



DIRECTIVE 2020-028

May 27, 2020

RE: JOINT USE AGREEMENT BETWEEN KENT STATE UNIVERSITY AND NOTRE DAME COLLEGE

Kent State University has been granted appropriations contained in House Bill 529 of 132nd General Assembly in the amount of two hundred thousand dollars. Kent State University will use the funds to improve the facility owned by Notre Dame College. As required by Ohio Administrative Code section 3333-1-03, Kent State University 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 Kent State University and Notre Dame College.

This directive will take effect immediately.

Randy Gardner
Chancellor

mlc

JOINT USE AGREEMENT

(For capital funds released to institutions for facilities not owned by the institution)

This Joint Use Agreement (“Agreement”) is entered into by and between KENT STATE UNIVERSITY, an instrumentality of the State of Ohio, created under Chapter 3341.01 of the Ohio Revised Code, whose address is 800 E SUMMIT ST, KENT, OH 44240, and NOTRE DAME COLLEGE, an Ohio nonprofit higher education institution, whose address is 4545 COLLGE RD, SOUTH EUCLID, OH 44121.

WHEREAS, the 132nd General Assembly has enacted House Bill Number 529 (H.B. 529) which includes SECTION 207.150 that provides for appropriation C270J4 of capital improvement resource directed to KENT STATE UNIVERSITY for renovation of NOTRE DAME COLLEGE’s performing arts auditorium (the “Project”) in cooperation with KENT STATE UNIVERSITY in the amount of TWO-HUNDRED THOUSAND DOLLARS (\$200,000.00).

WHEREAS, Ohio Administrative Code §3333-1-03(E) requires a public institution to submit to the Chancellor of the Ohio Department of Higher Education a joint use agreement that contains the requirements in (E)(1)-(11) for review and approval.

WHEREAS, in consideration of the KENT STATE UNIVERSITY’s assistance in the release of the above-mentioned appropriation and in accordance with the terms of this Agreement, NOTRE DAME COLLEGE has agreed to provide the KENT STATE UNIVERSITY with access to and use of the performing arts auditorium as set forth herein.

WHEREAS, KENT STATE UNIVERSITY has demonstrated that the value of the use of the facility or equipment is reasonably related to the amount of appropriation through the worksheet included in this Agreement as Attachment A.

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

1. **Facility or equipment owned, to be built or purchased by nonprofit or public body.**
The facility to be renovated is NOTRE DAME COLLEGE’s performing arts auditorium located on campus at 1857 S GREEN RD, SOUTH EUCLID, OH 44121. The performing arts auditorium is wholly owned by NOTRE DAME COLLEGE.

2. **Renovations: Use of the facility or equipment by public institution; Term.**
 - (a) Funds will be used by NOTRE DAME COLLEGE to renovate NOTRE DAME COLLEGE's performing arts auditorium for educational programs in the performing arts. Renovations include creation of a lobby/box office area and installation of energy-efficient lighting fixtures.
 - (b) The performing arts auditorium will be available for: 1) public rental; and, 2) may be used use by KENT STATE UNIVERSITY ten (10) days each year, provided that the facility is available for use by KENT STATE UNIVERISTY with no pre-existing scheduling conflicts, as referenced in Attachment A, hereby incorporated.
 - (c) The term of the agreement is for twenty (20) years from the completion date of renovations funded through HB529. That date will be determined by the date that KENT STATE UNIVERSITY has access to the facility.
3. **Reimbursement of funds.**

The STATE OF OHIO shall be reimbursed by NOTRE DAME COLLEGE should KENT STATE UNIVERSITY's right to use the facility be terminated by NOTRE DAME COLLEGE prior to the expiration of the 20-year term, calculated by dividing the funds by 20 and multiplying that sum by 20 less the number of full years the performing arts auditorium is used by KENT STATE UNIVERSITY.
4. **Use of funds.** The funds provided under this Agreement shall be used only for capital improvements for the Project and not operating costs, and these funds shall be used as defined in H.B. 529.
5. **Insurance for facility and hold harmless.** NOTRE DAME COLLEGE, the owner of the performing arts auditorium, maintains or shall acquire as necessary, a general liability and property insurance policy or policies for the performing arts auditorium, the improvements, and the Project services to be performed with the funds herein provided, and such policy or policies shall name KENT STATE UNIVERSITY as an additional insured for the purpose of the capital improvements and renovations services. NOTRE DAME COLLEGE shall hold KENT STATE UNIVERSITY, its officers, trustees, and employees, and the State of Ohio harmless from any obligations, expenses, liabilities or claims or any kind arising out of: (i) the Project, the construction, operation, or maintenance costs of the performing arts auditorium and/or (ii) KENT STATE UNIVERSITY, its officers, trustees, or employees or the State of Ohio being named as a defendant in or party to any lawsuit or adjudicatory proceeding, if such lawsuit or adjudicatory proceeding arises out of an action or omission, or an alleged action or omission, of NOTRE DAME COLLEGE, its officers, trustees, or employees, including

but not limited to NOTRE DAME COLLEGE'S failure or alleged failure to comply with applicable public bidding and prevailing wage requirements or any other federal, state, or local law, ordinance, rule, order, directive, or regulation.

6. **Compliance with federal, state and local law.** NOTRE DAME COLLEGE will comply with all pertinent federal, state, and local laws as well as state administrative regulations including but not limited to the applicable rules in Chapter 9, 123, 153 of the Ohio Revised Code and associated regulation of the Ohio Administrative Code.
7. **Competitive bidding; Prevailing Wage.** NOTRE DAME COLLEGE, in connection with the Project and the expenditure of State of Ohio appropriated funding, shall:
 - (a) require that the contractor performing the Project to pay wages to its laborers and mechanics at not less than the prevailing wages for laborers and mechanics for each class of work required by the renovation to the auditorium as determined by the Ohio Department of Commerce, Wage and Hour Bureau in accordance with the requirements of Chapter 4115, Ohio Revised Code; and
 - (b) follow competitive bidding procedures which include, at a minimum, publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidder, as described generally in Ohio Revised Code Chapter 153.
8. **Appropriation administrative fee.** KENT STATE UNIVERSITY shall be paid for administrative costs incurred as a result of the Project. Such administrative costs shall be \$3,000, which is equal to one and one-half percent (1.5%) of the appropriation and shall be paid to KENT STATE UNIVERSITY upon receipt of the appropriation.
9. **Amendments.** Amendments to this Agreement shall be in writing signed by KENT STATE UNIVERSITY and NOTRE DAME COLLEGE and shall require approval by the OHIO DEPARTMENT OF HIGHER EDUCATION prior to taking effect.
10. **Terms and conditions of use.** KENT STATE UNIVERSITY may use NOTRE DAME COLLEGE's performing arts auditorium for public performances upon execution of this Agreement.
11. **Review and inspection.** NOTRE DAME COLLEGE shall, upon request, supply the OHIO DEPARTMENT OF HIGHER EDUCATION with all pertinent records which measure the nature and extent of use of NOTRE DAME COLLEGE'S facility by KENT STATE UNIVERSITY, the terms and conditions governing such use and the specific benefits derived by KENT STATE UNIVERSITY under this Agreement.

12. **Payment.** An approved Controlling Board Request will release funds to KENT STATE UNIVERSITY. After release of funds NOTRE DAME COLLEGE shall submit to KENT STATE UNIVERSITY an appropriate invoice/invoices for payment along with documentation of competitive bidding, including, but not limited to, published advertisement and bid tab confirming the contract was awarded to the lowest responsive and responsible bidder. Upon review and approval of submitted request for payment, KENT STATE UNIVERSITY shall transfer the appropriate funds to NOTRE DAME COLLEGE.
13. **Approval required.** Commencement of this Agreement is subject to approval by the OHIO DEPARTMENT OF HIGHER EDUCATION and shall continue for a period of twenty (20) years, after KENT STATE UNIVERSITY has access to the facility. IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the latest date set forth below.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the latest date set forth below.

NOTRE DAME COLLEGE

By: 
J. Michael Pressimone
President

Date: April 29, 2020

KENT STATE UNIVERSITY

By: 
Mark M. Polatajko
Senior Vice President for
Finance and Administration

Date: 5/5/2020

Approved as
to legal form
and sufficiency
by Douglas
Kubinski

Digitally signed by
Approved as to legal
form and sufficiency by
Douglas Kubinski
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Attachment "A"

Project: NOTRE DAME COLLEGE Performing Arts Auditorium Renovation

Date: November 8, 2019

Section I: State appropriation information.

- | | |
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| 1. Amount of state appropriation provided: | <u>\$200,000</u> |
| 2. Estimated annual debt service on the appropriation: | <u>\$15,376</u> |
| 3. Term of the state bond, in years: | <u>20</u> |

Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. 10 days use by Kent State per year	\$ 25,000	20
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 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 Department of Higher Education. Sections II and III are to be filled out by the partner campus.

NOTRE DAME COLLEGE wishes to enter into a Joint Use Agreement with KENT STATE UNIVERSITY for a state appropriation of \$200,000. The annual debt service paid by the state on this appropriation is about \$15,360 (4.5%) per year for 20 years. The annual value of the facility to KENT STATE UNIVERSITY is \$25,000 per year for 20 years. This value is calculated as 10 days per year at a \$2,500 per day rental rate or \$25,000 annually. NOTRE DAME COLLEGE's daily rate to rent the auditorium to outside groups is \$2,500 per day; KENT STATE UNIVERSITY will not pay this rental fee per the terms of this Agreement.