

OHIO BOARD OF REGENTS

Consideration of a Joint Use Agreement between The Ohio State University
and Madison County Agricultural Society.

RESOLUTION

WHEREAS, the 126th Ohio General Assembly enacted H.B. 699 which includes a specific capital appropriation of \$94,000 to The Ohio State University for the OSU Extension Safety Improvements in Madison County; and

WHEREAS, 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; and

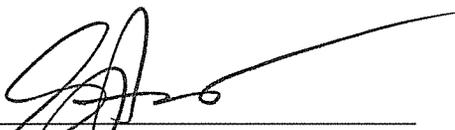
WHEREAS, The Ohio State University and Madison County Agricultural Society have presented a joint use agreement for approval by the Ohio Board of Regents; and

WHEREAS, the agreement has been reviewed and its format is found to be appropriate, its description of extent and nature of use has been specified, and the commitment extends no less than fifteen years, and it is in conformity with Rule 3333-1-03; and

WHEREAS, the parties have determined that the value of the use is reasonably related to the amount of the appropriation; and

NOW, THEREFORE,

BE IT RESOLVED: that the Joint Use Agreement between The Ohio State University and Madison County Agricultural Society, and attached and made a part hereof, be approved.



Eric D. Fingerhut
Chancellor

10/7/07

Date

Joint Use Agreement between The Ohio State University and Madison County
Agricultural Society

BACKGROUND

H.B. 699 includes a specific capital appropriation of \$ 94,000 to The Ohio State University for the Madison County Agricultural Society (MCAS). MCAS owns and operates the facility to be improved with state capital funds. As required in Ohio Administrative Code section 3333-1-03, The Ohio State University submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support various capital improvements to the MCAS facility located at 205 Elm Street, London, Ohio.

REVIEW

The Ohio State University, through the Department of Extension, College of Food, Agricultural and Environmental Sciences, supports Ohio's 4-H Youth Development program. All Ohio counties, including Madison County, have an active 4-H program.

The Madison County 4-H Program uses the MCAS fairground facilities for its annual 4-H project exhibition. The MCAS facilities are also the site of the Madison County Fair. 4-H members participate in a number of educational experiences during fair that are a culmination of each youth's project specific work.

The MCAS commits to improving the safety of the fairground facilities with state capital funds. The facility improvements will include the following –

- Improving outdated electrical systems
- Paving over gravel roads
- Lighting upgrades for evening activities
- Installation of public address system
- Roof repairs
- Repairs to key structural components
- Replacement of water lines into barns

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 Ohio State University and Madison County Agricultural Society.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved The Ohio State University/Madison County Agriculture Society

Project Title OSU Extension Safety Improvements in Madison County

Capital Bill HB 699 Item CAP-745, OSU Extension Safety Improvements in Madison County

- 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 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, 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: \$ 94,000
- 2. Estimated annual debt service on the appropriation: \$ 7,226
- 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. Annual 4H Exhibition at the Madison County Fair	\$14,000.00	20 Years
b. _____	\$ _____	_____
c. _____	\$ _____	_____

(* 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 Worksheet

Section III:

Madison County Agriculture Society Facilities Use

The Madison County 4H Program uses the Madison County Agriculture Society's (Madison County Senior Fair Board's) fairground facilities for its 4H project exhibition on a yearly basis. The 4H exhibition is a place where the participants of the 4H program display livestock projects, display special interest projects, and do demonstrations and other special events. This exhibition uses 10 buildings on the fairgrounds (livestock housing, exhibition areas and show rings), bathroom facilities, space for vendors, the grandstand facilities, parking, manure removal, and labor.

The \$94,000 scheduled to be released to the Madison County Agriculture Society from Ohio State University Extension in the Joint Use Agreement would be used to improve the safety of all the facilities used by the Madison County 4H Program's annual exhibition on the fairgrounds. The money will be used for improving electrical systems that are outdated, paving roads that are currently gravel, better lighting for evening activities, a public address system, structural and roof repairs on key buildings, and water lines into the barns.

This investment in the safety of the fairground facilities is a direct benefit to the 4H youth that use the Madison County Fairgrounds. Although the fairgrounds are safe at this time, continuing to improve the facilities and safety is of prime importance. For example, if maintenance on the fairgrounds was not performed and the 4H exhibition had to move for safety reasons the cost to the 4H program would be much greater than the cost of the safety improvements currently proposed. A comparable facility in Madison County is the Farm Science Review grounds just 3 miles north of the Madison County Fairgrounds. The FSR has quoted the Madison County 4H program a price of \$14,000 for the use of the facilities for 10 days to have the 4H exhibition. \$14,000 over 20 years is a cost of \$280,000. Compared to the total debt service cost of \$144,527, at a rate of \$7,226 per year for 20 years on the original \$94,000 grant, doing the proposed maintenance on the fairgrounds is much cheaper.

JOINT USE AGREEMENT

This joint use agreement (this "Agreement") is made and entered into as of the 14 day of June, 2007 by and between The Ohio State University (the "University"), acting under the provisions of Chapter 3335 of the Revised Code of Ohio, and the Madison County Agricultural Society ("MCAS"), a non-profit corporation organized and existing under the laws of the State of Ohio.

RECITALS

WHEREAS, the General Assembly has appropriated funds to the University for the following project (the "project"):

Project Name: OSU Extension Safety Improvements in Madison County

Legislation: House Bill 699

Capital Appropriation: CAP-745

OSU Project Number: #315-07-1553

In the total amount of ninety four thousand dollars (\$94,000.00), (the "Appropriation").

WHEREAS, in 2006 the Ohio General Assembly appropriated state capital funds in the amount of \$94,000.00 to The Ohio State University for the Madison County Agricultural Society to use for safety and facility improvements at the Madison County fairgrounds and this appropriation will enable the 4-H Youth Development Program of The Ohio State University to continue their extensive involvement in the Junior Fair in Madison County;

WHEREAS, Ohio's 4-H Youth Development Program is a part of The Ohio State University through the Department of Extension, located in the College of Food, Agricultural and Environmental Sciences and the 4-H Program has a presence in each of Ohio's counties through a local office of the Department of Extension, professional staff located in each of those offices, and a large network of volunteers who work directly with 4-H Youth;

WHEREAS, the Madison County 4-H Program uses the Madison County Agriculture Society's fairground facilities for its annual 4-H project exhibition and during the Madison County Fair, 4-H members participate in a number of educational experiences that are a culmination of the year's project-specific work by the youth;

WHEREAS, the University has concluded that the value of the use of the facilities by the University as provided in this agreement is reasonably related to the amount of the appropriation.

NOW, THEREFORE, in furtherance of the above, and in consideration of the mutual covenants, promises, conditions and terms to be performed by each, the University and MCAS hereby agree as follows:

AGREEMENT

1. Commitment. The Madison County Agricultural Society commits to the University that the monies for the project shall be used to improve the safety of the facility used by the Madison County 4-H Program's annual exhibition on the fairgrounds. The money will be used for improving electrical systems that are outdated, paving roads that are currently gravel, upgrading lighting for evening activities, installing a public address system, structural and repairing roof and other structural items on key buildings and replacing water lines into the barns.
2. Term. The term of this Agreement shall commence as of the date of its approval by the Ohio Board of Regents and shall expire twenty (20) years from the date the project is completed and placed into service. In the event that this Agreement is terminated prior to its expiration, MCAS shall reimburse the State of Ohio with an amount calculated by (a) dividing the amount of the appropriation actually paid to MCAS under the Agreement by twenty (20), and (b) multiplying the resulting amount by (i) twenty (20), less (ii) the number of full years the project has been utilized by the University in accordance with the Agreement (the "Reimbursement Amount"). The Reimbursement Amount shall be paid in cash.
3. Compliance with Laws. On this construction project MCAS shall comply with all pertinent federal, state and local laws as well as state administrative regulations including those relating to competitive bidding and prevailing wage.
4. Funds used for Capital Improvements. Except for the funds used to cover the University's administrative costs, the funds provided under this Agreement shall be used by MCAS only for capital improvements to MCAS's facility located at 205 Elm Street, P.O. Box 30, London, Ohio 43140, and shall not be used for operating expenses. MCAS, in connection with the Agreement, shall use where applicable competitive bidding procedures equivalent to those enumerated in relevant provisions of Chapter 153 Ohio Revised Code involving (1) publishing advertisements to seek bids, (2) receiving sealed bids, and (3) awarding contracts to the lowest, responsive and responsible bidders.
5. Ownership of MCAS and Insurance. MCAS's facility located at 205 Elm Street, P.O. Box 30, London, Ohio 43140 is owned by Madison County Agricultural Society, a non-profit corporation organized and existing under the laws of the State of Ohio, and is fully insured. Additionally, MCAS agrees to require all parties performing construction or construction-related services pursuant to the Agreement to provide and maintain insurance or self-insurance against general liability for accidents or injuries that may occur on the project.
6. Hold Harmless. The University shall have no liability for, and MCAS shall indemnify and hold the University harmless from, all construction, operation and maintenance costs of the project.

7. Distribution of Funds and Administrative Costs. Upon execution of this Agreement, the University shall submit to the Ohio Board of Regents a formal request for the release of the Appropriation. The University shall be paid for administrative costs incurred as a result of the construction of the project. Such administrative costs shall be \$1,410.00 which is equal to 1.5% of the appropriation and shall be paid by the University to itself concurrently with the University's payment to MCAS. MCAS shall submit a draw request of permitted use of funds to the University in the amount of \$92,590.00, as soon as practicable upon the signing of this Agreement; but not longer than eleven months from the date of the signing of this Agreement. The University shall, within 30 calendar days after receipt of MCAS's draw request, disburse the Appropriation.
8. The terms and conditions of such use by the University shall be more favorable than the terms and conditions of use by any other entity to a degree that reasonably reflects the magnitude of the University's investment in the facility. The Ohio Board of Regents, shall, upon request, be provided with pertinent records by the MCAS and the University that measure the nature and extent of the collaboration between the MCAS and the University, and the terms and conditions governing such collaboration.
9. Validity. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be illegal, invalid or unenforceable because of judicial construction, then the remaining terms, covenants and conditions of this Agreement or their application to persons or circumstances other than those held invalid or unenforceable shall not be affected thereby; and each term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.
10. Assignment. This Agreement may not be assigned in any form or to any extent by either party without the written consent of the other party.
11. Notices. Any notice required or permitted to be given under this Agreement shall be given either by: (i) first-class certified mail, return receipt requested, addressed to the party at the address shown below, or (ii) personal delivery at the then-current address of such party; in either event, with a copy given by either manner to the person designated below to receive a copy. Such notice shall be effective when delivered to both persons. The current addresses of the parties and the persons to receive copies are, respectively, as follows:

To the University:

Christopher M. Culley
General Counsel
Office of Legal Affairs
The Ohio State University
1590 North High Street
Suite 500
Columbus, Ohio 43210-2178

To the Society: President
Madison County Agricultural Society
P.O. Box 30
205 Elm Street
London, OH 43140

With a copy to: Tom Fisher
8710 Hume Lever Road
London, Ohio 43140

With a copy to: Dave Gallimore
6155 Rosedale-Milford Center Road
London, Ohio 43140

With a copy to: Brenda Roseberry
4715 Middle Pike
West Jefferson, Ohio 43162

With a copy to: Madison County Commissioners
1 North Main Street
P.O. Box 618
London, OH 43140

11. Governing Law. This Agreement shall be subject to and interpreted in accordance with the laws of the State of Ohio, and any action brought pursuant to this Agreement shall be brought in a court of competent jurisdiction within the State of Ohio.
12. Amendments. Any amendment to this Agreement will not be effective unless and until approved in writing by the parties hereto and by the Ohio Board of Regents.
13. 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

THE OHIO STATE UNIVERSITY

By: William J. Shkurti
William J. Shkurti
Senior Vice President, Business & Finance

MADISON COUNTY AGRICULTURAL SOCIETY

By: Thomas M. Fisher
Thomas M. Fisher, President