



John R. Kasich, Governor  
Jim Petro, Chancellor

University System of Ohio  
Board of Regents

DIRECTIVE 2012-027

August 1, 2012

RE: JOINT USE AGREEMENT BETWEEN THE CUYAHOGA COMMUNITY COLLEGE DISTRICT AND THE MUSEUM OF CONTEMPORARY ART, CLEVELAND

H.B. 114 includes a specific capital appropriation of \$450,000 for the Museum of Contemporary Art, Cleveland. As required by Ohio Administrative Code section 3333-1-03, The Cuyahoga Community College 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 twenty 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 Cuyahoga Community College District and the Museum of Contemporary Art, Cleveland.

This directive will take effect immediately.

Jim Petro  
Chancellor, Ohio Board of Regents

MLE

# Joint Use Agreement

Date: 7/9/12

## RECOMMENDATION

The Capital Planning Section has reviewed and recommends approval of the Joint Use Agreement between Cuyahoga Community College District and the Museum of Contemporary Art, Cleveland (MOCA)



7.9.12

Signature

Date

## RECOMMENDATION

The Office of the Vice Chancellor of Finance has reviewed and recommends approval of the Joint Use Agreement between Cuyahoga Community College District and the Museum of Contemporary Art, Cleveland (MOCA)



10/31/12

Signature

Date

**JOINT USE AGREEMENT ANALYSIS**

**Date:**

Institutions  
Involved:

Cuyahoga Community College district

Museum of Contemporary Art, Cleveland (MOCA)

Project Title: MOCA

Capital Bill: SB 312 129<sup>th</sup> GA

Item: C37834

- 1. Is the facility to be built/improved identified specifically by address or location?
- 2. Does the non-profit organization now own the property or have a long term lease? If not, when will it control the property?
- 3. Does the agreement provide for use of the facility for at least 20 years from the time that it is ready for occupancy?
- 4. If the agreement is terminated, is there a pro rata reimbursement clause? Is the reimbursement formula correct?
- 5. Will funds be used only for capital improvements and not operating costs?
- 6. Will the non-profit hold the institution harmless for all operation/maintenance costs?
- 7. Will the non-profit comply with federal, state and local laws and rules?
- 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.)?
- 9. Does the contract provide for a 1.5% administrative fee for the institution?
- 10. Does the agreement require that amendments be approved by the Board of Regents?
- 11. Is a drawdown schedule or payment procedure included?
- 12. Are the extent and nature of spaces and uses adequately described?
- 13. Are the terms and conditions of use of the facility described?
- 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)**
- 15. Is the facility insured?

*OK to  
be posted  
M/C 7/13/12*

*DOJ  
7.9.12*

## Joint Use Agreement Worksheet

The Ohio Board of Regents

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

### Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. <u>Events</u>	\$ <u>16,217.87</u>	<u>20</u>
b. <u>Admissions</u>	\$ <u>1,173.87</u>	<u>20</u>
c. <u>Internships</u>	\$ <u>6,950.52</u>	<u>20</u>
d. <u>Memberships</u>	\$ <u>6,178.24</u>	<u>20</u>
e. <u>Tri-C Day</u>	\$ <u>1,650.00</u>	<u>20</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.

See Attached

*Section III:*

*Explain how each use listed in Section II was valued for this analysis.*

The annual value of the \$34,594 debt service on the appropriation is expected to be re-captured within the 20 year term through annual "in-kind" value over the duration of a 20 year period as follows:

The Museum of Contemporary Art agrees to provide Tri-C with space usage for various events such as JazzFest, special events, and classes (lines a, b, c).

The annualized market value is estimated at \$16,218.

The Museum of Contemporary Art agrees to provide Tri-C with discounted tickets for students (500) and faculty (50). The annualized market value is estimated at \$1,174. (Lines d, e)

The Museum of Contemporary Art agrees to provide Tri-C with five internships in multiple disciplines (150 hours each) for qualified students. The annualized market value is estimated at \$6,951. (Line f)

The Museum of Contemporary Art agrees to provide Tri-C with a Patron Level membership. The annualized market value is estimated at \$6,178. (Line g)

The Museum of Contemporary Art agrees to provide Tri-C with two Tri-C Days per year (Spring & Fall). The annualized market value is estimated at \$4,078. (Line h)

CUYAHOGA COMMUNITY COLLEGE  
 VALUATION ANALYSIS - MOCA  
 HB 114 - FY 2012 - 2031

Amount of state appropriation provided:	450,000
Estimated annual debt service	34,594
Term of the state bond (years)	20
<b>Total debt service</b>	<b>691,880 (A)</b>

**Future Value Calculation:**

<i>Inflation</i>	
Fiscal Year	2.17%
2012	28,000
2013	28,608
2014	29,228
2015	29,863
2016	30,511
2017	31,173
2018	31,849
2019	32,540
2020	33,246
2021	33,968
2022	34,705
2023	35,458
2024	36,228
2025	37,014
2026	37,817
2027	38,637
2028	39,476
2029	40,333
2030	41,208
2031	42,102
<b>Total</b>	<b>691,962.74 (A)</b>
	<b>34,598.14</b>

			2011 value	Avg value over life
Tri-C Jazz Fest, MultiPurpose (MP) and Lobby	\$3,375.00	1	\$3,375	4,170.31
Tri-C event, MP and Lobby	\$3,375.00	2	\$6,750	8,340.62
Tri-C event, MP only. Possibly allow relevant classes to meet 1 or 2 times per semester in the MOCA space	\$1,500.00	2	\$3,000	3,706.94
<b>FREE and DISCOUNTED ADMISSION</b>				
Discounted tickets for students	\$1.50	500	\$750	926.74
Discounted tickets for faculty	\$4.00	50	\$200	247.13
<b>INTERNSHIPS</b>				
Restricted to qualified students in multiple disciplines (150 hours each at a rate of \$7.50/hr)	\$1,125.00	5	\$5,625	6,950.52
<b>MEMBERSHIP</b>				
Patron level membership for Tri-C leadership	\$5,000.00	1	\$5,000	6,178.24
<b>OTHER</b>				
Tri-C Day	\$1,650.00	2	\$3,300	4,077.64
<b>TOTAL</b>			<b>\$28,000</b>	<b>34,598.14</b>

## JOINT USE AGREEMENT

This JOINT USE AGREEMENT (the "Agreement") is made and entered into as of this 14th day of October 2011, by and between Cuyahoga Community College District (hereinafter referred to as the "College"), an institution of higher education and political subdivision of Ohio, and the Museum of Contemporary Art, Cleveland (hereinafter referred to as the "MOCA"), an Ohio non-profit corporation.

WHEREAS, the 129<sup>th</sup> General Assembly enacted House Bill 114 which includes a specific appropriation of capital improvement resources in the total amount of \$450,000, directed to the College for the improvements and modifications to the facilities of MOCA.

WHEREAS, capital appropriations released by the Chancellor of the Ohio Board of Regents (hereinafter referred to as the "Chancellor") require compliance with Ohio Administrative Code 3333-1-03(F), which specifically calls for the execution of a joint use agreement.

WHEREAS, the College wishes to utilize the expanded, reconstructed and renovated facilities of the MOCA;

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. The College shall submit, to the Chancellor, a request for the release of the Four Hundred Fifty Thousand Dollars (\$450,000) appropriation, of which Four Hundred Forty-Three Thousand Two Hundred Fifty Dollars (\$443,250.00) will be for the MOCA and up to Six Thousand Seven Hundred Fifty Dollars (\$6,750) (1.5% of the appropriation) will be for actual administrative costs to the College. The parties anticipate that the appropriated funds will be released by the Chancellor directly to the College. The MOCA shall then submit invoices and related documentation to the reasonable satisfaction of the College, after which the College shall transfer appropriate amounts to the MOCA.

2. The MOCA covenants that it shall use the funds to construct a new building and facilities commonly known as the Museum of Contemporary Art Cleveland and located at 11400 Euclid Avenue, Cleveland, OH 44106, and specifically the Project (as hereinafter defined). The MOCA represents and warrants that it has a long term lease to rent the existing facilities and the property where the project will be completed (from MOCA Cleveland Realty Foundation), and that the MOCA has sufficiently insured its facilities and the Project.

3. The MOCA has adopted a capital budget to be implemented in part with the funds contemplated by this Agreement. The planned project (the "Project") and the costs associated with it are set forth in Exhibit A which is attached hereto and hereby incorporated into this Agreement.

4. The term of this Agreement, as applied to either appropriation amount, will commence when the Chancellor approves the Agreement and shall remain effective for twenty years from the operational opening of the building, expected in October 2012.

During each year of the term, the MOCA shall:

- a) At the discretion of the College, provide use of the facility in pre-designated areas for conferences, seminars, and special events (JazzFest) for up to five times per year.
- b) At the discretion of the College, provide 500 discounted student tickets and 50 discounted faculty tickets for entry into the facility.
- c) Provide, with mutual agreement between MOCA and the College, up to five internships to qualified students in multiple disciplines.
- d) Provide the College with a "Patron" level membership for the College, and all benefits that are attributed to that level of membership.
- e) Provide the College with two Tri-C Days per year (Spring and Fall).

5. Either party may terminate this Agreement with respect to a particular appropriation prior to the expiration of its term by providing notice of the party's intent to terminate a specific appropriation Agreement at least six (6) months prior to the effective date of that termination.

In the event of a termination of the \$450,000 appropriation Agreement, the MOCA shall immediately return to the State of Ohio a pro rata portion of the state appropriation to be calculated by dividing the amount of the appropriation by twenty (20), and multiplying the result by twenty (20) minus the number of years the MOCA provided the benefits during the timeframe established in Section 4 of this Agreement.

6. The MOCA shall indemnify and hold harmless the College for all costs (including without limitation attorney fees and other costs of defense), losses, liabilities, and claims that arise from or are attendant to the construction, operation and maintenance costs of the MOCA and the Project.

7. The MOCA, in connection with the Project, shall use competitive bidding procedures equivalent to those enumerated in relevant provisions of Chapter 153 Ohio Revised Code involving publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidders.

8. The funds appropriated for the Project by the State of Ohio shall be used only for capital improvements as defined in House Bill 114.

9. The MOCA shall comply with all pertinent federal, state, and local laws, including without limitation state administrative provisions.

10. All mailings and notices relating to legal matters involving this Agreement in any way shall be in writing and 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:



Museum of Contemporary Art, Cleveland  
8501 Carnegie Avenue  
Cleveland, OH 44106

Cuyahoga Community College District  
Office of the President  
700 Carnegie Avenue  
Cleveland, Ohio 44115

with a copy sent separately to the same address, to the attention of "General Counsel"

11. Any amendments to this Agreement would require the prior written approval of the College, the MOCA and the Chancellor.

12. This Agreement may not be assigned. Any attempted assignment would be null and void.

13. This Agreement sets forth the entire agreement of the parties concerning its 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.

14. 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.

15. 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.

[SIGNATURES ON FOLLOWING PAGE]

MUSEUM OF CONTEMPORARY ART, CLEVELAND

By: [Signature]  
Title: EXECUTIVE DIRECTOR  
Date: 4/5/12

CUYAHOGA COMMUNITY COLLEGE DISTRICT

By: [Signature]  
Title: EXECUTIVE VICE PRESIDENT  
Date: 4/6/12

Approved by the Chancellor of the Ohio Board of Regents:

By: \_\_\_\_\_  
Date: \_\_\_\_\_