Grant Drawdown A	0 days	10/3/08	10/3/08

34	<i>Grand Drawdown B</i>	0 days	11/24/08	11/24/08
35	<i>Phase 2</i>	150 days	11/25/08	6/25/09
36	<i>Ground Floor Shell</i>	60 days	11/25/08	2/19/09
37	<i>Ground Floor Completed</i>	90 days	2/20/09	6/25/09
38	<i>Phase 3</i>	25 days	6/26/09	7/30/09
39	<i>Site Completion</i>	25 days	6/26/09	7/30/09
40	<i>Occupancy</i>	4 days	6/26/09	7/1/09
41	<i>Move & Activate</i>	2 days	7/2/09	7/3/09
42	<i>Phase 5 -Existing Comm Ctr Changes</i>	59 days	7/2/09	9/22/09
43	<i>Remodel / Upgrade Issues</i>	25 days	7/2/09	8/5/09
44	<i>Emergency / Exit Sign Upgrade / Replacement</i>	25 days	7/2/09	8/5/09
45	<i>ADA Upgrades to Current Building</i>	25 days	7/2/09	8/5/09
46	<i>Soil/Ground Support to Building</i>	20 days	7/2/09	7/29/09
47	<i>Parking Lot Resurfacing & Striping</i>	10 days	7/6/09	7/17/09
48	<i>Dispatch Carpet Replacement</i>	59 days	7/2/09	9/22/09
49	<i>Research Carpet & Vendors</i>	30 days	7/2/09	8/12/09
50	<i>Secure Funding</i>	5 days	8/13/09	8/19/09
51	<i>Award & Order</i>	14 days	8/20/09	9/8/09
52	<i>Install Carpet</i>	10 days	9/9/09	9/22/09