DIRECTIVE 2019-047

November 6, 2019

RE: JOINT USE AGREEMENT BETWEEN EASTERN GATEWAY COMMUNITY COLLEGE AND CITY OF NILES, OHIO

Eastern Gateway Community College has been granted appropriations contained in House Bill 529 of 132nd General Assembly in the amount of two hundred thousand dollars. Eastern Gateway Community College will use the funds to improve the facility owned by City of Niles, Ohio. As required by Ohio Administrative Code section 3333-1-03, Eastern Gateway 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 Department’s website for the purpose 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 Eastern Gateway Community College and City of Niles, Ohio.

This directive will take effect immediately.

Randy Gardner
Chancellor, Department of Higher Education
JOINT USE AGREEMENT

This Joint Use Agreement ("Agreement") is entered into by and between the City of Niles, Ohio (the "Owner"), a political subdivision of the State of Ohio whose address is 34 West State Street, Niles, Ohio 44446 and Eastern Gateway Community College (the "College"), an instrumentality of the State of Ohio, created under Chapter 3354 of the Ohio Revised Code, whose address is 110 John Scott Highway, Austintown, Ohio, 44515.

WHEREAS, the College desires to assist the Owner in financing in part the cost of planning, designing and/or constructing certain capital improvements generally to consist of major structural improvements to the Eastwood Field ballpark located at 111 Eastwood Mall Blvd., Niles, Ohio 44446 (the "Facility") and owned by the City of Niles, Ohio, which are more fully described in the attached Exhibit A (the "Project"); and

WHEREAS, the Owner is a Class A Affiliate of the Cleveland Indians major league baseball team, the Mahoning Valley Scrappers, and is entering its 20th year of existence this year. In addition to the Mahoning Valley Scrappers, Eastwood Field is the home for the Youngstown State University baseball team, over 50 high school and amateur baseball games and numerous community events each year, and desires to assist the College by sponsoring several recruiting and enrollment events at its facility each year; and

WHEREAS, the Ohio General Assembly has passed House Bill 529, which provides capital appropriations to the College from the State of Ohio in the amount of $200,000 for the Project (the "Funds"); and

WHEREAS, the release of the Funds by the Office of Budget and Management and/or the Controlling Board to the College requires the recommendation of the Chancellor of the Department of Higher Education (ODHE); and

WHEREAS, the College has demonstrated that the value of the use of the Project by the College as provided in the Agreement is reasonably related to the amount of the appropriation through the worksheet included in this Agreement as Attachment A, and that the terms of this Agreement are more favorable to the College than to others; and

WHEREAS, ODHE has established by rule a requirement that before recommending the release of capital funds to an institution for the improvement of facilities that will be owned or leased by a separate nonprofit organization or public body the institution shall submit a joint use agreement for approval which shall include the provisions described in the Ohio Administrative Code Sections 3333.1-03(E) (1) through (11) which the parties have incorporated herein; and

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

APPROVED

BOARD OF CONTROL

DATE 6/1/18 ANT. $200,000

BY Maureen Allen 6/1/18

PAY TO THE ORDER OF CITY OF NILES
1. **Use of Owner's Facilities by the College.** The City of Niles owns Eastwood Field and shall permit the College jointly to use the Facility: Eastwood Field whose address is 111 Eastwood Mall Blvd., Niles, Ohio 44446 for a term of twenty (20) years commencing on the date access to the facility is made available. The parties consent and agree that the extent and nature of the College's right to use the Facility is reasonably related to the amount of the Funds. The extent and nature of the space to which the College is by this Agreement granted rights for use, and the terms and conditions governing such use, is specified in the attachments Exhibits A through C, hereby incorporated.

2. **Reimbursement of funds.** The Owner shall provide for reimbursement to the state should the College's right to use the Facility be terminated by the Owner prior to the expiration of the twenty-year term, which reimbursement shall be calculated by dividing the funds contributed by the State of Ohio by twenty and multiplying that sum by twenty less the number of full years the Facility is utilized by the College.

3. **Notation of College Funding.** During the period of construction, the Owner shall provide a conspicuous notation upon or in the presence of the Project and in all publicity relating to the Project that the funding is being provided through a joint use agreement with the College.

4. **Use of funds.** The Owner shall use the Funds only for the capital improvements as defined in the bill appropriating the Funds.

5. **Owner's Compliance with Laws and Regulations.** Owner 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, as outlined in Chapter 153 of the Ohio Revised Code (ORC), which shall include, as a minimum, publishing advertisements to seek bids, receiving sealed bids and awarding contracts to the lowest responsive and responsible bidders or, if the Owner is a public body subject to specific competitive bidding requirements, then it shall follow the competitive bidding requirements applicable to such bodies.

6. **Distribution of Funds and Payment of Administrative Fee.** Following the approval of this Agreement by ODHE, the College will request the release of the Funds for the purpose of programming, planning, designing and/or implementing the capital improvements defined in the bill appropriating the Funds. After release of the Funds, the Owner may obtain payment by submitting to the College an application for payment (not more than once per month) identifying the amounts owing for work and/or materials in connection with the capital improvements, which shall be certified as true and correct by the Owner and shall be supported by such other documents reasonably required by the College, and after requesting that the amount is due and owing, the College shall cause payment to be made to the Owner. The College shall deduct and retain from the Funds the total amount of $3,000 constituting 1 1/4% of the Funds to compensate it for actual costs of administration.

7. **Hold Harmless.** The Owner shall hold the College harmless from all liability for the construction, operation and maintenance costs of the Facility.

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**Board of Control**

**Date: April 26, 2011**

**By:**

**Sec'd:**
8. **Liability Insurance.** The Owner has and shall maintain for the entire term of this Agreement a comprehensive program of insurance covering the Facility including property, liability and casualty coverage in an amount reasonably sufficient to indemnify the Owner from claims and any losses relating to the construction, ownership and operation of the Facility.

9. **Binding Nature.** This Agreement shall be binding upon and inure to the benefit of the Owner and the College and their respective successors.

10. **Amendments.** Any amendments to this Agreement shall be in writing, signed by the Owner and the College and shall require approval of ODHE.

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

EASTERN GATEWAY COMMUNITY COLLEGE  CITY OF NILES, OHIO

By: [Signature]  [Signature]

Title: President  Mayor

Date: 7/16/19  Date: 7/10/19

**APPROVED**
**BOARD OF CONTROL**

[Signature]  [Signature]

[Signature]  [Signature]

[Signature]  [Signature]

[Signature]  [Signature]
EXHIBIT A

Description of the Project

Eastwood Field, owned by the City of Niles, Ohio is entering its 20th year of existence this year. The Mahoning Valley Scrappers, Class A affiliate of the Cleveland Indians, is the anchor tenant of the facility. In addition to the Scrappers, Eastwood Field is the home for Youngstown State University Baseball, over 50 high school and amateur baseball games and numerous community events each year. Over 200 events are held at Eastwood Field annually, making it one of the Mahoning Valley’s most popular entertainment destinations. Over the past 19 years, Eastwood Field has welcomed more than 3.5 million visitors to the facility. As the facility closes in on 20 years, many upgrades are needed to modernize the facility. The state funding would give the facility a major facelift as we continue to attract and produce quality events for the community.

Capital dollars will be used to install a new video board at Eastwood Field along with the supporting equipment. The steel structure of the original video board will remain intact. In addition, the stadium would undergo energy efficient lighting upgrades. This includes field lighting, stadium lighting, and parking lighting. The playing surface would be completely replaced and graded as part of the project. Renovations of the clubhouse will be done to meet with the Cleveland Indians facility expectations. This will include common eating areas, a multipurpose room, weight facility, etc. This will also be an asset to additional teams using Eastwood Field, including Youngstown State University and Eastern Gateway Community College.

The location of project is the City of Niles, Ohio which is located in Trumbull County. The project is a partnership between the City of Niles, HWS Baseball and Youngstown State University. The asset is owned by the City of Niles and the total cost of the project is $3,250,000. The original state capital request for funding was $1,875,000. The asset has not received state funding in the past.

Additional funding would come from the stadium partnership group. In addition to the stadium partnership group funding, The City of Niles provides $60,000 per year in utility credits. Installing energy efficient upgrades will help lower costs long-term.

Completion of the project would allow the team and facility to book additional events which will have an impact through additional job creation and spin off economic impact in Trumbull County.
# EXHIBIT B
## JOINT USE AGREEMENT ANALYSIS

Institutions: City of Niles, Ohio and the Eastern Gateway Community College

Project Title: Eastwood Field Improvements

Capital Bill: **House Bill 529 Line Item C38622**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Yes</td>
<td>Is the facility to be built/improved identified specifically by address or location?</td>
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<tr>
<td>2</td>
<td>Yes</td>
<td>Does the non-profit organization now own the property or have a long term lease? If not, when will it control the property?</td>
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<tr>
<td>3</td>
<td>Yes</td>
<td>Does the agreement provide for use of the facility for at least 20 years from the time that it is ready for occupancy?</td>
</tr>
<tr>
<td>4</td>
<td>Yes</td>
<td>If the agreement is terminated, is there a pro rata reimbursement clause? Is the reimbursement formula correct?</td>
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<tr>
<td>5</td>
<td>Yes</td>
<td>Will funds be used only for capital improvements and not operating costs?</td>
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<tr>
<td>6</td>
<td>Yes</td>
<td>Will the non-profit hold the institution harmless for all construction, operation, and maintenance costs?</td>
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<tr>
<td>7</td>
<td>Yes</td>
<td>Will the non-profit comply with federal, state, and local laws and rules?</td>
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<tr>
<td>8</td>
<td>Yes</td>
<td>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.)?</td>
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<tr>
<td>9</td>
<td>Yes</td>
<td>Does the contract provide for a 1.5% administrative fee for the institution?</td>
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<tr>
<td>10</td>
<td>Yes</td>
<td>Does the agreement require that amendments be approved by the Department of Higher Education?</td>
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<td>11</td>
<td>Yes</td>
<td>Is a drawdown schedule or payment procedure included?</td>
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<td>12</td>
<td>Yes</td>
<td>Are the extent and nature of spaces and uses adequately described?</td>
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<tr>
<td>13</td>
<td>Yes</td>
<td>Are the terms and conditions of use of the facility described?</td>
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<tr>
<td>14</td>
<td>Yes</td>
<td>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)</td>
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<tr>
<td>15</td>
<td>Yes</td>
<td>Is the facility insured?</td>
</tr>
</tbody>
</table>
EXHIBIT C

Joint Use Agreement Worksheet
Ohio Department of Higher Education

Project: Eastwood Fields Improvement
Date: July 10, 2018

Section I: State appropriation information.

1. Amount of state appropriation provided: $200,000
2. Estimated annual debt service on the appropriation: $15,376
3. Term of the state bond, in years: 20 years

Section II: Estimated value of use of the facility.

<table>
<thead>
<tr>
<th>Use(s) of the facility</th>
<th>Annual value of use</th>
<th># of years</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Seven (7) annual student recruiting events @ $1,875 per event. Includes table at the Main concourse, two 30-second videoboard spots at each game and 50 game tickets.</td>
<td>$13,125</td>
<td>20</td>
</tr>
<tr>
<td>b. One (1) annual major event, Eastern Gateway Community College Game night and sponsorship of that evening’s game with 75 game tickets and 75 picnic passes for guests. Included in the game night sponsorship will be all applicable advertising: print, radio, TV and social media. Also first pitch opportunity.</td>
<td>$2,500</td>
<td>20</td>
</tr>
</tbody>
</table>

Section III:

The City of Niles will provide the College at no cost over the twenty (20) year term of this agreement the use of the Eastwood Fields ballpark to conduct seven (7) student recruiting and entertainment events and one major event each year. At each of the seven (7) recruiting and entertainment events, the College will provide college program materials throughout the box
office and field areas. College recruiters will be onsite providing college and program information to prospective students. The College will also be participating in college night, which is open to all post-secondary educators in the region.

Over the life of the 20 agreement, the benefit to the College for the above will be at least $15,625 per year:

- Seven (7) annual student recruiting events @ $1,875 per event

- One (1) annual major event, including an Eastern Gateway Community College night and sponsorship of that evening’s game at an estimated annual benefit of $2,500