



Board of Regents

Ted Strickland, Governor
Eric D. Fingerhut, Chancellor

University System of Ohio

DIRECTIVE 2010-025

May 20, 2010

RE: JOINT USE AGREEMENT BETWEEN THE UNIVERSITY OF AKRON AND THE AKRON-CANTON REGIONAL FOODBANK

H.B. 562 includes a specific capital appropriation of \$200,000 to the University of Akron for the Akron-Canton Regional Foodbank (Foodbank) project. The Foodbank 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. The University of Akron 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 University of Akron and the Akron-Canton Regional Foodbank.

This directive will take effect immediately.

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

m/c

Joint Use Agreement between the University of Akron and the Akron-Canton Regional Foodbank

BACKGROUND

H.B. 562 includes a specific capital appropriation of \$200,000 to the University of Akron for Akron-Canton Regional Foodbank (Foodbank) project. The Foodbank owns the facility to be improved with state capital funds. As required by Ohio Administrative Code section 3333-1-03, the University of Akron submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support the addition of a Demonstration Kitchen to the Foodbank facility that will be built on land owned by Foodbank located at 350 Opportunity Parkway, Akron, Ohio.

REVIEW

Throughout the entire term of the agreement, the Foodbank will provide the following to the University –

- 1) Use of the Demonstration Kitchen by all University departments in all of its 10 colleges.

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 University of Akron and the Akron-Canton Regional Foodbank.

Joint Use Agreement Worksheet

The Ohio Board of Regents

December, 2009

Direction: The purpose of this worksheet is to enable a campus to demonstrate how the value of the use 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 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 the state appropriation provided | <u>\$200,000</u> |
| 2. Estimated annual debt service on the appropriation | <u>\$ 15,375</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>Daily room rental 34 days @ \$450.00</u>	<u>\$15,375</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 (Reference: Exhibit B)

Joint Use Agreement Between
Akron-Canton Regional Foodbank and the University of Akron
Supporting Statement

Section III

The Akron-Canton Regional Foodbank is a non-profit organization committed to feeding people and fighting hunger in its eight county territory (Carroll, Holmes, Medina, Portage, Stark, Summit, Tuscarawas, and Wayne). The Building was purchased and renovated in 2007 and is located at 350 Opportunity Parkway, Akron, Ohio. The Building has approximately 82,000 square feet dedicated to dry storage with approximately 4,000 square feet each for a freezer, cooler and food recovery area. A large Community Room located on the second floor is open to the public for meetings, training, seminars, etc. The Community Room can accommodate up to 180 people. There is ample parking on two sides of the building one off Darl Avenue and the other off Opportunity Parkway. It is located near the freeway system with access to Interstate 77 and 76 and State Highway 59. The Foodbank is located approximately 5 miles from the University of Akron campus.

It is the intention of the Foodbank to construct a fully-equipped Demonstration Kitchen within the Building that will serve its eight county communities. The Foodbank will utilize this kitchen to train its staff and member agencies. This new Kitchen will be the cornerstone for developing and conducting food related training. Program partners will be sought to offer training in food nutrition, safety, certification, and preparation. Through those partnerships the Foodbank will provide educational job training and work experience to program partners.

Funding support would provide resources for commercial-grade appliances, including stove/oven, microwave, refrigerator and freezer, kitchen accessories and staging for associated training/programs. The Foodbank will utilize this space to train its staff and four hundred plus member agencies. The kitchen will be used to properly demonstrate food preparation and the creation of nutritional recipes that can be distributed to clients in its service area. The Kitchen will be available to all departments of the University of Akron in all of its 10 colleges for student classes, training, lectures and conferences.

The use of this facility may be of particular importance to Akron should the University desire to hold a course or courses during its academic calendar for its resident nontraditional student population for continuing education courses. The Foodbank's role as the source of food for 400 charities serving people in need in eight counties may also provide Akron a resourceful interface with agencies addressing hunger and poverty.

The value of the use of the facility by the University has been calculated on a daily room rental rate of \$450.

\$450 per day room rental for a total of 34 days through the year	\$15,375
for twenty (20) years and shall be subject to the Foodbank space rental policy a copy of which is attached as Exhibit B. This figure includes room setup and maintenance, use of Foodbank media equipment, appliances, kitchen accessories and staging areas	

Total Annual Value	\$15,375
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JOINT USE AGREEMENT ANALYSIS

Institutions Involved University of Akron/Akron-Canton Regional Foodbank

Project Title Demonstration Kitchen

Capital Bill HB 562 Item C25043 Akron Canton Regional Foodbank

- 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
BETWEEN
Akron-Canton Regional Foodbank
AND
THE UNIVERSITY OF AKRON

This Joint Use Agreement ("Agreement") is between the University of Akron (hereinafter referred to as "Akron") and the Akron-Canton Regional Foodbank, an Ohio non-profit corporation (hereinafter referred to as "Foodbank").

RECITALS

WHEREAS, Ohio's 127th General Assembly has passed House Bill 562, which includes a specific appropriation of capital improvement resources in the total amount of Two Hundred Thousand Dollars (\$200,000) ("Funds") directed to the Foodbank for the construction of a fully-equipped Demonstration Kitchen, and

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

WHEREAS, Akron and the Foodbank entered into an agreement in 2010 whereby students enrolled at the University of Akron could attend and facilitate classes under supervision of Akron faculty in food nutrition, food preparation, food safety, etc., at the Foodbank; and

WHEREAS, Akron finds that the value of the use of the Demonstration Kitchen by Akron is reasonably related to the amount of the grant and that the terms of use of the Demonstration Kitchen are more favorable to Akron than to others; and

WHEREAS, Foodbank and Akron agree that a Demonstration Kitchen will be constructed within the Foodbank facility (on land owned by the Foodbank at 350 Opportunity Parkway); and

NOW, THEREFORE, in consideration of the mutual benefits hereunder and the benefits conferred upon the Foodbank and Akron, it is hereby agreed between the parties as follows:

1. **Request for Distribution of Appropriation:** Akron will submit to the Chancellor, a request for the release of Two Hundred Thousand Dollars (\$200,000) of the appropriation identified in the Agreement. Upon approval of the Joint Use Agreement, Akron will process a Capital Request in order to facilitate the full transfer of funds to the Foodbank for this initiative.
2. **Funds Used Only for Capital Improvements:** Foodbank will extend the Funds only for capital improvements, as defined in HB 562, to and for the Demonstration Kitchen in accordance with the preliminary capital improvements budget set forth on Exhibit A, which is attached hereto and made a part hereof and, for the purposes hereof, which constitute the "Project." All aspects of the Project shall be performed on the Foodbank property.
3. **Utilization of Appropriation:** Foodbank will utilize the Demonstration Kitchen to train staff and member agencies in its eight county area for food related training or classes. Throughout the entire term of the agreement, the Akron-Canton Regional Foodbank will provide the University with use of the Demonstration Kitchen for a total of 34 days

per year. The University will not be charged for this use, which has a computed value of \$450.00 per day.

4. **Term:** The term of this Agreement shall commence upon its execution by the parties and extend through no fewer than twenty (20) years.
5. **Termination Prior to Expiration Prior to Term:** 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 the 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 Foodbank's right to involvement in the Project be terminated prior to the end of the twenty (20) year term of this Agreement, Foodbank shall return to the State of Ohio a pro rata portion of the State of Ohio's appropriation to be calculated by dividing the amount of such appropriation by twenty (20) years and multiplying the result by twenty (20) years, minus the number of years of Foodbank involvement in the Project.
6. **Hold Harmless:** Foodbank shall hold Akron harmless from liability for any and all Demonstration Kitchen costs, liabilities, and claims that arise from or are attendant to the Project and the construction, operation, and maintenance costs. Foodbank will maintain liability insurance on the premises in accordance with its policy of insuring all buildings at the Foodbank used as classrooms and/or meetings and/or office space.
7. **Insurance:** Foodbank maintain General Liability Insurance on its property located at 350 Opportunity Parkway in the amount of \$7,500,000. Prior to the use of the Demonstration Kitchen by Akron, Akron agrees to provide proof of liability insurance in the amount of \$1 million per Occurrence and \$2 million in the Aggregate by way of a Certificate of Insurance that names the Foodbank as Additional Insured.
8. **Contracting:** Foodbank will negotiate terms for the construction of the Project and will, with due diligence, prosecute the construction to completion in connection with the Project, but only as to the portions thereof identified on Exhibit A. Foodbank will use, where applicable, competitive bidding procedures substantially equivalent to those enumerated in relevant provisions of Chapter 153 Ohio Revised Code involving (1) publishing advertisements to receive bids or to otherwise solicit multiple bid proposals, (2) receiving sealed bids, and (3) awarding contracts to the lowest, responsive and responsible bidders.
9. **Compliance with Laws:** Foodbank shall comply with all applicable rules, regulations, and laws of the federal, state, and local government including, without limitation, all State of Ohio administrative regulations.
10. **Notices:** All mailing and notices to the parties shall be addressed to the parties at the address 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:

Akron-Canton Regional Foodbank
350 Opportunity Parkway
Akron, OH 44307
Attn: Daniel R. Flowers, President & CEO

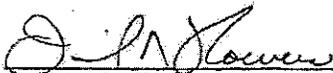
University of Akron
Misty M. Villers, CPA
Assistant to the VP/Fiscal Officer
Capital Planning & Facilities Management

Akron, OH 44325-0405
Email mwiller@uAkron.edu

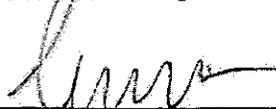
11. **Amendments:** All amendments to the Agreement shall require the prior approval of Foodbank and Akron, as well as the express prior approval of the Chancellor.
12. **Distribution of Funds; Administrative Costs:** After applicable State of Ohio approvals, the funds provided in House Bill 562 will be released to Akron and subsequently transferred to Foodbank after presentation by Foodbank of invoices related to obligations incurred by Akron for permitted uses of the appropriate funds. Such obligations must be properly documented to the reasonable satisfaction of Akron.
13. **Reimbursement to Akron for administrative Costs:** Out of the funds appropriated, Foodbank shall reimburse Akron for administrative costs incurred by Akron associated herewith for management fees and reimbursable expenses. Said Administrative Code 3333-1-03(E) (10), equal no more than one and one-half percent (1.5%) of the amount appropriated by the State of Ohio. Akron hereby agrees to seek reimbursement only of Akron's actual out-of-pocket expenses, not to exceed 1.5% of the amount appropriated by the State of Ohio, incurred in administering the Foodbank request and conveyance of the appropriated funds. Said reimbursement shall be deducted and paid to Akron as such funds are released by the State of Ohio.
14. **Enforceability:** 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. **Entire Agreement:** 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, premises and understandings made or arrived at prior to our contemporaneously with this Agreement are hereby mutually revoked, withdrawn, rescinded and rendered null and void by the parties.
16. **Binding Nature:** This Agreement shall be binding upon and insure to the benefit of Foodbank and Akron and their respective successors and assigns.
17. **Governing Law:** This Agreement shall be construed under and governed by the laws of the State of Ohio.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the dates written below.

Akron-Canton Regional Foodbank

By: 
Daniel R. Flowers
President & CEO
Akron-Canton Regional Foodbank

Date: 3.31.10

By: 
Scott P. Borgemenke
Acting Vice President for Finances and Administration/CFO
University of Akron

Date: _____

Exhibit A

Joint Use Agreement

Akron-Canton Regional Foodbank Demonstration Kitchen

Capital Improvement Budget

Constructing a fully-equipped demonstration kitchen	\$200,000.00
Total Project Cost	\$200,000.00

Exhibit B

**Akron-Canton Regional Foodbank
Meeting Room Availability and Usage Policy**

• **Availability**

The Akron-Canton Regional Foodbank's conference rooms are available for use by non-profit community groups, units of government, public and private corporations, and businesses. The conference rooms are open during the Foodbank's regular hours of operation, Monday through Friday, 8am – 5pm. The Commons is available for standing receptions of up to 150 people, Monday through Friday, 5pm – 7pm. Private parties of any kind are prohibited.

The Foodbank reserves the right to reject applications or withdraw previously granted permission if the organization fails to meet the Foodbank's policies.

• **Scheduling**

First priority is given to the Foodbank's programs, Board and committee meetings, and meetings involving member agencies. Reservations will be taken on a first-come, first-served basis. All requests for use of a room must be made no more than ninety (90) days in advance.

The Foodbank reserves the right to cancel use of the conference room due to inclement weather or unforeseen circumstances. If this becomes necessary, notification will be made by phone to the meeting organizer as soon as possible and fees will be refunded. The group is responsible for notifying their vendors, attendees, etc.

When scheduling the room, the applicant should be prepared to provide the name of the group, purpose of the meeting, the number expected to attend, arrival and departure times, and a contact name and phone number. Please notify the Foodbank with any changes as soon as possible.

• **Applications and Daily Room Rates**

Applications may be made by phone or in writing. Prior to the meeting, the person responsible must sign a Meeting Room Reservation Form. The Foodbank will send an invoice to the lessee for all associated costs. Payment in full is due upon receipt of invoice.

		<u>Up To 4 Hrs.</u>	<u>Full Day</u>
Glass Conference Room	Seats 15	\$50	\$100
Board Room	Seats 20	\$75	\$150
Community Room	Seats 100	\$100	\$200
The Commons	Standing / Seats 150	\$300	
Community Kitchen			\$450

Member Agencies of the Foodbank will not be charged.

There is an additional \$20 surcharge to cover staff costs for events after 5pm.

• **Refreshments**

Groups may order food and refreshments from commercial caterers or vendors. Costs and expenses associated with all refreshments and food are the sole responsibility of the group. No alcohol is permitted on the Foodbank's premises.

• **Responsibility of Cleanup**

The visiting group is responsible for leaving the meeting room in good condition. All waste must be disposed of properly in the waste receptacles provided. Any food or beverage left in the refrigerator will be thrown out.

If any of the furniture is rearranged, it must be returned to the original arrangement at the end of the meeting.

In the event that a group fails to properly clean the premises used, as determined by the Foodbank in its reasonable discretion, a clean-up fee of \$50 shall be assessed and paid by the group within thirty (30) days after receipt of an invoice thereof.

Group or caterer may bring rental linens, china, etc., and is responsible for delivery and pick-up scheduled no later than the next business day.

- **In-House Equipment**

No in-house AV equipment or copy service will be provided by the Foodbank. Groups may bring their own AV equipment or order from an outside vendor, but the Foodbank offers no materials, set up or technical assistance. Internet access will not be provided.

- **Parking**

Groups have the non-exclusive use of designated parking lots in which the Foodbank is located on a first-come, first-served basis. Valet service is the responsibility of the Group.

- **Smoking**

Smoking in and on the premises of the Foodbank is prohibited.

- **Rules for Use**

The applicant shall be responsible for the conduct of those attending the meeting and the cost of repairing any damages incurred to the Foodbank's facilities by the applicant and their guests as determined by the Foodbank.

The use of candles or open flames is not permitted.

Groups may bring flip charts and Post-it flip charts for their use, but they must be used only on an easel. Attaching paper to the wall is not permitted. No tape, tacks, staples, etc. are to be used.

If a group wishes to tour the Foodbank's facility they must be accompanied by a Foodbank employee. Please arrange for a tour at the time of reservation. No unescorted guests are to occupy any part of the facility other than the room assigned, restrooms, commons, and the reception area.

- **Liability**

Group assumes all risk of, and agrees that Foodbank will not be liable for, any damage to property or injury to or death of any persons including, without limitation, Group, its agents, invitees, licensees or agents in, on, or about the Premises or any other portion of Foodbank's property, from any cause excepting where such damage or injury arises out of the gross negligence or willful misconduct of Foodbank. Further, Group shall indemnify and hold Foodbank and its members, directors, officers, employees and agents harmless from and against all claims, demands, actions, losses, damages or liability (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") (a) for any death of or injury to any person or destruction of or damage to any property occurring upon the Premises or any portion thereof, or (b) for Group's failure to perform and comply with this Agreement, to the extent that such Losses arise as a direct or proximate result of any act, omission or negligence of Group, its invitees, licensees or agents.

FOR FOODBANK USE

Room Reserved _____
Copy to Group _____
Copy to Finance _____
Payment Date _____

MEETING ROOM RESERVATION FORM

GROUP INFORMATION

Name: _____
Name of Organization: _____
Address: _____
City: _____ State: _____ Zip: _____
Billing Address (if different than above): _____
Work Telephone: _____ Cell: _____ Fax: _____
Email: _____

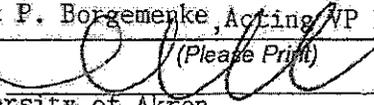
EVENT INFORMATION

Date of event: _____ Day of week: _____
Time: _____ Hours of event: _____
Type of event: _____ Expected attendance: _____
Room requested: _____
Total due: _____

I have read and fully understand the attached Meeting Room Policy Agreement.

In consideration of the agreement of the Akron-Canton Regional Foodbank to allow the foregoing applicant organization to use its conference room facilities, applicant organization, for the organization and its members, officers, directors, trustees, employees and agents, agrees to indemnify, defend, and hold Akron-Canton Regional Foodbank, its trustees, officers and employees, harmless from and against any and all costs, expense, liability, damage, loss, claim, action or cause of action arising out of or with respect of their use of the Akron-Canton Regional Foodbank's facilities.

NAME: Scott P. Borgemenke, Acting VP Finance & Administration, CFO
(Please Print)

SIGNATURE:  DATE: _____
The University of Akron

(Organization Representative)

ACCEPTED BY: _____ DATE: _____

(Foodbank Representative)

Donor Member Agency Non-Profit Organization Other

Directions
Akron Canton Regional Foodbank
350 Opportunity Parkway
Akron, Ohio 44307
330-535-6900

From Canton

Take I-77 North through the central interchange. Take exit #21 for Dart Ave. Turn right onto Dart Ave. and follow the curve to the left. The Foodbank is approximately ½ mile on the right side at the corner of Dart Ave and Opportunity Parkway.

From Cleveland

Take I-77 South to exit #21C for Route 59 E. Exit Opportunity Parkway. The Foodbank is immediately across from the end of the exit ramp.

From Youngstown

Take I-76 West through the central interchange. Take exit #21 for Dart Ave. Turn right onto Dart Ave. and follow the curve to the left. The Foodbank is approximately ½ mile on the right side at the corner of Dart Ave and Opportunity Parkway.

From Lodi / I-71

Take I-76 East to exit #21C for Route 59 E. Exit Opportunity Parkway. The Foodbank is immediately across from the end of the exit ramp.

From Cuyahoga Falls

Take RT 8 South to exit for Perkins Street/Route 59. Turn right onto Perkins St. Exit at V Odom. Turn left. The Foodbank is immediately across the bridge on the right side at the corner of Dart Avenue and Opportunity Parkway. Cross Dart to access our building. (Dart is ONE WAY ROAD).