



John R. Kasich, Governor  
Jim Petro, Chancellor

University System of Ohio  
Board of Regents

DIRECTIVE 2012-030

October 10, 2012

RE: JOINT USE AGREEMENT BETWEEN SINCLAIR COMMUNITY COLLEGE AND THE  
EATON COMMUNITY SCHOOLS

Sinclair Community College has been granted a Non-Credit Job Training award from Board of Regent's reappropriations contained in H.B. 312 in the amount of \$200,000. Sinclair Community College will use the funds to improve the facility leased from the Eaton Community Schools. As required by Ohio Administrative Code section 3333-1-03, Sinclair 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 Sinclair Community College and the Eaton Community Schools.

This directive will take effect immediately.

Jim Petro  
Chancellor, Ohio Board of Regents

MIC

# Joint Use Agreement

Date: September 24, 2012

## RECOMMENDATION


The Capital Planning Section has reviewed and recommends approval of the Joint Use Agreement between Sinclair Community College and the Eaton Community Schools.



9.24.12

Signature

Date

Approved by Ulysses 

24 SEP 12

## RECOMMENDATION

The Office of the Vice Chancellor of Finance has reviewed and recommends approval of the Joint Use Agreement between Sinclair Community College and the Eaton Community Schools.



24 SEP 12

Signature

Date

# JOINT USE AGREEMENT ANALYSIS

Date: Sept 24, 2012

Institutions: Sinclair Community College  
Eaton Community Schools

Project Title: Non-Credit Job Training

Capital Bill HB 312 Line Item (ALI): c37711

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

*Handwritten:* 9.24.12 8 24 SEP 12

## 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. Section II and III are to be filled out by the partner campus.

**Example:** A campus wished to enter into a Joint Use Agreement with a 501(C)(3) entity for a state appropriation of \$5,000,000. The annual debt services paid by the state on this appropriation are 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:            | \$200,000 |
| 2. Estimated annual debt service on the appropriation | \$15,375  |
| 3. Term of the state bond, in years:                  | 20 Years  |

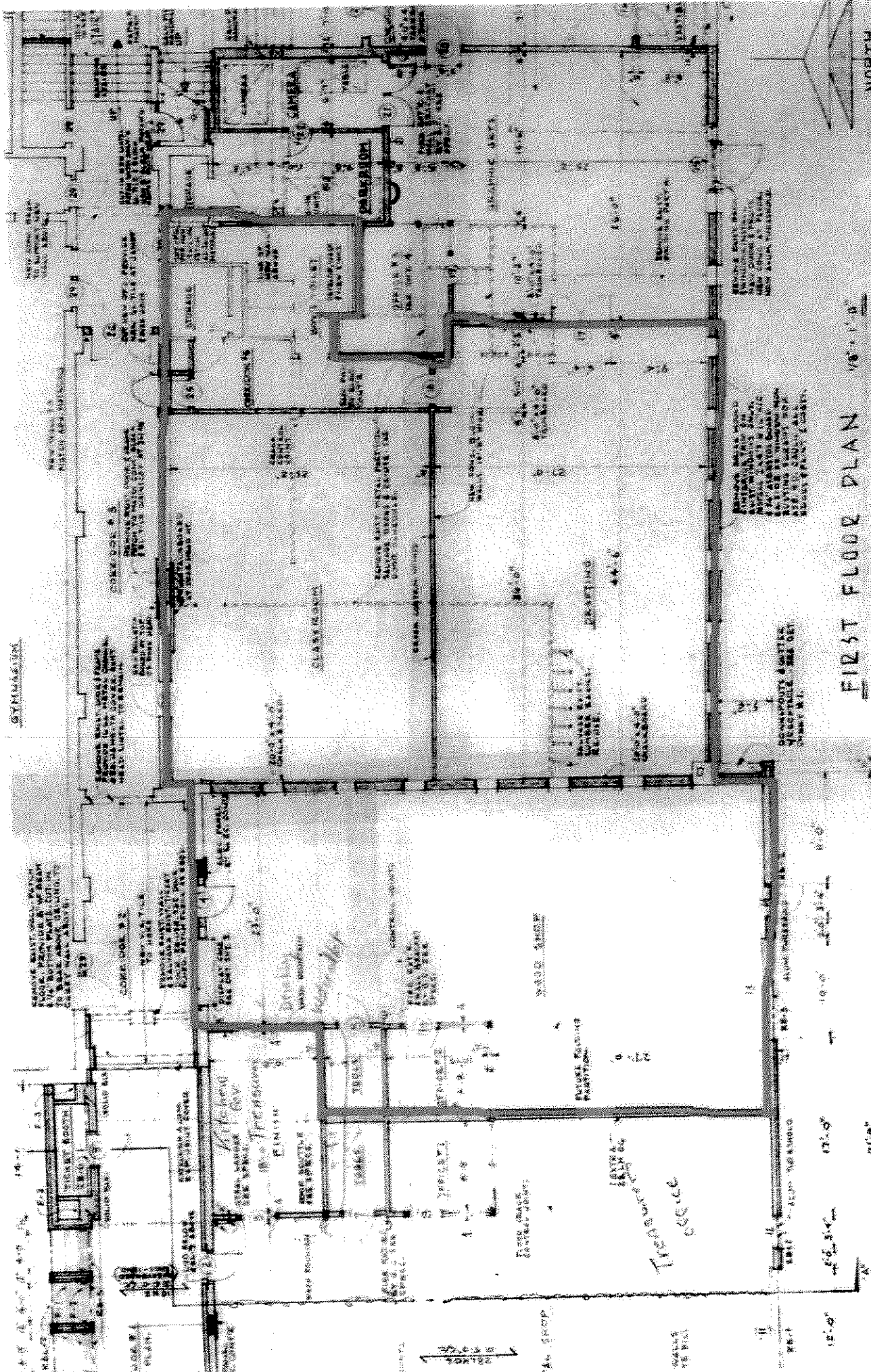
### *Section II: Estimated value of use of the facility.*

Use(s) of the facility*	Annual value of use	# of years
a. Favorable Lease Rate and access to Electric, Water and Sewer	\$15,526	20

(\*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.*





FIRST FLOOR PLAN 1/8" = 1'-0"



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## JOINT USE AGREEMENT

This JOINT USE AGREEMENT (the "Agreement") is made and entered into as of this 14<sup>th</sup> day of July, 2012 by and between Sinclair Community College, (hereinafter referred to as the "College") and Eaton Community Schools, (hereinafter referred to as the "Eaton Schools").

### WITNESSETH THAT:

WHEREAS, the 128<sup>th</sup> General Assembly has since enacted House Bill 462 which includes a specific appropriation of capital improvement resources in the total amount of two hundred thousand dollars (\$200,000), directed to the Ohio Board of Regents to improve the leased facility that will be used to prepare workers to meet the needs of growing industries; and

WHEREAS, the State of Ohio capital appropriations released through the Ohio Board of Regents require compliance with Ohio Board of Regents Rule 3333-1-03, which specifically calls for the execution of a Joint Use Agreement, and

WHEREAS, the College has concluded that the value of its use of, and exposure to, the Eaton Middle School and its tools and equipment as provided in this agreement, as enhanced by the acquisitions that will be made possible by this appropriation, is reasonably related to the amount of the appropriation, and

WHEREAS, the College wished to utilize the expanded, reconstructed and renovated facilities and equipment and tools of the Eaton Middle School in connection with programs identified in the Joint Use Agreement and, therefore, wishes to enter into this Agreement.

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 will submit to the Ohio Board of Regents, a request for the release of two hundred thousand dollars (\$200,000) to fund construction and space renovations.
2. Eaton Schools will allow access to the facility in for purposes of renovating space to establish the training lab as defined in Exhibit A, which is attached hereto and made a part hereof and, for the purposed hereof, constitute the "Project". All aspects of the Project shall be performed at the Eaton Middle School, 311 N. Cherry Street, Eaton, OH 45320.
3. That throughout the entire term of this Agreement, the Eaton Schools will do the following:
  - a. Provide favorable lease rates to Sinclair over the term of the agreement.
  - b. Provide access to the electric, water and sewer services.
  - c. Provide maintenance and upkeep to the rented space.
4. The terms and conditions of such use by the College shall be more favorable than the terms and conditions of use by any other entity to a degree that reasonably reflects the magnitude of the College's investment in the facility. The Ohio Board of Regents, shall, upon request, be provided with pertinent records of the facility that measure the nature and extent of the use of the facility by the College, and the terms and conditions governing such use.

5. **Taxes and Insurance:** Eaton Schools shall pay all taxes related to the Facility, including any property taxes or assessments. Eaton Schools shall insure the Facility and warrants that Eaton Schools' general liability, property, and casualty insurance policies are sufficient to fully cover all expected claims and losses related to the Facility.
6. **Compliance with Law: Competitive Bidding; Prevailing Wage.** Eaton Schools shall comply with all pertinent federal, state, and local laws, rules and state administrative regulations. Eaton Schools shall follow the competitive bidding procedures identified in Ohio Revised Code Chapter 153.
7. **Reimbursement to College for Administrative Costs.** Sinclair Community College agrees to waive the standard one-half percent (1.5%) typically received for reimbursement for administrative costs.
8. **That the term of this Agreement shall commence upon its execution by the parties and extend through calendar year 2032.**
9. **That in the event either party desires to terminate this agreement prior to the expiration of its term, written notice of either party's intent to terminate this agreement shall be given to the other party at least six (6) months prior to the effective date of that termination. Should the project not be completed or should the College's right to involvement in the Project be terminated prior to the term of this agreement, Eaton Schools shall return to the State of Ohio a pro rata portion of the State appropriation to be calculated by dividing the amount of its state appropriation by twenty (20) years and multiplying the result by twenty (20), minus the number of years of the College's involvement in the Project.**
10. **Eaton Schools shall hold the College harmless from liability for any and all costs, liabilities, and claims that arise from or are attendant to the construction, operation, and maintenance costs of Eaton Schools.**
11. **The funds appropriated for the Project by the State of Ohio shall be used only for capital improvements as defined in the House Bill 462.**
12. **Eaton Schools shall comply with all pertinent rules, regulations, and laws of the federal, state, and local government.**
13. **All mailing and notices to the parties shall be addressed to the parties at the addresses set forth below or to such other address as either shall have designated by notice given in accordance with the provisions of this paragraph. All mailings and notices shall be addressed as follows:**

Eaton Community Schools  
307 North Cherry Street  
Eaton, Ohio 45320  
Attn: Bradley C. Neavin, Superintendent

Sinclair Community College  
444 West Third Street  
Dayton, Ohio 45402  
Attn: Jeffrey A. Miller, AVP Workforce Development



14. All Amendments to the Agreement shall require the prior approval of the College and Eaton Schools, as well as the express prior approval of the Ohio Board of Regents.
15. This Agreement shall be binding upon and inure to the benefit of Eaton Schools and the College and their respective successors and assigns.
16. This Agreement sets forth the entire agreement of the parties concerning the 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.
17. 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.
18. 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 as of the later date below written.

**EATON COMMUNITY SCHOOLS**

By: [Signature]  
 By: [Signature]  
 Date: 9/10/12

**SINCLAIR COMMUNITY COLLEGE**

By: [Signature] mark Schmid - MER. PUECH.  
 By: Linda A. Martin  
 Date: 9/13/12

LINDA A. MARTIN, Notary Public  
 in and for the State of Ohio  
 My Commission Expires Jan. 13, 2014

EXHIBIT A

1. Approximately \$200,000 will be spent on facility renovations and improvements to approximately 4,162 square feet of space located at the Eaton Middle School, 311 N. Cherry Street, Eaton ON, 45320.

A summary of the improvements will include necessary demolition and installation of new hardwood panel walls, hard ceiling, carpet, paint, lighting and miscellaneous electrical work.

EXHIBIT B

Drawing representing area within the building that is considered the "leased space."

**FY 2005 – FY 2006 Capital Bill (HB 16)**

**Extract regarding Joint Use Agreements**

**"SECTION 19.51.** No capital improvement appropriations made in Sections 19.02 to 19.48 of this act shall be released for planning or for improvement, renovation, construction, or acquisition of capital facilities if the institution of higher education or the state does not own the real property on which the capital facilities are or will be located. This restriction does not apply in any of the following circumstances:

(1) The institution has a long-term (at least fifteen years) lease of, or other interest (such as an easement) in, the real property.

(2) The Ohio Board of Regents certifies to the Controlling Board that undue delay will occur if planning does not proceed while the property or property interest acquisition process continues. In this case, funds may be released upon approval of the Controlling Board to pay for planning through the development of schematic drawings only.

(3) In the case of an appropriation for capital facilities that, because of their unique nature or location, will be owned or will be part of facilities owned by a separate nonprofit organization or public body and will be made available to the institution of higher education for its use, the nonprofit organization or public body either owns or has a long-term (at least fifteen years) lease of the real property or other capital facility to be improved, renovated, constructed, or acquired and has entered into a joint or cooperative use agreement with the institution of higher education that meets the requirements of division (C) of this section.

(B) Any foregoing appropriations which require cooperation between a technical college and a branch campus of a university may be released by the Controlling Board upon recommendation by the Ohio Board of Regents that the facilities proposed by the institutions are:

(1) The result of a joint planning effort by the university and the technical college, satisfactory to the Ohio Board of Regents;

(2) Facilities that will meet the needs of the region in terms of technical and general education, taking into consideration the totality of facilities which will be available after the completion of these projects;

(3) Planned to permit maximum joint use by the university and technical college of the totality of facilities which will be available upon their completion; and

(4) To be located on or adjacent to the branch campus of the university.

(C) The Ohio Board of Regents shall adopt rules regarding the release of moneys from all the foregoing appropriations for capital facilities for all state-supported or state-assisted institutions of higher education. In the case of capital facilities referred to in division (A)(3) of this section, the joint or cooperative use agreements shall include, as a minimum, provisions that:

(1) Specify the extent and nature of that joint or cooperative use, extending for not fewer than fifteen years, with the value of such use or right to use to be, as to be determined by the parties and approved by the Board of Regents, reasonably related to the amount of the appropriations;

## JOINT USE AGREEMENT ANALYSIS

Institutions Involved: Sinclair Community College

Project Title: OBOR Training Capital Improvement Facilities Fund

Capital Bill: H.B. 462            Item C37711

- Yes 1. Is the amount of the grant specified?
- Yes 2. Is the facility to be built/improved identified specifically by address or location?
- Yes 3. Does the non-profit organization now own the property/equipment or have a long term lease?  
If not, who does and when will the non-profit control the property/equipment?
- Yes 4. Does the agreement provide for use of the facility by the institution of higher education for at least 15 years from the time that it is ready for occupancy and what is the nature of that use?
- Yes 5. If the agreement is terminated, is there a pro rata reimbursement clause? Is the reimbursement formula correct?
- Yes 6. Will funds be used only for capital improvements and not operating costs?
- Yes 7. Will the non-profit hold the institution harmless for all operation/maintenance costs?
- Yes 8. Will the non-profit comply with federal, state, and local laws and rules?
- Yes 9. 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.) and is Chapter 153 referenced by name?
- No 10. Does the contract provide for a 1.5% administrative fee for the institution?
- Yes 11. Does the agreement require that amendments be approved by the Board of Regents?
- Yes 12. Is a drawdown schedule or payment procedure included?
- Yes 13. Are the extent and nature of spaces/equipment and uses adequately described?
- Yes 14. Are the terms and conditions of use of the facility described?
- Yes 15. 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 16. Is the facility/equipment insured and by whom?
- Yes 17. Is a representative of the non-profit aware they'll have to appear before Board of Regents when the joint use agreement is presented for approval?

(2) Provide for pro rata reimbursement to the state should the arrangement for joint or cooperative use be terminated;

(3) Provide that procedures to be followed during the capital improvement process will comply with appropriate applicable state laws and rules, including provisions of this act; and

(4) Provide for payment or reimbursement to the institution of its administrative costs incurred as a result of the facilities project, not to exceed 1.5 per cent of the appropriated amount.