



Board of Regents

Ted Strickland, Governor
Eric D. Fingerhut, Chancellor

University System of Ohio

DIRECTIVE 2009-028

August 14, 2009

RE: A JOINT USE AGREEMENT BETWEEN THE UNIVERSITY OF AKRON AND HIRAM COLLEGE.

H.B. 562 includes a specific capital appropriation of \$500,000 to the University of Akron for the Garfield Institute Meeting House project. Hiram College will use state funds to reconstruct a historic building on land owned by Hiram at the intersection of State Routes 700, 82, and 305.

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 and Hiram 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 University of Akron and Hiram College.

This directive will take effect immediately.

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

MLC

Joint Use Agreement between the University of Akron and Hiram College

BACKGROUND

H.B. 562 includes a specific capital appropriation of \$500,000 to the University of Akron for the Garfield Institute Meeting House project. Hiram College will use state funds to reconstruct a historic building on land owned by Hiram at the intersection of State Routes 700, 82, and 305. 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.

REVIEW

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

- 1) Use of Lecture Hall for a single course taught by University of Akron faculty;
- 2) One faculty office in the Garfield Meeting House for University of Akron faculty;
- 3) Four one-day symposium or events held in the Lecture Hall.

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 Hiram College.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved The University of Akron/Hiram College

Project Title Garfield Institute Meeting House

Capital Bill HB 562 Item C25044 Hiram College James A. Garfield Institute

- 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

April, 2009

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: \$500,000
- 2. Estimated annual debt service on the appropriation: \$38,438
- 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. <u>1 course 4 hrs. a week/15 weeks</u>	<u>\$ 36,000.00</u>	<u>20</u>
b. <u>1 office</u>	<u>\$ 3,000.00</u>	<u>20</u>
c. <u>1 day symposium \$600/day 4 times/year</u>	<u>\$ 2,400.00</u>	<u>20</u>
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.

Joint Use Agreement Between
Hiram College and the University of Akron

Supporting Statement

Section III

The Garfield Institute Meeting House, home of the Garfield Institute for Public Leadership, is a meeting facility that evokes the history of the Western Reserve region of Ohio. The building is a reconstructed 1840s meeting house that was dismantled in its original location of Mecca, Ohio and transported to Hiram, Ohio where it has been reconstructed at the intersection of State Routes 700, 82 and 305. The building provides event space that can be rented to off campus groups that need a space that will accommodate a maximum of 120 people. The rental rate for the space is \$600 per day. Maximum occupancy is 120 persons. This facility will have period décor and period furnishings. It is located near the freeway system with access to State Routes 422, 76, 77, 480, and the Ohio Turnpike. The Hiram College campus is located approximately 35 miles from the University of Akron campus.

This event space will be available to all departments of the University of Akron in all of its 10 colleges for lectures, recitals, classes, retreats, and symposia. This facility will be particularly conducive to lectures or courses in local history, the history of architecture, and historic preservation. It will be a convenient location for University administrative and departmental retreats.

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 nontraditional student population resident in Portage County and the surrounding area or for continuing education courses.

The value of the use of the facility by the University of Akron has been calculated on a daily room rental rate of \$600.

Use of Lecture Hall for a single course taught by University of Akron faculty:

\$600 per day for room rental for 4 days per week for 15 weeks This figure includes room setup and maintenance, and use of Hiram College media equipment	\$36,000.00
Rental of one faculty office in the Garfield Meeting House per year Includes housekeeping and maintenance services	\$ 3,000.00
One-day symposium or event held in the Lecture Hall Includes room set up and use of Hiram College media equipment (\$600.00 per day – 4 times per year)	\$ 2,400.00
Total Value	\$41,400.00

JOINT USE AGREEMENT
BETWEEN
HIRAM COLLEGE
AND
THE UNIVERSITY OF AKRON

This Joint Use Agreement (“Agreement”) is between Hiram College, an Ohio non-profit corporation (hereinafter referred to as “Hiram”) and The University of Akron (hereinafter referred to as “Akron”).

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 Five Hundred Thousand Dollars (\$500,000) (“Funds”) directed to Akron for the improvement of the Hiram campus and reconstruction of an historic building to serve as the home of the Hiram’s Garfield Institute for Public Leadership; 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, Hiram and Akron entered into an agreement in 2005 whereby students enrolled at Hiram could also enroll at Akron in order to partake of certain internship opportunities available to Akron students; and,

WHEREAS, Hiram and Akron agree that the reconstruction of the historic building to be known as the Garfield Institute Meeting House on the Hiram campus (on land that is owned by Hiram at the intersection of State Routes 700, 82, and 305) would facilitate the programs of Hiram’s Garfield Institute for Public Leadership (the “Garfield Institute”).

NOW, THEREFORE, in consideration of the mutual benefits hereunder and the benefits conferred upon Hiram 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 Five Hundred Thousand Dollars (\$500,000) of the appropriation identified in this Agreement. Upon approval of the Joint Use Agreement, Akron will process a Capital Request in order to facilitate the full transfer of funds to Hiram for this initiative.
2. **Funds Used Only for Capital Improvements:** Hiram will expend the Funds only for capital improvements, as defined in HB 562, to and for the Garfield Institute Meeting House 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 Hiram campus.

3. **Utilization of Appropriation:** Hiram will utilize the Garfield Institute Meeting House as the home of the Garfield Institute. It will house faculty offices, seminar rooms, meeting rooms, and a library, all spaces dedicated to the activities of the Garfield Institute. Such activities include the participation of University of Akron faculty including, but not limited to members of the faculty of the School of Public Administration and Public Policy and the Ray C. Bliss Institute of Applied Politics, in the Garfield Institute symposia, lectures and other events appropriate to the purposes of the Garfield Institute. Hiram students will have the opportunity to enroll in the sponsored internships for which Akron will receive tuition payments. Credits earned by Hiram students at Akron will transfer to Hiram.
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 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 Hiram's right to involvement in the Project be terminated prior to the end of the twenty (20) year term of this Agreement, Akron 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 Hiram's involvement in the Project.
6. **Hold Harmless:** Hiram shall hold Akron harmless from liability for any and all Garfield Institute Meeting House's costs, liabilities, and claims that arise from or are attendant to the Project and the construction, operation, and maintenance costs Hiram will maintain liability insurance on the premises in accordance with its policy of insuring all buildings on the Hiram campus used as classrooms and/or meetings and/or office space.
7. **Insurance:** Hiram College will maintain General Liability Insurance in the amount of \$1 million per Occurrence and \$2 million in the Aggregate on the Garfield Institute Meeting House. Prior to the use of the Garfield Institute Meeting House 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 Hiram as Additional Insured.
8. **Contracting:** Hiram has negotiated 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, Hiram will use, where applicable, competitive bidding procedures equivalent to those

enumerated in relevant provisions of Chapter 153 Ohio Revised Code involving (1) publishing advertisements to see bids, (2) receiving sealed bids, and (3) awarding contracts to the lowest, responsive and responsible bidders.

9. **Compliance with Laws:** Hiram 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:

Hiram College
P.O. Box 1801
Hiram, Ohio 44234
Attn: Stephen Jones, V.P. for Business and Finance

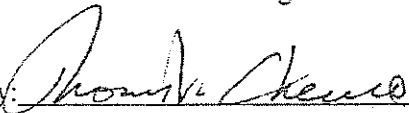
University of Akron
Misty M. Villers, CPA
Assistant to the VP/Fiscal Officer
302 Buchtel Common
Akron, OH 44325-0405
Email mvillers@uakron.edu

11. **Amendments:** All amendments to the Agreement shall require the prior approval of Hiram 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 by Akron to Hiram, after presentation by Hiram to Akron 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, Hiram shall reimburse Akron for administrative costs incurred by Akron associated herewith for management fees and reimbursable expenses. Said reimbursement of administrative costs shall, in compliance with Ohio 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 incurred in administering the Hiram 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 or 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 inure to the benefit of Hiram 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.

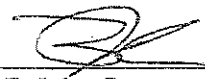
IN WITNESS WHEREOF, the parties have hereunto set their hands on the dates written below.

Hiram College

By: 
Thomas V. Chema, President

Date: 6/9/09

University of Akron

By: 
F. John Case
Vice President for Finance and
Administration, CFO

Date: 7/1/09


OFFICE OF GENERAL COUNSEL
THE UNIVERSITY OF AKRON
Reviewed and Approved for
Legal Form and Sufficiency
By: 
Date: 6.12.09

Exhibit A
to Joint Use Agreement
Garfield Institute Meeting House
Capital Improvement Budget

Purchase price, delivery and storage of disassembled historic building	\$ 50,000.00
Architectural Services	\$ 87,000.00
Re-assembly of dismantled historic building and related construction	\$600,000.00
Interior Finishing Costs	\$250,000.00
FF & E	\$200,000.00
Construction Administration & Misc. Consulting	\$ 40,000.00
Contingency	\$ 85,000.00
Total Project Cost	\$1,312,000.00