

**JOINT USE AGREEMENT
BETWEEN
BOWLING GREEN STATE UNIVERSITY
AND
ERIE METROPARKS BOARD OF PARKS COMMISSIONERS**

THIS JOINT USE AGREEMENT (“Agreement”) is made by and between **ERIE METROPARKS BOARD OF PARKS COMMISSIONERS (“EMP”)** for the James H. McBride Arboretum (“the Arboretum”), and **BOWLING GREEN STATE UNIVERSITY (“University”)**, an institution of higher education and instrumentality of the State of Ohio, established and existing under Chapter 3541 of the Ohio Revised Code. The University and EMP may each be referred to herein as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, through the provision and interdependence of teaching, learning, scholarship and service, the University has established and continues to foster an environment that is grounded in intellectual discovery, community engagement, and multicultural academic and social experiences, while guided in all such pursuits by rational discourse and civility to others;

WHEREAS, the University provides an education of high quality to students with diverse backgrounds, experiences, and educational needs and serves as a resource to address the concerns of local businesses, governments, and communities;

WHEREAS, EMP’s mission showcases horticultural and natural landscape features and provides associated education, enrichment, and enjoyment to the public;

WHEREAS, one purpose of this Agreement is to develop and pursue an engagement relationship that will be mutually beneficial to both Parties;

WHEREAS, during the term of this Agreement the Parties desire to further their cooperative and collaborative efforts, better align the common elements of their respective missions, and set forth their current understandings concerning various aspects of their prospective relationship;

WHEREAS, such cooperative and collaborative efforts include expanding existing relationships by and between EMP and the programs and activities of the University, including students actively volunteering at EMP;

WHEREAS, in June 2008 the Ohio General Assembly enacted Am. Sub. HB 562, an Act that made capital appropriations for fiscal years 2009-10 (the “ACT”);

WHEREAS, in Section 233.30.20, Line Item C24040 of the ACT, the University was appropriated \$378,000 (the “Funds”) to construct a capital project commonly known as the *James H. McBride Arboretum at BGSU Firelands* (“the Project”), that will provide, among other things, an expansion to its educational programs, cultural events, passive recreation, and increased active recreation and thereby benefit the University’s programs and related activities; **WHEREAS**, the Project includes the construction of a restroom facility, parking lot, and access road (“the Facility”) and upon completion of the Project it will be used, in part, to advance the common mission elements of both Parties;

WHEREAS, pursuant to Ohio law such Funds appropriated for capital improvements are released by the State upon the approval of the Chancellor of the Ohio Board of Regents (“Chancellor”);

WHEREAS, Ohio Administrative Code §3333-1-03 requires that the Parties execute a Joint Use Agreement containing certain terms and conditions; and

WHEREAS, the Parties have determined that this Agreement contains all such terms and conditions, is otherwise fully compliant with all controlling laws, rules and regulations, and in reliance thereupon, the Parties have elected to enter into this Agreement.

COVENANTS

NOW THEREFORE, in consideration of the Recitals and the mutual promises herein contained, and intending to be legally bound thereby, the Parties agree as follows:

1.0 Use of EMP’s Facilities and Resources by University.

1.1 As further described in Section 1.2, EMP agrees to provide the faculty and students of the University the use of the Facility, described more fully in Section 7.0, as a site for conducting the academic programs and activities of the University, including but not limited to, the University’s programs, its community engagement activities, and its training programs for University faculty.

1.2 During the term of this Agreement EMP shall:

- (a) provide University students and faculty access to EMP’s park facilities and activities so that students may learn about the nature, functioning, and extent of EMP’s services;
- (b) provide University’s faculty and students continued opportunities to collaborate with EMP for community engagement activities based on mutually-agreed goals such as fund raising activities, student practicums, student co-operatives, and public classes;

- (c) provide University faculty access to data regarding the number and type of daily operations, including Arboretum operations during adverse weather conditions, Arboretum management operations, and Arboretum maintenance operations;
- (d) provide University students field placements, as appropriate for student internships and as requested by the University. Such students shall be given priority in the provision of all field placements/internships if the number of available spots, as determined by EMP, are not sufficient to accommodate all the requests made of EMP;
- (e) use reasonable best efforts to obtain funding for University student field placements/internships; if any such funding is received, EMP shall make the internships available to University students; and
- (f) make notation on promotional and program information that funding for the Project has been “in part” provided through a joint use agreement with the University.

1.3 In the performance of those collaborative efforts described in Sections 1.1 and 1.2, the Parties agree to the extent of their legal ability to do so, to respect and observe the relevant policies of each and to work cooperatively with one another.

2.0 Joint Committee.

A Joint Committee comprised of EMP’s representatives, including the chair of the James H. McBride Arboretum Board or his/her designated representative, and representatives of the University will develop the details and guidelines for implementation of the efforts, programs, and activities described in Section 1.0. The Joint Committee shall meet at least semi-annually to review and monitor implementation of the Parties’ respective commitments arising under this Agreement.

3.0 Reports.

3.1 On or before December 31 of each year during the term of this Agreement, EMP shall issue an Annual Report to the Trustees of the University. Each such Report shall include: (a) a description of the University-EMP relationship established by this Agreement including, but not limited to, the nature and extent of University participation in each of the collaborative efforts, programs, and activities described in Section 1.0; and (b) mention that the Funds for the construction of the Facility were provided pursuant to a state appropriation made to the University.

3.2 Upon request by the Chancellor or the University, EMP shall provide the requestor all relevant records, including financial records, that measure the nature and extent of the University’s use of the Facility and other EMP resources, the terms and conditions governing such use, and the benefits otherwise derived by the University under this Agreement.

4.0 Term; Termination Prior to Expiration of Term.

4.1 Subject to the provisions of Section 4.2, this Agreement shall be effective as of the later date of the signatures set forth below (the “Effective Date”), and shall expire on the twentieth (20) annual anniversary of such date.

4.2 This Agreement shall be deemed terminated in its entirety prior to the Expiration Date specified in Section 4.1 upon:

- (a) the provision of forty-five (45) days prior written notice by the University to EMP due to EMP’s material breach of this Agreement; provided that, such breach is not cured by EMP within such forty-five (45) day period (the “cure period”);
- (b) the provision of thirty (30) days prior written notice by either Party to the other;
- (c) termination of the Lease Agreement prior to its term, as stated therein; or
- (d) **the University fails to obtain Chancellor approval of this Agreement, as required under the Ohio Administrative Code §3333-1-03, within thirty (30) days after the Effective Date, or such other period of time as may be mutually agreed to by the Parties.**

5.0 Reimbursement to the State Upon Early Termination.

In the event that this Agreement is terminated for any reason prior to the twentieth (20) annual anniversary of the Effective Date and EMP retains rights of access, control, or dominion over the Facility through a lease agreement or other arrangement or ownership, EMP shall remit to the State of Ohio a prorated portion of the Funds received by EMP, which shall be calculated by dividing the Funds contributed by the State of Ohio by twenty (20) and multiplying that sum by twenty (20) less the number of full years that the Facility was made available to the University for the purposes described in Section 1.0.

6.0 Compliance with Laws.

Throughout the term of this Agreement EMP shall comply with all relevant federal, state, Wood County, and local laws, as well as, all relevant administrative rules and regulations of any agency, political subdivision, or instrumentality of the Federal Government and the State of Ohio.

7.0 Funds Used Only for Capital Improvements; Identification of the Project.

7.1 Except for the payment of administrative costs to the University pursuant to Section 13.0, the Funds shall be used by EMP only for capital improvements, as defined in and intended by the ACT and further described in Section 7.2 of this Agreement.

7.2 Such capital improvement shall include, but not limited to, construction of a restroom facility, parking lot, and access road located on the James H. McBride Arboretum property on the Bowling Green State University's Firelands Campus property, 901 Rye Beach Road, Huron, Erie County, Ohio 44839, and related capital improvements incident thereto, that will enable EMP to provide educational opportunities in topics to the University, provide a setting of natural beauty, peaceful respite and passive recreation, a site for artistic and cultural activities, and restore and demonstrate native plant communities of Erie County and the region.

8.0 Ownership of the Facility by EMP; Insurance.

8.1 Subject to the provisions of Section 8.2, during the term of this Agreement the Facility will be owned by EMP and will be fully insured by EMP at market replacement value from and against hazards including, but not limited to, fire and such other forms of property damage as the EMP may reasonably determine to be appropriate. As landowner, the University will be listed on all policies required as an additional insured and loss payee.

8.2 In accordance with the terms and conditions of a certain lease agreement entitled: *JAMES H. MCBRIDE ARBORETUM LEASE AGREEMENT*, that commenced in 1993 (the "Lease Agreement"), and unless the Lease Agreement is extended by mutual consent of the Parties, all right, title and interest in the Facility shall belong to and vest in the University effective on May 31, 2018. The provisions of the preceding sentence shall be deemed self-executing and no further action shall be required of the University for such title, right and interest to vest in the University.

9.0 Competitive Bidding.

EMP, in connection with the expenditure of the Funds, shall conduct itself ethically and shall follow such competitive bidding procedures as are required by Section 307.86 and chapter 153 of the Ohio Revised Code and all rules, regulations, and policies adopted pursuant thereto. EMP shall avoid, to the maximum extent practicable, any act that is or may reasonably appear to be a conflict of interest.

10.0 Hold Harmless.

EMP shall hold harmless the State of Ohio and the University, its officers, trustees, employees, and students from and against any and all obligations, expenses, liabilities, or claims of any kind whatsoever arising out of: (1) the construction, renovation, operation, or maintenance of the Facility; (2) the acts or omissions of EMP, its officers, trustees, employees, or volunteers; or (3) any failure or alleged failure of EMP, its officers, trustees or employees to comply with any provision of law, including, but not limited to, EMP's failure or alleged failure to comply with applicable statutory bidding requirements, or any other federal, state or local law, ordinance, rule, order, directive or regulation. Nothing contained herein shall be deemed to make EMP

responsible for the negligence or misconduct of the University, its trustees, officers, employees, or students.

11.0 Entire Agreement; Amendments.

This Agreement and its attachments represent the entire and integrated agreement between the University and EMP and supersedes all prior negotiations, representations or agreements, either written or oral. No representations were made or relied upon by any Party other than those expressly set forth herein. No agent, employee, or representative of a Party is empowered to alter or modify any of the terms in this Agreement unless such alteration or modification is done in writing, signed by the signatories below, or their successors, or other authorized persons designated, in writing, by such signatories or successors, **and is approved by the Chancellor.** This Agreement may not be assigned in any form or to any extent by either Party without the written consent of the other Party.

12.0 Distribution of Funds; Administrative Costs.

- 12.1. Within ten (10) work days after the Effective Date, EMP shall submit to the University a tentative disbursement schedule (the "Schedule"). Upon receipt, such Schedule shall be attached hereto as Exhibit A and shall be incorporated herein by this reference.
- 12.2. Within ten (10) business days after the receipt of the Exhibit A, the University shall submit to the Chancellor a formal request for the release of the Funds pursuant to and in accordance with such Schedule.
- 12.3. The University shall provide prompt notice to EMP upon receipt of the Funds. Disbursements of the Funds to the consultants and contractors shall be made in material conformance with such Schedule and pursuant to properly documented requests for payment. For the purpose of this section a "properly documented request for payment" shall consist of at least the following:
 - (a) a sequentially numbered claim for payment;
 - (b) the amount requested and the cumulative amount requested and paid to date;
 - (c) the estimated percent completion of the Facility; and
 - (d) copies of original source documentation of the costs incurred for architects, engineers, contractors, trades, supplies, equipment, and other costs incurred for which a disbursement of a portion of the Funds is requested.
- 12.4. The University agrees to keep separate written records in reasonable detail of all costs incurred and work performed by it with the Funds provided under this Agreement. All written records and any other data, drawings, prints, and information of whatever form prepared during or evolved from or associated with constructing the Facility shall be

made available for inspection and copying upon request of the EMP or OBOR, or a designated representative of either, at all reasonable times.

13.0 Administrative Costs.

From the Funds, University shall receive administrative costs in the amount of Five Thousand Six Hundred Seventy Dollars (\$5,670), a sum equal to one and one-half percent (1.5%) of the total amount of the Funds.

14.0 Notices.

All notices, designations and other communications contemplated under this Agreement shall be in writing and shall be either personally delivered, or transmitted by certified mail, facsimile transmission, wire, or other device reasonably calculated to effect delivery of documents within three (3) calendar days. All such notices shall be effective only when received by the addressee. Unless otherwise agreed to in writing by the Parties, such notices, designations, and communications shall be sent to the Parties' representatives at the addresses noted below:

If to the University: Ms. Sherideen S. Stoll
Vice President of Finance & Administration
Bowling Green State University
McFall Center
Bowling Green, Ohio 43403

With a copy to: Dr. William K. Balzer
Dean, Firelands College
Bowling Green State University
Huron, Ohio 44839

If to EMP: Mr. Stephen D. Dice
Executive Director
Erie Metroparks Board of Park Commissioners
3109 Hull Road
Huron, Ohio 44830

15.0 Binding Nature.

The University and EMP each bind themselves, their successors, assigns and legal representatives, to the other Party to this Agreement and to the successors, assigns and legal representatives of the other Party with respect to all terms of this Agreement; provided that, EMP shall not assign, or transfer any right, title or interest in this Agreement without the prior written consent of the University, which consent shall not be unreasonably withheld.

17.0 Headings.

The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.

18.0 Governing Law.

This Agreement shall be interpreted, controlled, and enforced in accordance with the substantive laws of Ohio.

19.0 Authority to Act.

The Parties hereto warrant and represent to each other that they have the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby and have been duly authorized by their respective Boards of Trustees to execute this Agreement.

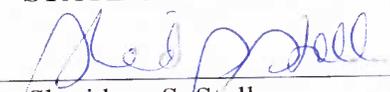
IN WITNESS WHEREOF, the Parties, intending to be legally bound thereby, have executed this Joint Use Agreement on the date indicated below under their respective signatures.

**Erie Metroparks Board of Parks Commissioners
for the JAMES H. MCBRIDE ARBORETUM**

By: 
Stephen D. Dice
Executive Director

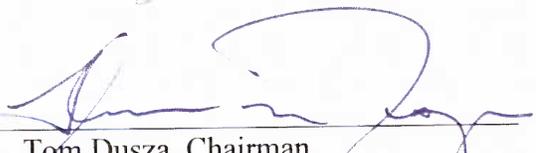
Date: August 12, 2009

**BOWLING GREEN
STATE UNIVERSITY**

By: 
Sherideen S. Stoll
Vice President of Finance
& Administration

Date: 8/26/09

AND

By: 
Tom Dusza, Chairman
Erie Metroparks Board of Parks Commissioners

Date: August 12, 2009

EXHIBIT "A"

PROPOSED DISBURSEMENT SCHEDULE

**ERIE METROPARKS BOARD OF PARKS COMMISSIONERS
and
BOWLING GREEN STATE UNIVERSITY**

Joint Use Agreement Worksheet

The Ohio Board of Regents

Bowling Green State University and Erie County MetroParks

May, 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: \$ 378,000
2. Estimated annual debt service on the appropriation: \$ 29,059
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. Student Internship/Co-op	\$ <u>16,640</u>	<u>20</u>
b. Additional Maintenance	\$ <u>4,500</u>	<u>20</u>
c. Additional Maintenance Supplies	\$ <u>2,000</u>	<u>20</u>
d. Rental of Facilities	\$ <u>6,000</u>	<u>20</u>
e. _____	\$ _____	_____
f. _____	\$ _____	_____

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

Section III:

Analysis of Value

The annual value of \$29,140 for the University's use of the Erie MetroParks James H. McBride Arboretum at Firelands buildings is based upon the Joint Use Agreement. The State will be servicing the debt over a 20 year period at an annual cost of \$29,059. The use of this facility will continue the collaborative relationship that has been shared between the University and the MetroParks for many years. While this relationship has been specific in agreements between the University and the MetroParks, the results have benefitted many in the area. As this agreement is specific to the improvements funded through the State capital bill, we have concentrated on the benefits to the University tied specifically to the new construction, and not to the approximate \$80,000 in benefits and improvements that the MetroParks already bring to the Firelands campus in their management of the McBride Arboretum.

These benefits to the University come from the greater ability to make use of the arboretum for many different types of classes and teaching. While the MetroParks will be looking to supply internships or co-ops to our students, the facilities will also provide improvements to our property both in the value of those specific improvements, but also in the annual maintenance that MetroParks will spend on their upkeep for visitors to campus. These facilities will also allow for the greater use of the area by our faculty and students for classes in areas such as GPS/GIS training, Biological Sciences and Environmental Health Programs.

Estimated Value of Use Calculations

- | | |
|------------------------------------|--------------------------------------|
| a. Student Internship/Co-op | 1 student, 40 hours/week, \$8/hour |
| b. Additional Maintenance | 1 custodian, 10 hours/week, \$9/hour |
| c. Additional Maintenance Supplies | \$2,000 materials |
| d. Space Rental | \$12/sq.ft., 12 months of the year |