



John R. Kasich, Governor
Jim Petro, Chancellor

University System of Ohio
Board of Regents

DIRECTIVE 2011-027

October 12, 2011

RE: JOINT USE AGREEMENT BETWEEN CASE WESTERN RESERVE UNIVERSITY AND
THE CLEVELAND CLINIC FOUNDATION

H.B. 462 includes a specific capital reappropriation of \$93,525,566 for the Third Frontier Project, also known as the Third Frontier Wright Capital project. Section 105.40.50 in H.B. 462, Third Frontier Project, specifies the funds shall be used to make grants awarded on a competitive basis. The grant awards shall be administered by the Third Frontier Commission.

An Ohio Third Frontier Research & Development Fund award in the amount of \$2,500,000 was ratified by the Third Frontier Commission at its meeting on May 26, 2010, of which \$1,440,000 will be used at the Cleveland Clinic Foundation (CCF) as described in the Joint Use Agreement.

The higher education capital funds will support the purchase of equipment to establish the Clinically Applied Rehabilitation Engineering (CARE) project. As required by Ohio Administrative Code section 3333-1-03, Case Western Reserve University (Case) submitted a Joint Use Agreement for consideration and approval by the Chancellor.

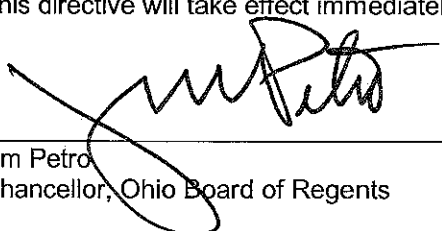
The agreement conforms to Ohio Administrative Code as follows –

- 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 Case Western Reserve University and the Cleveland Clinic Foundation.

This directive will take effect immediately.



Jim Petro
Chancellor, Ohio Board of Regents

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Joint Use Agreement between Case Western Reserve University and The Cleveland Clinic Foundation

BACKGROUND

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REVIEW

Throughout the entire term of the agreement, CCF will provide the following to Case –

- 1) Opportunities for research in support of the development of novel and improved Rehabilitation Engineering solutions.

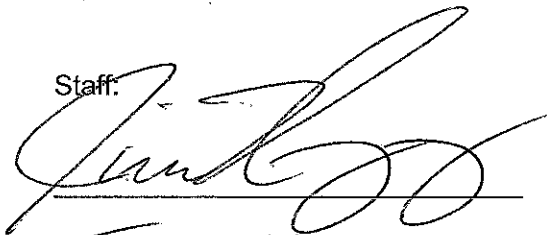
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RECOMMENDATION

Staff recommends Chancellor approval of the Joint Use Agreement between Case Western Reserve University and The Cleveland Clinic Foundation.

Staff:



James Nargang

Print Name

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Case Western Reserve University/The Cleveland Clinic Foundation

Project Title Clinically Applied Rehabilitation Engineering (CARE) Project

Capital Bill HB 462 Item Third Frontier Project

- 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 Worksheet

The Ohio Board of Regents

August 5, 2011

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 \$1,440,000. The annual debt service paid by the state on this appropriation is about \$110,702 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 \$110,702 per year for 20 years.

Section I: State appropriation information.

1. Amount of state appropriation provided:	\$ <u>1,440,000</u>
2. Estimated annual debt service on the appropriation:	\$ <u>110,702</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>See attached explanation</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.

- **NIH Funding – the Cleveland Clinic, the Louis Stokes Cleveland VA Medical Center (LSCVAMC), and Case Western Reserve University (CWRU) are committed to submitting NIH and other federal peer-reviewed proposals for funding in Rehabilitation Engineering Research. The equipment and facilities will support the development of novel and improved Rehabilitation Engineering solutions funded by these grants.**
 - **Estimated value/year: at least 1 grant at \$110,702 value per grant awarded to Case Western Reserve University or a state-sponsored institution, such as Cleveland State University or Ohio State University.**
Market value of 20 years with no change in market value is \$2,214,040.

Exhibit A Budget

Equipment:

For the Cleveland Clinic, the following will be purchased:

1. Caren Extended system (\$1,400,000) which includes (i) Caren software suite, including the software module for integration with the optical motion capture system, (ii) Human Body Model software, (iii) 12 camera optical motion capture system including truss, (iv) Heavy load motion base with an integrated Bertec dual belt instrumented treadmill, (v) Visualization & audio system, (vi) Caren operator interface and safety system, (vii) Electrical driven access ramp, (viii) Caren software modules for pedal force sensors (for Parkinson's forced exercise system).
 2. EMG 12 muscle system (\$35,000)
 3. Landice L970 treadmill (\$5,000)
- Total funds requested for equipment for the Cleveland Clinic: \$1,440,000.

Equipment:

The following items of equipment are requested for the Advanced Platform Technology group:

- Sputtering System (Gold, Platinum, SiC) \$180,000
 - o The Explorer® 14 Sputtering System by Denton Vacuum provides the capability to deposit a variety of different materials through the sputtering process.
 - Cambridge Nanotech, Inc. Atomic Layer Deposition System (\$120,000)
 - o The Savannah S100 Atomic Layer Deposition system is able to deposit Al₂O₃ and other metal films one atomic layer a time for stimulation devices.
 - Xactix Dry Isotropic Silicon Etching System (XSYS3B) \$150,000
 - o The XSYS3B Xetch system will allow sophisticated flexible substrate release mechanisms to be employed in order to produce devices such as the ISSD.
 - FlipChip Bonding Machine \$140,000
 - o This system would enable the development of advanced micromedical device packaging through placement and bonding of ASIC chips using the "flipchip" approach.
 - Biocompatibility Test System \$190,000
 - o The Biocompatibility test system for evaluating tissue response to implanted devices.
 - Rapid Prototyping \$192,000
 - o The Stratasys FDM 400mc, is capable of rapid prototyping in multiple materials. This directly results in creating parts that can both be more durable and mechanically sophisticated.
 - Electronics Assembly & Test Bench \$38,000
 - o The medical electronics assembly and test bench allows a full range of assembly functions for medical devices, including critical soldering and encapsulation processes.
 - MFL Room Modification \$30,000 and MFL Equipment Installation \$20,000.
- Total budget requested for equipment: \$1,060,000.

JOINT USE AGREEMENT
Between
THE CLEVELAND CLINIC FOUNDATION
And
CASE WESTERN RESERVE UNIVERSITY

THIS JOINT USE AGREEMENT ("Agreement") is made the 5th day of August, 2011 (Effective Date") between THE CLEVELAND CLINIC FOUNDATION, an Ohio non-profit corporation ("CCF") and CASE WESTERN RESERVE UNIVERSITY, an institution of higher learning established under the laws of the State of Ohio ("CASE") (CCF and CASE, collectively, the "parties").

RECITALS

WHEREAS, substitute House Bill Number 462 ("HB 462") from the 128th Ohio General Assembly appropriated certain funds to the Chancellor of the Ohio Board of Regents ("Chancellor") for allocation among programs associated with Ohio's Third Frontier Project; and

WHEREAS, CCF, as the lead organization among a group including CCF, Case, Louis Stokes Cleveland Department of Veterans Affairs Medical Center (LSCDVAMC), Parker Hannifin Corporation, and Bertec Corporation (each a "Participant" and collectively, the "Participants"), applied to the Third Frontier Commission ("Commission") for a Wright Projects Program ("WPP") capital grant requesting \$2,500,000 ("Funds") to develop the Clinically Applied Rehabilitation Engineering (CARE) Project, a comprehensive, proactive, and focused approach to rehabilitation device design that will bring new products to market within the next three years.

WHEREAS, pursuant to the authority conferred upon the Chancellor in the reappropriations act for capital improvements, and prior to the Chancellor recommending release of the Funds, the parties must submit and the Chancellor must approve a joint use agreement satisfying the requirements of Ohio Administrative Code Rule 3333-1-03(E); and

WHEREAS, Case qualifies as a "state-assisted institution of higher education" per Ohio Administrative Code Rule 3333-1-05 since the institution receives state subsidy for its medical students per Section 371.40.10 of House Bill 1, passed by the 128th General Assembly; and

WHEREAS, as a state assisted institution of higher education, Case was selected by the Commission as the fiscal agent for this project; and

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

1. Purpose of Agreement. CCF and Case desire to enter into this Agreement in order to facilitate establishment of the CARE, thereby accelerating development and commercialization of state-of-the-art Ohio-based rehabilitation devices. The Funds received pursuant to this Agreement and to be expended hereunder will be for capital purposes only as defined in HB 462.

2. Location of Facilities and User of Funds. CCF would receive a total of \$1,440,000 of the Funds and Case would receive \$1,060,000 over three (3) years. Using the Funds, Participants shall establish CARE by purchasing the equipment listed in Exhibit A. CCF and Case shall each provide space at their institution to house the equipment listed in Exhibit A.

3. Budget. A budget detailing the capital expenditures is attached as Exhibit A.

4. Use of Facilities, Equipment, and Instrumentation by CCF, Case and other Participants. Upon completion, the CARE Facilities will be open to full public use by CCF, CASE, and other Participants who are then engaged in rehabilitation device development and commercialization. This engagement will be expanded to include additional collaborators as additional programs are developed. All participants and those that have public access to the CARE will be required to obey all applicable CCF and Case policies while on CCF and Case premises. It is anticipated that shared administrative space, lab facilities and conference rooms will be available to state-supported and state-assisted higher education institutions on a non-paying or cost-only basis.

- 4.a. Value of Use NIH Funding – the Cleveland Clinic, the Louis Stokes Cleveland VA Medical Center (LSCVAMC), and Case Western Reserve University (CWRU) are committed to submitting NIH and other federal peer-reviewed proposals for funding in Rehabilitation Engineering Research. The equipment and facilities will support the development of novel and improved Rehabilitation Engineering solutions funded by these grants.
 - Estimated value/year: at least 1 grant at \$110,702 value per grant awarded to Case Western Reserve University or a state-sponsored institution, such as Cleveland State University or Ohio State University.
Market value of 20 years with no change in market value is \$2,214,040.

5. Distribution of funds.

A. Each Participant in the CARE project shall submit quarterly requests with documentation for reimbursement of costs associated with establishing, equipping and managing the CARE. These requests shall be submitted to CCF for approval. Costs approved by CCF will then be submitted to Case for payment. As soon as reasonable practical after receipt of each invoice, Case shall submit to the State of Ohio a corresponding request for reimbursement of grant funds. Upon receipt of such grant funds from the State of Ohio, Case shall promptly pay such funds directly to the requesting Participant.

B. Case shall be entitled to an administrative fee of one thousand dollars (\$1,000) per transaction, not to exceed six (6) transactions per year, or six thousand dollars (\$6,000) per year for actual administrative costs incurred. Case shall invoice the State of Ohio directly for this administrative fee up to an amount equal to \$37,500, or 1.5% of the award.

6. Term and Termination. The term of this Agreement shall commence on the effective date and expire twenty years (20) after the Funds are released to CCF. Either party may terminate this agreement upon ninety (90) days prior written notice to the other. Upon any such termination of this Agreement or of Case's right to use the CARE, CCF shall reimburse the State of Ohio an amount determined by dividing the total funds distributed by the State of Ohio by twenty (20) and multiplying that sum by twenty (20) less the number of full years this Agreement was in effect.

7. Compliance with Laws. Each party shall comply with all applicable federal, state, and local laws and state administrative regulations, including, to the extent possible and consistent with the proposal, competitive bidding procedures equivalent to those enumerated in relevant provisions of Chapter 153 of the Ohio Revised Code involving publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidders. Case represents, that it has not been debarred, suspended, excluded, or otherwise determined to be ineligible to participate in federal healthcare programs (collectively, "Debarred") and acknowledges that CCF shall have the right to terminate this Agreement immediately in the event that Case is Debarred. Accordingly, Case shall provide CCF with immediate notice if during the term of this Agreement, Case (i) received notice of action or threat of action with respect to its Debarment; or (ii) becomes Debarred.

Hold Harmless. Case and CCF will hold the State of Ohio harmless from, and at the State of Ohio's request, will defend the State of Ohio against any and all claims and liabilities whatsoever for the planning, design, engineering, installation, construction, operation, maintenance, and repair cost of the Equipment occurring during the performance of this Agreement to the extent caused by Case and CCF's negligence, gross negligence, recklessness or willful misconduct.

8. Use of Name. Neither party shall use the name, logo, likeness, trademarks, image, or other intellectual property of the other party for advertising, promotion, or other purpose, without the prior specific written consent of the other party as to each such use.

9. Insurance and Ownership. Appropriate levels for insurance for equipment and facilities of the types covered by this Agreement will be maintained by the owner of each of the facilities. Case and CCF shall retain title to the equipment purchased.

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

CCF: The Cleveland Clinic Foundation
9500 Euclid Avenue
Cleveland, OH 44195
Attn: Chief Operating Officer

With a copy to:

The Law Department
The Cleveland Clinic Foundation
9500 Euclid Avenue
Cleveland, OH 44195
Attn: Director, Research and Sponsored Programs

11. Entire Agreement. This Agreement, including Exhibit A, attached hereto and incorporated herein by this reference, sets forth the entire agreement of CCF and Case relating to the subject matter of this Agreement. Any amendments to this Agreement shall be (i) in writing, (ii) approved by the Chancellor, and (iii) signed by authorized representatives of Case and CCF

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

THE CLEVELAND CLINIC FOUNDATION

By: Jacqueline Whatley

Name: Jacqueline Whatley

Title: Senior Director, Office of Sponsored

Research and Projects

Date: 8/25/11

CASE WESTERN RESERVE UNIVERSITY

By: Diane Domanovics

Name: DIANE L. DOMANOVICS

Title: Assistant Vice President for Research
Sponsored Projects Administration
Case Western Reserve University

Sponsored Projects Administration

Date: 8/18/11

Approved:

Ohio Board of Regents

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM

CCF - LAW DEPT.

DATE: 8/25/11 CMSE #: 45430
BY: [Signature]