



# Board of Regents

Ted Strickland Governor  
Eric D. Fingerhut Chancellor

University System of Ohio

## DIRECTIVE 2009-015

*May 27*, 2009

Re: A JOINT USE AGREEMENT BETWEEN THE UNIVERSITY OF AKRON AND THE METRO REGIONAL TRANSIT AUTHORITY.

H.B. 496 includes a specific capital appropriation of \$1,000,000 to the University of Akron for capital improvements to a Metro Regional Transit Authority facility. The Authority will own and operate the facility that will receive 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 and the Metro Regional Transit Authority 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 Metro Regional Transit Authority.

This directive will take effect immediately.

Eric D. Fingerhut  
Chancellor, Ohio Board of Regents

*mlc*

Joint Use Agreement between the University of Akron and Metro Regional Transit Authority

**BACKGROUND**

H.B. 496 includes a specific capital appropriation of \$1,000,000 to the University of Akron for capital improvements to a Metro Regional Transit Authority facility. The Metro Regional Transit Authority owns and operates the facility to receive 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 renovation and construction of the Regional Transfer Station, Refueling Station and Production Facility, located at the intersection of South Broadway and Bartges Street in Akron, Ohio.

**REVIEW**

Throughout the entire term of the agreement, the Metro Regional Transit Authority will provide the following to the University –

- 1) Improved student access to the University of Akron by public transit.
- 2) Support for the Transportation Research Center within the University's College of Engineering.

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 Metro Regional Transit Authority.**

## Joint Use Agreement Worksheet

The Ohio Board of Regents

April, 2005

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:	\$1,000,000
2. Estimated annual debt service on the appropriation:	\$76,876
3. Term of the state bond, in years:	20

### *Section II: Estimated value of use of the facility.*

Use(s) of the facility*	Annual value of use	# of years
a. Improved access to UA by Public Transit	\$266,666	20
b. Transportation Research Center	\$25,000	5
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.*

a. Improved access to the University of Akron by Public Transit

According to METRO's last ridership survey, approximately 1,000 people were using public transportation to travel to and from the University. This improvement will provide for a better transfer location, more secure facility, and improved passenger information. Each student should experience at 10 minute improvement in their travel time to and from the University. This is will save students 167 hours per day or 26,666 hours annually (based on two 16 week semesters). Assuming \$10 per hour value of time, the cost of fuel, and improved street access to the University, the total value of this improvement is \$266,666 annually.

b. Transportation Research Center within the College of Engineering

METRO and the College of Engineering have jointly filed grant proposals to test and develop a fuel cell powered bus with the Federal Transit Administration and Ohio's Congressional delegation for \$1.2 million. While this was not funded, this facility will allow the two organizations to collaborate on future proposals and projects. Other research areas include bio-fuels and diesel electric hybrid vehicles.

METRO serves on the Research Center's advisory board. Recently, METRO made a presentation at the invitation of the Center about energy and fuel at the Universities and Colleges of Ohio Energy Alliance conference in Columbus.

The span of access to METRO facilities, staff, and vehicles is approximately 100 hours per year or \$25,000 annually.

## JOINT USE AGREEMENT ANALYSIS

Institutions Involved The University of Akron  
Metro Regional Transit Authority  
Project Title Hydrogen fueling Station at the Univ of Akron  
Capital Bill HB 496 Item C25035

- Y 1. Is the facility to be built/improved identified specifically by address or location?
- Y 2. Does the non-profit organization now own the property or have a long term lease? If not, when will it control the property?
- Y 3. Does the agreement provide for use of the facility for at least 15 years from the time that it is ready for occupancy?
- Y 4. If the agreement is terminated, is there a pro rata reimbursement clause? Is the reimbursement formula correct?
- Y 5. Will funds be used only for capital improvements and not operating costs?
- Y 6. Will the non-profit hold the institution harmless for all operation/maintenance costs?
- Y 7. Will the non-profit comply with federal, state and local laws and rules?
- Y 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.)?
- Y 9. Does the contract provide for a 1.5% administrative fee for the institution?
- Y 10. Does the agreement require that amendments be approved by the Board of Regents?
- Y 11. Is a drawdown schedule or payment procedure included?
- Y 12. Are the extent and nature of spaces and uses adequately described?
- Y 13. Are the terms and conditions of use of the facility described?
- Y 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)**
- Y 15. Is the facility insured?

**JOINT USE AGREEMENT  
BETWEEN  
THE UNIVERSITY OF AKRON  
AND  
METRO REGIONAL TRANSIT AUTHORITY**

THIS JOINT USE AGREEMENT ("Agreement") is made this 30<sup>th</sup> day of March, 2009 between The University of Akron, an institution of higher education, located at 302 Buchtel Common, Akron, Ohio 44325 ("UNIVERSITY") and Metro Regional Transit Authority, a regional transit authority organized and existing pursuant to Ohio Revised Code §306, located at 416 Kenmore Blvd Akron, Ohio 44301 ("METRO").

WHEREAS, the Ohio General Assembly has approved the FY 2007-2008 Capital Budget (House Bill 699) which appropriates One Million Dollars (\$1,000,000) (the "Funds") to the UNIVERSITY to be used for infrastructure related needs on a Hydrogen Technology Project conducted by METRO, including a Regional Transfer Station, Refueling Station and Production Facility (the "Project"), and

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

WHEREAS, the UNIVERSITY has concluded that the value of the use of the property, facilities, resources and programs of METRO by the UNIVERSITY 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 UNIVERSITY than to others.

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

- 1) a) Use of Facilities and Resources by the UNIVERSITY. METRO shall provide UNIVERSITY with access to the Project for available academic and research opportunities during normal business hours as determined by METRO in its sole discretion. Such access by the UNIVERSITY shall further be subject to all rules and regulations adopted by METRO for the Project. The Funds shall be paid to METRO as reimbursement for expenses, in accord with the requirements of Section 9. Upon approval by the State, payment shall be made directly to METRO. METRO shall use the funds to assist in the reconfiguration of the intersection of South Broadway and Bartges Street in Akron, Ohio, to make necessary improvements to Bartges Street, and for other improvements recommended in the Traffic Study of the area conducted by GPD dated

August 2007. To the extent practicable, METRO shall provide UNIVERSITY with opportunities for student field placements, student internships and student employment.

b) Improved access to the University of Akron by Public Transit

According to METRO's last ridership survey, approximately 1,000 people were using public transportation to travel to and from the University. This improvement will provide for a better transfer location, more secure facility, and improved passenger information. Each student should experience at 10 minute improvement in their travel time to and from the University. This is will save students 167 hours per day or 26,666 hours annually (based on two 16 week semesters). Assuming \$10 per hour value of time, the cost of fuel, and improved street access to the University, the total value of this improvement is \$266,666 annually.

c) Transportation Research Center within the College of Engineering

METRO and the College of Engineering have jointly filed grant proposals to test and develop a fuel cell powered bus with the Federal Transit Administration and Ohio's Congressional delegation for \$1.2 million. While this was not funded, this facility will allow the two organizations to collaborate on future proposals and projects. Other research areas include bio-fuels and diesel electric hybrid vehicles. IN addition, METRO serves on the Research Center's advisory board. Recently, METRO made a presentation at the invitation of the Center about energy and fuel at the Universities and Colleges of Ohio Energy Alliance conference in Columbus. Finally, the span of access to METRO facilities, staff, and vehicles is approximately 100 hours per year or \$25,000 annually.

- 2) Terms: Termination Prior to Expiration of Term. The term of this Agreement shall begin on the date of execution of this Agreement by the parties hereto and shall end fifteen (15) years thereafter. If any material terms or conditions contained in this Agreement are breached by METRO, UNIVERSITY may terminate this Agreement upon forty-five (45) days' written notice to METRO, provided that METRO does not cure the breach within the 45-day notice period. METRO or UNIVERSITY may terminate this Agreement for any reason not stated in the immediately preceding sentence upon thirty (30) days' written notice to the other party.
- 3) Reimbursement to State Upon Termination. In the event this Agreement is terminated for any reason prior to the end of its term, or if the station closes prior to fifteen years from the effective date of this Agreement, METRO 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 fifteen and multiplying that sum by (fifteen less the number of full years that the obligations of METRO under this Agreement were

fulfilled.)

- 4) Compliance with Laws. METRO shall comply with all pertinent federal, state, and local laws as well as state administrative regulations.
- 5) Renovation. The Funds will be used by METRO for capital improvements related to the Project conducted by METRO, including a Regional Transfer Station, Refueling Station and Production Facility more specifically described in Section 1.
- 6) Ownership of Facilities to be Renovated: Insurance. All of the funds will be used to renovate facilities owned by METRO. METRO must be fully insured, subject to normal deductibles, and must name UNIVERSITY as an additional insured.
- 7) Hold Harmless. To the extent permitted by law, METRO agrees to hold the UNIVERSITY, its officers; trustees and employees harmless from any or all obligations, expenses, liabilities, or claims of any kind arising out of (1) the construction, renovation, operation or maintenance of the facilities of METRO, and/or (2) the UNIVERSITY, its officers, trustees or employees 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 METRO, or their respective officers, trustees or employees, including, but not limited to, the failure or alleged failure of METRO to comply with applicable public bidding requirements or any other federal, state or local law, ordinance, rule, order, directive or regulation. This section shall not apply to any claim arising solely out of the negligence or reckless misconduct of the UNIVERSITY, or its trustees, officers or employees.
- 8) Competitive Bidding. METRO, in connection with the Project, shall, to the extent required by law, follow the competitive bidding procedures as set forth in Ohio Revised Code Chapter 153, including, but not limited to, publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidders. The UNIVERSITY shall have the right to review and audit the records of METRO pertaining to their use of competitive bidding procedures.
- 9) Distribution of Funds: Administrative Costs. Upon execution of this Agreement, the UNIVERSITY shall submit to the Chancellor a formal request for the release of Funds. After the release of Funds, METRO shall submit to the UNIVERSITY requests for payment of amounts along with documentation of contractor invoices and/or purchase orders related to obligations incurred by METRO for permitted uses of the Funds. Such obligations must be properly documented to the UNIVERSITY'S satisfaction. From the Funds, the UNIVERSITY shall receive administrative costs of \$15,000, which is an amount equal to one and one-half percent (1 ½%) of the total amount of the Funds disbursed.

- 10) Amendments. Any amendments to this Agreement shall be in writing signed by METRO and the UNIVERSITY and shall require approval by the Chancellor.
- 11) Records of UNIVERSITY use. METRO shall, upon request by the Chancellor and/or the UNIVERSITY, supply the Chancellor and/or the UNIVERSITY with all pertinent records which measure the nature and extent of use of the METRO facilities by the UNIVERSITY, the terms and conditions governing such use and the specific benefits derived by the UNIVERSITY under this Agreement.
- 12) Notices. All notices to the parties given under this Agreement shall be in writing, sent by registered or certified mail (return receipt requested) and addressed to the parties at the addresses set forth below, or to such other address as either party shall be designated by prior notice.

Vice President for Business and Finance  
and Chief Financial Officer  
The University of Akron  
302 Buchtel Common  
Akron, Ohio 44325

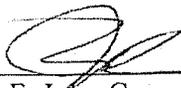
Robert K. Pfaff, Executive Director/Secretary-Treasurer  
Metro Regional Transit Authority  
416 Kenmore Blvd  
Akron, OH 44301

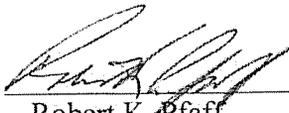
- 13) Binding Nature. This Agreement shall be binding upon and inure to the benefit of METRO and the UNIVERSITY and their respective successors and assigns.
- 14) Entire Agreement. This Agreement sets forth the entire agreement of the parties hereto concerning the subject matter of this Agreement and supersedes all previous agreements, arrangements, discussions, representations, promises and understandings, whether written or oral, relating to the subject matter of this Agreement.
- 15) Headings. 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.
- 16) Governing Law. This Agreement shall be governed by and constructed in accordance with the laws of the State of Ohio.

The parties executing this Joint Use Agreement represent that they have the authority to bind their respective parties.

THE UNIVERSITY OF AKRON

METRO REGIONAL TRANSIT  
AUTHORITY

BY:   
F. John Case

BY:   
Robert K. Pfaff

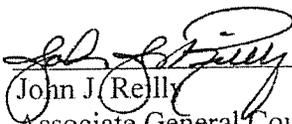
TITLE: Vice President for Finance  
and Administration and Chief  
Financial Officer

TITLE: Executive Director/  
Secretary-Treasurer

DATE: 3/30/09

DATE: 3-26-09

Reviewed and approved for  
legal form and sufficiency:

BY:   
John J. Reilly  
Associate General Counsel  
The University of Akron

DATE: 3-27-09