



Board of Regents

Ted Strickland, Governor
Eric D. Fingerhut, Chancellor

University System of Ohio


DIRECTIVE 2010-037

, 2010

RE: JOINT USE AGREEMENT BETWEEN THE CINCINNATI STATE TECHNICAL AND COMMUNITY COLLEGE AND THE HEBREW UNION COLLEGE-JEWISH INSTITUTE FOR RELIGION

H.B. 562 includes a specific capital appropriation of \$185,000 to the Cincinnati State Technical and Community College for the Hebrew Union College-Jewish Institute for Religion (HUC) project. The HUC owns the facility to be improved with state capital funds.

The Ohio Board of Regents' Rule 3333-1-03 requires that a joint use agreement between the institution for which funds are appropriated and the organization which will own or lease and operate facilities to be constructed or improved with such funds must be approved by the Chancellor. Cincinnati State Technical and Community College presented a joint use agreement for approval.

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 the Cincinnati State Technical and Community College and the Hebrew Union College-Jewish Institute for Religion.

This directive will take effect immediately.



Eric D. Fingerhut
Chancellor, Ohio Board of Regents

mlc

Joint Use Agreement between the Cincinnati State Technical and Community College
and the Hebrew Union College-Jewish Institute for Religion

BACKGROUND

H.B. 562 includes a specific capital appropriation of \$185,000 to the Cincinnati State Technical and Community College for the Hebrew Union College-Jewish Institute for Religion (HUC) project. The HUC owns the facility to be improved with state capital funds. As required by Ohio Administrative Code section 3333-1-03, the Cincinnati State Technical and Community College submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support the design and construction of an exhibition that will provide educational resources to the HUC facility located at 3101 Clifton Avenue, Cincinnati, Ohio.

REVIEW

Throughout the entire term of the agreement, the HUC will provide the College with access to the following –

- 1) Four (4) events to exhibits after hours
- 2) One hundred and seventy (170) hours to a videoconferencing center
- 3) Three (3) events to an electronic classroom.

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

RECOMMENDATION

Staff recommends Chancellor approval of the Joint Use Agreement between the Cincinnati State Technical and Community College and the Hebrew Union College-Jewish Institute for Religion.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Cincinnati State Technical & Community College/Hebrew Union College-Jewish Institute of Religion

Project Title American Jewish Archives

Capital Bill HB 562 Item C36121 Hebrew Union College Archives

- 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

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:	<u>\$185,000</u>
2. Estimated annual debt service on the appropriation	<u>\$14,222</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>After Hours Access to Exhibits</u>	<u>\$ 3,107</u>	<u>20</u>
b.	<u>Access to Videoconferencing Center</u>	<u>\$ 20,400</u>	<u>20</u>
c.	<u>Access to Electronic Classroom</u>	<u>\$ 3,400</u>	<u>20</u>
d.	<u>Total</u>	<u>\$ 26,907</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.

Analysis of Value

The annual value of \$14,222 ($\$185,000 \times 20$ yrs at 4.5% annual interest) for Cincinnati State's use of the Hebrew Union College Archives Exhibit is based on the 20 year Joint Use Agreement. The State will be servicing the debt over a 20 year period at an annual estimated cost of \$14,222. Afterhours access to the exhibits at the Jacob Rader Marcus Center is a service not available to the general public and the value estimates the cost of opening the exhibits outside of regular school hours. While the majority of the facilities at the Jacob Rader Marcus Center are open to the public free of charge, the Videoconferencing Center and the Electronic classroom are services for which the general public must pay for. In particular, the Videoconferencing Center will cost a member of the general public \$120 per hour of use.

In calculating the "value of use" for the afterhours access and electronic classroom, the guiding factor will be determined by the hours used by Cincinnati State. The hourly rate valuation will vary as the following factors enter the formula for use costs: security personnel, technical support personnel, utilities charges, cleaning services, facility administrative oversight supervision during usage time, promotional materials, and instructional faculty. It is being estimated that the afterhours access to exhibits will occur four times and access to the electronic classroom will be requested for three events.

Listed below are the service description and the estimated annual uses of each:

- After Hours Access to Exhibits 4 Events
- Access to Videoconferencing Center 170 Hours
- Access to Electronic Classroom 3 Events

JOINT USE AGREEMENT

Between

HEBREW UNION COLLEGE-JEWISH INSTITUTE OF RELIGION

and

CINCINNATI STATE TECHNICAL & COMMUNITY COLLEGE

THIS JOINT USE AGREEMENT (this "Agreement") is by and between HEBREW UNION COLLEGE - JEWISH INSTITUTE OF RELIGION ("HUC"), an Ohio not for profit corporation, and the **CINCINNATI STATE TECHNICAL & COMMUNITY COLLEGE**, an instrumentality of the State of Ohio created and existing under Chapter 3358 of the Ohio Revised Code ("Cincinnati State").

RECITALS

WHEREAS, Cincinnati State desires to participate in the design and construction of the gallery/exhibition at The Jacob Rader Marcus Center of the American Jewish Archives (the "AJA"), a facility wholly-owned by HUC and located at 3101 Clifton Avenue, Cincinnati, Ohio 45220, which will consist of an exhibition that will provide educational resources for students of all ages and educational needs (more fully described in attached Exhibit A attached hereto), which is referred to herein as the "Project";

WHEREAS, the Ohio General Assembly has passed House Bill Number 562, which provides for capital appropriations in the amount of \$185,000 (Sec. 233.40.10) for the Project (the "Funds");

WHEREAS, the State of Ohio has appropriations released through the Chancellor of the Ohio Board of Regents ("Chancellor") require compliance with Ohio Administrative Rule 3333-1-03(E), which specifically calls for the execution of a Joint Use Agreement; and

WHEREAS, Cincinnati State has concluded that the value of the use of the HUC's facilities and resources by Cincinnati State as provided in this Agreement is reasonably related to the amount of the appropriation, and that the terms of this Agreement are more favorable to the CSTCC than to others;

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

1. **Use of HUC and the AJA's Facilities and Resources by Cincinnati State.**

HUC agrees to provide access to the completed Project and the AJA Professionals, as defined in Exhibit A, to the students, faculty, and staff of Cincinnati State for all educational opportunities reasonably related to the Project, such opportunities to include any related learning activities such as seminars and presentations, for a term of twenty (20) years commencing upon the execution of this Agreement. The extent of such access to the Project, as defined in Exhibit A, by the students, faculty, and staff of Cincinnati State shall not exceed the extent of access to the Project available to the students, faculty and staff of HUC. Cincinnati State is entitled to annual access to the following:

- Four (4) events to exhibits after hours
- One hundred and seventy (170) hours to a videoconferencing center
- Three (3) events to an electronic classroom.

2. **Joint Committee.** A Joint Committee comprised of HUC's representatives and representatives of CSTCC's Divisions will develop the details and guidelines for implementation of programs referenced in item (1) above. The Joint Committee shall meet at least semi-annually to review and monitor implementation of the parties' commitments under this Agreement. A written report shall be prepared following each meeting, and submitted to each party and the Chancellor upon its request.

3. Annual Reports. Each annual report issued by HUC during the term of this Agreement shall (1) include a description of the CSTCC-HUC relationship created by this Agreement, and (2) mention that the funds were provided via a state appropriation made to the CSTCC.
4. Term: Termination Prior to Expiration of Term: The term of this Agreement shall commence as of the date of execution set forth below and shall end twenty (20) years thereafter.
5. Reimbursement of State upon Termination. In the event that this Agreement is terminated for any reason prior to twenty (20) years from the commencement date, HUC shall remit to the State of Ohio a prorated portion of the Funds, which shall be calculated by dividing the funds contributed by the State of Ohio by twenty (20) and multiplying that sum by twenty (20) less the number of full years that HUC's obligations under this Agreement were fulfilled.
6. Compliance with Laws. HUC shall comply in all material respects with all pertinent federal, state, and local laws as well as state administrative regulations, applicable to the use of funds hereunder and to the operation of the Capital Improvement.
7. Funds Used Only for Capital Improvements. The funds provided under this Agreement shall be used by HUC only for capital improvements as provided in HB 562, including but not limited to, the design and construction of the gallery/exhibition at the Jacob Rader Marcus Center of the American Jewish Archives, located at 3101 Clifton Avenue, Cincinnati, Ohio 45220.
8. Ownership of HUC Insurance. The Project will be owned by HUC, and will be fully insured.
9. Competitive Bidding. HUC, in connection with the expenditures of Funds for the

Project, shall, to the extent required by Chapter 153 of the Ohio Revised Code, follow the competitive bidding procedures for educational facilities construction, including, but not limited to, publishing advertisements to seek bids, receiving sealed bids and awarding contracts to the lowest bidder and responsible bidder.

10. Hold Harmless. HUC shall hold the State of Ohio and Cincinnati State, its officers, trustees and employees harmless from any obligations, expenses, liabilities or claims in connection with a lawsuit or adjudicatory proceeding in which Cincinnati State, its officers, trustees and/or employees are named as a defendant or party, if and only if such lawsuit or adjudicatory proceeding arises out of both (1) the construction, renovation, operation, or maintenance of the Project, and (2) an alleged action or omission of HUC, its officers, trustees or employees, including, but not limited to HUC's failure or alleged failure to comply with any applicable federal, state or local law, ordinance, rule, order, directive or regulation.
11. Amendments. Any amendments to this Agreement shall be in writing, signed by HUC and Cincinnati State, and shall require approval by the Chancellor.
12. Records of CSTCC Use. Upon request by the Chancellor and/or the CSTCC, HUC shall supply the Chancellor and/or the CSC with all pertinent records, including financial records, which measure the nature and extent of use of HUC's facilities by the CSTCC, the terms and conditions governing such use and the specific benefits derived by the CSTCC under this Agreement.
13. Distribution of Funds; Administrative Costs. Upon execution of this Agreement, CSTCC shall submit to the Chancellor a formal request for the release of the Funds. After the release of the Funds, HUC shall submit to CSTCC request for payment of amounts along with documentation of contractor invoices or purchase orders related to obligations

incurred by HUC for permitted use of the Funds. A tentative disbursement schedule is attached hereto as Exhibit A. From the Funds, CSTCC shall receive payment or reimbursement of administrative costs incurred as a direct result of the Project in an amount not to exceed \$2,775.00, which is equal to one and one-half percent (1.5%) of the total amount of the Funds.

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

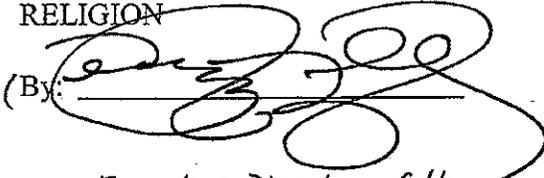
Hebrew Union College-Jewish Institute of Religion
3101 Clifton Avenue
Cincinnati, OH 45220

Cincinnati State Technical and Community College
3520 Central Parkway
Cincinnati, OH 45223
Attn: Dr. John Henderson/Interim President

15. Binding Nature. This Agreement shall be binding upon and inure to the benefit of HUC and the CSTCC and their respective successors and assigns.
16. Entire Agreement. This Agreement sets forth the entire agreement of the parties hereto relating to the subject matter of this Agreement.
17. Heading. The headings used in this Agreement are inserted only as a matter of convenience and for reference and should not be given effect in the interpretation of this Agreement.
18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

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

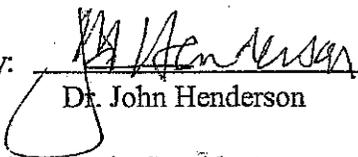
JACOB RADER MARCUS CENTER
OF THE AMERICAN JEWISH
ARCHIVES AT HEBREW UNION
COLLEGE-JEWISH INSTITUTE OF
RELIGION

(By:  _____)

Title: Executive Director of the
AMERICAN Jewish Archives

Date: August 11, 2010

CINCINNATI STATE

By:  _____

Dr. John Henderson

Title: Interim President

Date: August 6, 2010

Exhibit A

The design and construction of the gallery/exhibition at the Jacob Radar Marcus Center of the American Jewish Archives (the "AJA"), a facility wholly-owned by the Hebrew Union College (HUC), located at 3101 Clifton Ave, Cincinnati, Ohio 45229, will consist of an exhibition facility that will provide educational resources for students of all ages and educational needs, which is referred to as the "Project".

Major components of the Project will include a state of the art video conferencing center and "smart" electronic classroom. To assist Cincinnati State students in their research projects, these new facilities are open without a fee that is normally charged to the general public for use of each of these facilities of the Project.

The new facilities of the Project will further enhance the mission of the research and educational by providing high technical resources for research and studies. The Center will also be providing technical and support staff, and facility management supervision during normal open hours of the Center and will be providing after hours access for students of Cincinnati State Technical and Community College.

Joint Use Agreement Worksheet

The Ohio Board of Regents

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JOINT USE AGREEMENT ANALYSIS

Institutions Involved Hebrew Union College – American Jewish Archives and CSTCC

Project Title Archives Exhibit

Capital Bill House Bill # 420 Item Sec. 233.40.10

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- 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?