

OHIO BOARD OF REGENTS

Consideration of a Joint Use Agreement between Ohio Board of Regents and  
the MetroHealth System.

**RESOLUTION**

WHEREAS, the 126<sup>th</sup> Ohio General Assembly enacted H.B. 699 which includes a specific capital appropriation of \$1,000,000 to the Ohio Board of Regent for the MetroHealth Senior Health and Wellness Center; 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

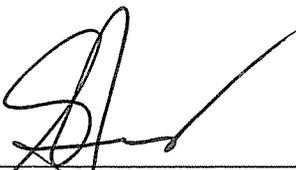
WHEREAS, the MetroHealth System has presented a joint use agreement for approval by the Chancellor of the Ohio Board of Regents; and

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 Ohio Board of Regents and the MetroHealth System, and attached and made a part hereof, be approved.

  
\_\_\_\_\_  
Eric D. Fingerhut  
Chancellor

6/27/11  
\_\_\_\_\_  
Date

Joint Use Agreement between the Ohio Board of Regents  
and the MetroHealth System

**BACKGROUND**

H.B. 699 includes a specific capital appropriation of \$1,000,000 to the Ohio Board of Regents for the MetroHealth System. MetroHealth owns and operates the facility to be improved with state capital funds. As required in Ohio Administrative Code section 3333-1-03, MetroHealth submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support various capital improvements to the MetroHealth facility located at 4229 Pearl Road, Cleveland, Ohio.

**REVIEW**

Throughout the entire term of the agreement, MetroHealth will provide the following -

- a. Clinical and didactic rotation site for medical students from Case Western Reserve University (CWRU), Ohio University and various medical schools requesting an elective opportunity focused on geriatric medical care;
- b. Accreditation Council for Graduate Medical Education (ACGME) accredited residency programs in the primary specialties arena of Family Medicine and Internal Medicine;
- c. Educational opportunities focused on elder care through affiliation agreements with Cleveland State University, Cuyahoga Community College and CWRU for nursing and allied health students;

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 Board of Regents and MetroHealth System.**

## JOINT USE AGREEMENT ANALYSIS

Institutions Involved Board of Regents/The MetroHealth System

Project Title Senior Health and Wellness Center

Capital Bill HB 699 Item CAP-089, MetroHealth Senior Health and Wellness Ctr

- 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:	\$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. Geriatric resident training	\$98,425	20
b. Physician faculty salaries and support	\$289,778	20
c. Overhead / indirect facility costs	\$55,707	20
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 Worksheet**

### **Section III**

For purposes of this analysis, uses A and B, (geriatric resident training and physician faculty salaries and support), were determined by adding the residents and faculty's salary and benefits paid by The MetroHealth System and multiplying by their time spent at MetroHealth.

Use C (Overhead/ indirect facility costs) were calculated by multiplying the overhead rate from the Medicare Cost Report (14.35%) times the costs identified in Uses A and B.

## JOINT USE AGREEMENT

**THIS JOINT USE AGREEMENT** (the "Agreement") is made and entered into as of this 27<sup>th</sup> day of October, 2007 by and between the Ohio Board of Regents (hereinafter referred to as "Regents"), and The MetroHealth System, a county hospital organized under Chapter 339 of the Ohio Revised Code, (hereinafter referred to as "MetroHealth"). Regents and MetroHealth are jointly referred to in this Agreement as "the Parties."

**WHEREAS**, MetroHealth is building a Senior Health and Wellness Center ("SHWC") in order to enhance MetroHealth's ability to extend its educational outreach programs throughout the underserved segments of the community; and leverage the partnership of MetroHealth, Visiting Nurse Association Healthcare Partners of Ohio, Concordia Care (PACE Program) and Benjamin Rose to create a unique senior health care delivery model to meet the growing needs of an aging population; to reopen the closed Deaconess Hospital and revitalize the community around a single location that coordinates primary and specialty care for seniors, skilled nursing, hospice and social services to reduce the Medicaid burden and improve health outcomes; to create a replicable model for the rest of the country that promises a solution to the escalating health care costs of our fastest growing generation; and

**WHEREAS**, The SHWC will be a clinical and didactic rotation site for medical students from Case Western Reserve University, Ohio University and various medical schools requesting an elective opportunity focused on geriatric medical care. The SHWC will be a regular clinical rotation location for ACGME accredited residency programs of MetroHealth especially in the primary specialties arena of Family Medicine and Internal Medicine. The SHWC will be the primary site of the ACGME certified Geriatric Fellowship at MetroHealth that is currently providing advanced learning in the area of care for the elderly. Plans are to provide educational opportunities focused on elder care through affiliation agreements with Cleveland State University, Cuyahoga Community College and CWRU for nursing and allied health students.

**WHEREAS**, the 126<sup>th</sup> General Assembly has enacted Amended Substitute House Bill 699 which includes a specific appropriation of capital improvement resources in the total amount of One Million Dollars (\$1,000,000) ("Funds"), directed to the Regents for the benefit of MetroHealth for the building and creating of this innovative Senior Health and Wellness Center to enhance community access to healthcare, educational, programmatic, cultural and professional programs; and

**WHEREAS**, the Parties desire to update and expand their relationship as set forth in this Agreement; and

**WHEREAS**, the State of Ohio capital appropriations released through the Regents require compliance with OSR Rule 3333-1-03, which specifically calls for the execution of a Joint Use Agreement.

**ACCORDINGLY**, in consideration of the foregoing, of the other promises and mutual covenants contained in this Agreement, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. MetroHealth shall submit to the Regents, a request for the release to MetroHealth of the One Million Dollar (\$1,000,000) appropriation identified above.
2. MetroHealth represents, warrants, and covenants that the Funds appropriated for the Project by the State of Ohio shall be used only for capital improvements as defined in House Bill 699. The Funds provided under this Agreement shall be used by MetroHealth for the renovation and conversion of an existing 274,658 square foot building located at 4229 Pearl Road, Cleveland, Ohio 44109 (the "Project"). The renovated building will house high quality health care for seniors, regardless of ability to pay, in a convenient and accessible community setting. The coordination of services, including primary and specialty health care, adult day care, home health care, long-term care and hospice, is designed to help seniors remain independent as long as possible. The total Project cost is \$65 million dollars (\$65,000,000.00).
3. The Project is owned by MetroHealth, and will be fully insured by MetroHealth.
4. Should the Project not be completed, should this Agreement be terminated, or should MetroHealth's right to involvement in the Project be terminated prior to the twenty (20) year term, which shall commence on the date of execution as set forth below, MetroHealth shall return within thirty days to the State of Ohio a pro rata portion of the State appropriation to be calculated by dividing the amount of funds contributed by the State of Ohio and received by MetroHealth by twenty (20) and multiplying that sum by twenty (20) less the number of full years SHWC is utilized by MetroHealth. This Agreement may be terminated as follows:
  - a. If either of the Parties fails to perform under any provision of the Agreement, then either Party may serve written notice upon the non-performing Party specifying the nature of the failure. If, within sixty (60) days of the date notice is served, the non-performing Party has not cured the default, or presented a plan acceptable to the other Party to cure the default, then upon expiration of the sixty (60) day period, the Party giving the notice may, at its option, terminate the Agreement.
  - b. Either of the Parties shall have the right to immediately terminate this Agreement upon written notice to the others if the other Party:

- i. Ceases to do business as a going concern;
  - ii. Makes an assignment for the benefit of its creditors;
  - iii. Admits in writing its inability to pay its debts as they become due;
  - iv. Becomes insolvent, suspends or abandons its business;
  - v. Authorizes, applies for, or consents to the appointment of a trustee or receiver of all or a substantial portion of its assets;
  - vi. Files a voluntary petition under any bankruptcy or insolvency law or files a voluntary petition under the organization provisions of the laws of the United States; or if
  - vii. A court assumes jurisdiction over the assets of that other party.
5. MetroHealth shall comply with all pertinent rules, administrative regulations, and laws of the federal, state and local government. MetroHealth represents and warrants that the value of its duties set forth in this Agreement is reasonably related to the amount of the appropriation.
6. MetroHealth shall hold the State of Ohio, the Regents, affiliated colleges and universities, and their officers, trustees and employees harmless from any and all obligations, expenses, liabilities or claims of any kind arising out of (1) the construction, operation, or maintenance of the Project, and/or (2) the Regents, affiliated colleges and universities, or their officers, trustees or employees being named as a defendant or party to any lawsuit or adjudicatory proceedings, if such lawsuit or adjudicatory proceeding arises out of an action or omission, or an alleged action or omission of MetroHealth, its officers, trustees or employees related to the construction, operation, or maintenance of the Project, including, but not limited to MetroHealth's failure or alleged failure to comply with any federal, state or local law, ordinance, rule, order, directive or regulation in connection therewith.
7. Upon execution of this Agreement, Regents shall submit to the Ohio Board of Regents a formal request for the release of the Funds. After the release of the Funds, MetroHealth shall submit to Regents requests for payment of amounts along with documentation of contractor invoices or purchase orders related to obligations incurred by MetroHealth for permitted uses of the Funds.
8. Out of the Funds, MetroHealth shall reimburse the Regents for administrative costs incurred by the Regents associated herewith for management fees and reimbursable expenses. Said reimbursement of administrative costs shall equal no more than one and one-half (1.5) percent of the amount appropriated by the State of Ohio. The Regents hereby agree that it will seek reimbursement only of actual out-of-pocket expenses it incurs in administering the request and conveyance of the appropriated funds. Said reimbursement shall be deducted and paid to the Regents as those funds are released by the State of Ohio.

9. All mailings and notices to the Parties relating to contractual or other legal matters shall be addressed to the Parties at the addresses set forth below or to such other address as either of the Parties shall have designated by notice given in accordance with the provisions of this paragraph:

The MetroHealth System  
2500 MetroHealth Drive  
Cleveland, OH 44109  
Attention: John Sideras, President and CEO

With, in the case of MetroHealth, a copy to: General Counsel

Ohio Board of Regents  
30 East Broad Street, 36<sup>th</sup> Floor  
Columbus, OH 43215-3414

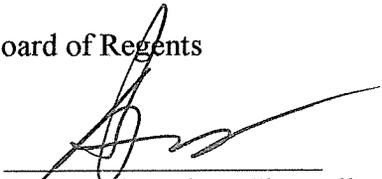
10. All amendments to this Agreement shall require the prior written approval of MetroHealth, as well as the express prior approval of the Regents.
11. In connection with the construction at MetroHealth's Senior Health and Wellness Center, contemplated by this Agreement, MetroHealth shall follow competitive bidding procedures which include, as a minimum, publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest and best bidders.
12. This Agreement shall be binding upon and inure to the benefit of MetroHealth and Regents and their respective successors and assigns.
13. This Agreement sets for the entire agreement of the Parties concerning the subject matter and any and all other oral or written agreements, discussions, representations, promises and understandings made or arrived at prior to or contemporaneously with this Amendment are hereby mutually revoked, withdrawn, rescinded and rendered null and void by the Parties.
14. 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. This Agreement shall be construed under and governed by the laws of the State of Ohio.

IN WITNESS WHEREOF, the Parties execute this Agreement as of the Effective Date.

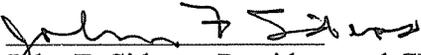
Ohio Board of Regents

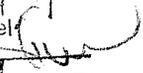
The MetroHealth System

By:

  
Eric D. Fingerhut, Chancellor

By:

  
John F. Sideras, President and CEO

APPROVED AS TO FORM  
MHS - Office of  
General Counsel  
By   
Date 10-10-17

## Joint Use Agreement Worksheet

The Ohio Board of Regents

April, 2005

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