



DIRECTIVE 2021-030

September 16, 2021

RE: JOINT USE AGREEMENT BETWEEN LAKELAND COMMUNITY COLLEGE AND
HOLA OHIO

Lakeland Community College has been granted appropriations contained in Senate Bill 310 of 133rd General Assembly in the amount of seventy-five thousand dollars. Lakeland Community College will use the funds to improve the facility owned by HOLA Ohio. As required by Ohio Administrative Code section 3333-1-03, Lakeland 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 Lakeland Community College and HOLA Ohio.

This directive will take effect immediately.



Randy Gardner
Chancellor

mlc

JOINT USE AGREEMENT

This Joint Use Agreement (“Agreement”) is entered into by and between Lakeland Community College (“Lakeland”), an instrumentality of the State of Ohio (“State”), created under Chapter 3354 of the Ohio Revised Code, whose address is 7700 Clocktower Drive, Kirtland, Ohio 44094, and HOLA Ohio (“HOLA Ohio”), an Ohio non-profit corporation exempt from federal income tax under Internal Revenue Code Section 501(c)(3), whose address is Post Office Box 3066, Ashtabula, Ohio 44005-3066.

WHEREAS, the State of Ohio 133rd General Assembly, Amended Substitute Senate Bill 310, appropriates Seventy-Five Thousand Dollars (\$75,000) (“Funds”) to Lakeland for the HOLA Commercial Kitchen Business Incubator (“Commercial Kitchen”); and

WHEREAS, HOLA Ohio will construct, own, and operate the Commercial Kitchen as a component of its Resource Center located at 265 North State Street, Painesville, Ohio 44077 (“Resource Center”) that promotes economic development opportunities for micro and small businesses, supporting education, and offering specialized workforce skills-training and development for members of the Hispanic community and all Northeast Ohio residents. The Funds will be used for the Commercial Kitchen’s construction; and

WHEREAS, Lakeland and HOLA Ohio will collaborate to plan and conduct multiple recruitment and cultural events and programs using the Commercial Kitchen’s space in order to create opportunities for participants to enroll as Lakeland students in courses that compliment HOLA Ohio’s array of services and programs; and

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; and

WHEREAS, Lakeland has demonstrated that the value of its use of the Commercial Kitchen will be reasonably related to the amount of the State 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. **Commercial Kitchen or equipment owned, to be built or purchased by nonprofit or public body.** The Commercial Kitchen will be built, owned, and operated by HOLA Ohio. It will be located at HOLA Ohio’s Resource Center, 265 North State Street, Painesville, Ohio 44077 (“Resource Center”), a property owned by HOLA Ohio.
2. **Use of the Commercial Kitchen or equipment by public institution.** The Agreement’s term is twenty (20) years, commencing on the date when the Commercial Kitchen can be occupied and is made available to Lakeland. The extent and nature of Commercial Kitchen space to which Lakeland is granted rights for use, and the terms and conditions governing such use, are specified in section 11 and in Attachment A, hereby incorporated.
3. **Reimbursement of the Funds.** The State shall be reimbursed by HOLA Ohio should Lakeland’s right to use the Commercial Kitchen be terminated by HOLA Ohio 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 Commercial Kitchen is used by Lakeland.
4. **Use of the Funds.** The Funds will be used only for construction of the Commercial Kitchen by HOLA Ohio. The Funds will not be used for operating costs of HOLA Ohio.
5. **Insurance for Commercial Kitchen and hold harmless.** HOLA Ohio maintains, or shall acquire as necessary, casualty and property insurance for the entire period of time that Lakeland has the right to use the Commercial Kitchen under this Agreement, which shall include the State and Lakeland as additional insureds. HOLA Ohio shall hold Lakeland harmless from any and all obligations, expenses, liabilities, or claims of any kind arising out of: the construction, operation, and maintenance costs of the Commercial Kitchen; and any omission or an alleged action or omission of HOLA Ohio’s failure or alleged failure to comply with any applicable federal, State and local law.
6. **Compliance with federal, state and local law.** HOLA Ohio will comply with all pertinent federal, State and local laws as well as State administrative regulations in the construction and operation of the Commercial Kitchen.

7. **Competitive bidding and prevailing wage.** HOLA Ohio will follow competitive bidding procedures with respect to the construction of the Commercial Kitchen, 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. Funded construction is subject to Ohio Revised Code Chapter 4115, as well as Chapter 4101:9-4 of the Ohio Administrative Code, relating but not limited to the payment of prevailing wage. HOLA Ohio acknowledges that it shall submit documentation to demonstrate compliance with this section before Lakeland will release the Funds, including certified payroll reports and any prevailing wage information.
8. **Appropriation administrative fee.** Lakeland waives the one and one-half percent (1.5%) administrative fee so that HOLA Ohio can use all allocated funds toward construction of the Commercial Kitchen.
9. **Amendments.** HOLA Ohio and Lakeland agree that any amendments to the Agreement require the approval by the Ohio Department of Higher Education and will be submitted to the Chancellor before any such amendment takes effect.
10. **Payment.** An approved Controlling Board request will release project funds. HOLA Ohio shall submit invoices and related documentation, not more than once per month, to the reasonable satisfaction of Lakeland, after which Lakeland shall transfer appropriate amounts to HOLA Ohio.
11. **Other terms and conditions of use.** HOLA Ohio acknowledges and agrees that Lakeland is an intended third-party beneficiary of the architect and construction agreements relating to the Commercial Kitchen, entitled to enforce any rights thereunder for its benefit.

Lakeland shall use the Commercial Kitchen and its equipment at no cost to Lakeland during the term of this Agreement. As a condition to its use of the Commercial Kitchen, Lakeland shall notify HOLA Ohio by electronic written notice at least 90 days in advance. Lakeland shall be responsible to reimburse HOLA Ohio for any consumable educational materials or other directly related program expenses necessitated by Lakeland's use of the Commercial Kitchen.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year written below:

HOLA Ohio

By: Veronica Sibel Doherty

Title: Executive Director

Date: July 26, 2021

Lakeland Community College

By: [Signature]

Title: Executive Vice President

Date: July 26, 2021

Attachment A

Project: HOLA Commercial Kitchen Business Incubator

Date: July 26, 2021

Section I: State appropriation information.

- 1. Amount of state appropriation provided: \$ 75,000.00
- 2. Estimated annual debt service on the appropriation: \$ 5,766.00
- 3. Term of the state bond, in years: 20

Section II: Estimated value of use of the Commercial Kitchen.

	Use(s) of the Commercial Kitchen*	Annual value of use	# of years
a.	<u>Collaborative Programs</u>	<u>\$ 6,000.00</u>	<u>20</u>
b.	<u></u>	<u>\$</u>	<u></u>
c.	<u></u>	<u>\$</u>	<u></u>
d.	<u></u>	<u>\$</u>	<u></u>
e.	<u></u>	<u>\$</u>	<u></u>
f.	<u></u>	<u>\$</u>	<u></u>

(* List additional uses on separate page as needed.)

Attachment A, continued

Section III:

Lakeland wishes to enter into an Agreement with HOLA Ohio for a \$75,000 State appropriation. The annual debt service paid by the State on this appropriation approximates **\$5,766.00 per year**, each year for twenty (20) years. The annual use value of the Commercial Kitchen for Lakeland is reasonably related to the State appropriation and approximates **\$6,000.00 per year**, each year, for twenty (20) years.

The basis of the estimated annual use value that is provided to Lakeland by HOLA Ohio in Lakeland's utilization of the Commercial Kitchen is that the reasonable rental value of the Commercial Kitchen is \$75.00 per hour, and the estimated number of hours of use each year is eighty (80) hours, at roughly twenty (20) hours per calendar quarter. The estimated annual use value also reflects that the hourly-use rate (at \$75.00 per hour) is within the rental fee range that Lakeland currently charges the public to rent similar-type spaces. Lakeland's current facility rental fee range charged to an outside party to use similar-type spaces is between \$48.00 per hour to \$100.00 per hour.

Lakeland shall provide HOLA Ohio with electronic written notice at least 90 days in advance of the date of Lakeland's proposed use of the Commercial Kitchen space. Such notice shall indicate the proposed date and time, and the duration and purpose of the proposed use. In all cases, such proposed use shall be during HOLA Ohio's normally posted hours of use, Monday through Saturday, and any such use shall be for a reasonable amount of time and comply with any applicable policies adopted by HOLA Ohio for the Commercial Kitchen. HOLA Ohio will collaborate with Lakeland on scheduling the proposed use, and so long as such use does not create a conflict with HOLA Ohio's programming at the Resource Center, HOLA Ohio shall not unreasonably withhold the granting of Lakeland's use of the Commercial Kitchen space.

The estimated annual use value reflects that Lakeland, through its Hispanic Program and Hispanic Program Coordinator, and HOLA Ohio will collaborate to plan and conduct multiple recruitment and cultural events and programs each year using the Commercial Kitchen's space in order to create opportunities for members of the Hispanic community and other Northeast Ohio residents to enroll as students at Lakeland, in business and general courses that compliment HOLA Ohio's services and programs at the Commercial Kitchen and the Hispanic Resource Center. Recent high school graduates as well as adults in need of training or embarking on a new business venture will be able to take advantage of these events at the Commercial Kitchen, and the courses of instruction offered by Lakeland.