



DIRECTIVE 2012-013

April 24, 2012

RE: JOINT USE AGREEMENT BETWEEN THE UNIVERSITY OF AKRON AND NORTHEAST OHIO MEDICAL UNIVERSITY AND SUMMA HEALTH SYSTEM

The University of Akron and Northeast Ohio Medical University have received Ohio Research Scholars Program funding from the Ohio Department of development, Third Frontier Grant Program to establish and support the Orthopaedic Research Cluster of Northeast Ohio (ORCNEO), and are eligible to receive an award in the amount of \$900,000 for the purchase of equipment for use by the partners of the project. 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.

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 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 Northeast Ohio Medical University and Summa Health System.

This directive will take effect immediately.

Jim Petro  
Chancellor, Ohio Board of Regents

*mlc*

# Joint Use Agreement

Date:

4.2.12

## RECOMMENDATION

The Capital Planning Section has reviewed and recommends approval of the Joint Use Agreement between **The University of Akron and Northeast Ohio Medical University and Summa Health System.**



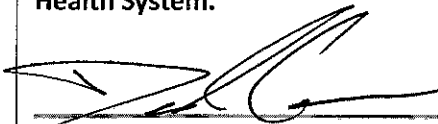
Signature

4.2.12

Date

## RECOMMENDATION

The Office of the Vice Chancellor of Finance has reviewed and recommends approval of the Joint Use Agreement between **The University of Akron and Northeast Ohio Medical University and Summa Health System.**



Signature

2 Apr 12

Date

# JOINT USE AGREEMENT ANALYSIS

Date: 4/2/12\_\_\_\_\_

Institutions: The University of Akron **and**  
 Northeast Ohio Medical University **and** Summa Health Systems

Project Title: Orthopaedic Research Cluster of Northeast Ohio

Capital Bill HB 462 Line Item (ALI): C25046

✓	✓ Is the facility to be built/improved identified specifically by address or location?
✓	✓ Does the non-profit organization now own the property or have a long term lease? If not, when will it control the property?
✓	✓ Does the agreement provide for use of the facility for at least 20 years from the time that it is ready for occupancy?
✓	✓ If the agreement is terminated, is there a pro rata reimbursement clause? Is the reimbursement formula correct?
✓	✓ Will funds be used only for capital improvements and not operating costs?
✓	✓ Will the non-profit hold the institution harmless for all operation/maintenance costs?
✓	✓ Will the non-profit comply with federal, state, and local laws and rules?
✓	✓ 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.)?
✓	✓ Does the contract provide for a 1.5% administrative fee for the institution?
✓	✓ Does the agreement require that amendments be approved by the Board of Regents?
✓	✓ Is a drawdown schedule or payment procedure included?
✓	✓ Are the extent and nature of spaces and uses adequately described?
✓	✓ Are the terms and conditions of use of the facility described?
✓	<b>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)</b>
✓	✓ Is the facility insured?

*OK to post  
 - MLC 4/2/12*

*DD  
 4/2/12*

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: \$ 900,000
2. Estimated annual debt service on the appropriation: \$ 69,189
3. Term of the state bond, in years: 20 years

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

Use(s) of the facility*	Annual value of use	# of years
a. <u>NEOMED Ohio Research Scholar research</u>	\$ <u>385,000</u>	<u>10</u>
b. <u>UA Ohio Research Scholar research</u>	\$ <u>250,000</u>	<u>10</u>
c. <u>Partner contributions to equipment costs</u>	\$ <u>450,000</u>	<u>2</u>
d. <u>industry sponsored research</u>	\$ <u>10,000</u>	<u>20</u>
e. <u>Ph.D student training &amp; dissertation research</u>	\$ <u>60,000</u>	<u>10</u>
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.*

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

- a. NEOMED's Ohio Research Scholar, Dr. Fayez Safadi, is expected to obtain at least one National Institutes of Health R01 grant in skeletal biology leveraged by the collaborations created by and equipment provided to the partners, valued at \$350,000/year for the next 10 years.
- b. The University of Akron's Ohio Research Scholar is expected to obtain at least one National Science Foundation grant in biomaterials science leverage by the collaborations created by and equipment provided to the partners, valued at \$250,000/year for the next 10 years.
- c. The Partners, Akron Children's Hospital, Akron General Medical Center, Case Western Reserve University, Cleveland Clinic Foundation, and Summa Health System, have committed to matching the state funds dollar for dollar at a total of \$900,000.
- d. The collaborations resulting from the shared equipment and the enhanced infrastructure of NEOMED and UA is anticipated to attract industry sponsored research conservatively valued at \$10,000/year for 20 years.
- e. On average, at least two Ph.D. students from the universities are expected to use the state-of-the-art biomedical equipment for training and dissertation research, valued at \$60,000/year for 10 years based on the students' stipend and tuition costs.

**Joint Use Agreement  
Between  
The University of Akron  
And  
Northeast Ohio Medical University  
And  
Summa Health System**

This Joint Use Agreement (this "Agreement") is effective this 17 day of Oct, 2011 (the "Effective Date"), by and between The University of Akron (hereinafter referred to as "UA"), a State of Ohio assisted institution of higher education with its principal offices at 302 Buchtel Common, Akron, Ohio, 44325-2102, Northeast Ohio Medical University (hereinafter referred to as "NEOMED"), a State of Ohio supported institution of higher education, with its principal offices at 4209 State Route 44, Rootstown, Ohio 44272 and Summa Health System (hereinafter referred to as "Partner") with its principal offices at 525 East Market Street, Akron Ohio 44304 (all of which may hereinafter be referred to respectively as the "Parties" or a "Party").

WHEREAS, UA and NEOMED have received Ohio Research Scholars Program funding from the Ohio Department of Development, Third Frontier Grant Program to establish and support the *Orthopaedic Research Cluster of Northeast Ohio (ORCNEO)* (the "Project") and are eligible to receive an award in the amount of \$900,000 (nine hundred thousand dollars) for the purchase of equipment for use by Summa Health System and other partners in the Project; and

WHEREAS, the Parties collaborate and will continue to collaborate in research and development relating to the Project and desire to purchase the equipment identified in Attachment A for joint use on the Project (the "Equipment"); and

WHEREAS, the Parties desire to enter into this Joint Use Agreement relating to the purchase by Partner, joint use, and maintenance of the Equipment,

Now, therefore, in consideration of the mutual promises and premises set forth below, the Parties agree as follows:

**I. Equipment**

Partner will purchase the Equipment and maintain ownership thereof. Partner will install, operate, and maintain the Equipment. The Award funds will be used in accordance with the Chancellor of the Ohio Board of Regents Allowable Capital Expenditure Guidelines. UA and NEOMED will provide \$200,000 (two hundred thousand dollars) to Partner in support of the cost of the Equipment and Partner will provide cost share in an amount of \$200,000 (two hundred thousand dollars). The Equipment will be located on the campus of NEOMED (the "Location").

**II. Reservation of Usage Rights**

UA and NEOMED retain the right to use the Equipment for education, research and development related to the Project at the Location. Partner, UA and NEOMED shall cooperate to the schedule their respective usages of the Equipment toward maximum benefit relating to the Project. Access by UA and NEOMED, its employees, agents, and contractors to Partner's location shall be subject to compliance with Partner's normal confidentiality and security procedures.

### **III. Value of Use**

UA and NEOMED will use Equipment for education, research and development in an amount equivalent to the value of the Award. Partner agrees to provide UA and NEOMED with access to the Equipment for one or more of the following Project uses during the term of this Agreement:

- A. NEOMED's Ohio Research Scholar, Dr. Fayez Safadi, is expected to obtain at least one National Institutes of Health R01 grant in skeletal biology leveraged by the collaborations created by and equipment provided to the partners, valued at \$350,000/year for the next 10 years.
- B. The University of Akron's Ohio Research Scholar is expected to obtain at least one National Science Foundation grant in biomaterials science leverage by the collaborations created by and equipment provided to the partners, valued at \$250,000/year for the next 10 years.
- C. The collaborations resulting from the shared equipment and the enhanced infrastructure of NEOMED and UA are anticipated to attract industry sponsored research conservatively valued at \$10,000/year for 20 years.
- D. On average, at least two Ph.D. students from the universities are expected to use the state-of-the-art biomedical equipment for training and dissertation research, valued at \$60,000/year for 10 years based on the students' stipend and tuition costs.

### **IV. Installation and Maintenance**

Partner shall install the Equipment at the Location. Partner, at its own expense, shall maintain the Equipment in good working order (subject to ordinary wear and tear), repair the Equipment, and pay all operating expenses. Partner holds UA and NEOMED harmless for all maintenance, repair and operating costs.

### **V. Taxes and Insurance**

Partner will pay all taxes, if any, related to its use of the Equipment, including any personal property taxes or assessments. Partner will insure the Equipment against loss under Partner's general property and casualty insurance policy.

### **VI. Partner's Compliance with Laws and Regulations**

Partner shall comply with all pertinent federal, state and local laws as well as state administrative regulations including, but not limited to the requirement that it follow competitive bidding procedures, as outlined in ORC Chapter 153, as applicable.

### **VII. Term and Termination of Joint Usage Agreement**

The term of this Agreement shall begin upon the Effective Date and end twenty (20) years from the Effective Date, (the "Expiration Date"). Either party may terminate this Agreement prior to the expiration date above. Such termination shall be effected by either party giving written notice to the other not less than ninety (90) days in advance of the date of termination. If this Agreement is terminated prior to the Agreement Term, then Partner shall reimburse the State of Ohio the capital grant funds on a pro rata basis. Partner 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 twenty (20) and multiplying that sum by twenty (20) less the number of full years that the Partner's obligations under this Agreement were fulfilled.

**VIII. Return of Equipment**

Upon early termination of the Agreement, Partner shall peacefully yield up the Equipment to UA or NEOMED. Partner will cover the costs of removing and transporting the Equipment to UA or NEOMED. UA and NEOMED shall have the right to use, re-lease or sell the Equipment.

**IX. Amendments**

Any amendments of this agreement shall be in writing, signed by the Parties, and shall require approval by the Chancellor of the Ohio Board of Regents.

**X. Compliance with Laws**


The Parties shall comply in all material respects with all pertinent federal, state and local laws and rules.

**XI. Hold Harmless**

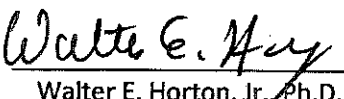
Partner will hold UA and NEOMED harmless from, and at UA and NEOMED's request, will defend UA and NEOMED against any and all claims and liabilities whatsoever regarding the planning, design, engineering, installation, construction, operation, maintenance, and repair costs of the Equipment occurring during the performance of this Agreement to the extent caused by Partner's negligence, gross negligence, recklessness or willful misconduct.

IN WITNESS WHEREOF, The Parties have executed this Joint Use Agreement as of the Date stated below.

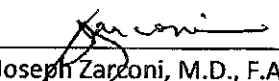
THE UNIVERSITY OF AKRON

By:   
Kathryn Watkins  
Title: Director  
Research Services & Sponsored Programs  
Date: 10/17/11

NORTHEAST OHIO MEDICAL UNIVERSITY

By:   
Walter E. Horton, Jr., Ph.D.  
Vice President for Research  
Date: 10/10/2011

SUMMA HEALTH SYSTEM

By:   
Joseph Zarzoni, M.D., F.A.C.P.  
Title: System Vice President, Medical Education  
Chief Academic Officer  
Date: 10-3-11



**ATTACHMENT A**

“Equipment” shall mean and include the following property:

<u>Equipment</u>	<u>Cost</u>
Confocal (or equivalent) Microscope(s)	\$200,000 (minimum)

Cost Share

Cost share will include the additional cost to purchase the microscope(s) and/or renovate the area if needed, but will be a minimum of \$200,000

**First Amendment to the  
Joint Use Agreement  
Between  
The University of Akron  
And  
Northeast Ohio Medical University  
And  
Summa Health System**

This Amendment is made to the original Joint Use Agreement between the University of Akron (hereinafter referred to as "UA") and Northeast Ohio Medical University (hereinafter referred to as "NEOMED"), and Summa Health System (hereinafter referred to as "Partner"), signed by UA on 10/17/2011, by NEOMED on 10/10/2011, and by Partner on 10/3/2011, for the purchase of equipment for use by the Summa Health System and other partners in the *Orthopaedic Research Cluster of Northeast Ohio (ORCNEO)* (the "Project").

The Agreement is hereby amended as follows:

**I. Equipment**

Partner will purchase the Equipment and maintain ownership thereof. Partner will install, operate, and maintain the Equipment. The Award funds will be used in accordance with the Chancellor of the Ohio Board of Regents Allowable Capital Expenditure Guidelines. UA and NEOMED will provide a total of \$200,000 (two hundred thousand dollars) to Partner in support of the cost of the Equipment and Partner will provide cost share in an amount of \$200,000 (two hundred thousand dollars). The Equipment will be located in Building D, Room 137, Medical Campus for Summa Health System (the "Location").

**XII. Distribution of Funds and Payment of Administrative Costs**

Following the approval of this Agreement by the Board of Regents, UA will request the release of and seek to encumber the Funds to UA for the purpose of the purchase of the equipment. After release and encumbrance of the Funds, the Partner may obtain payment by submitting to NEOMED an invoice for payment identifying the amounts to be reimbursed and the cost share provided. Said invoice, signed by an authorized financial official, should be sent to:

Marie Baka-Mosko, Grants Accountant  
Northeast Ohio Medical University  
4209 State Route 44, PO Box 95  
Rootstown, Ohio 44272  
email: mbaka@neomed.edu  
phone: 330.325.6371

Equipment must be purchased by January 11, 2014. A final statement of cumulative costs incurred, including cost sharing, marked "FINAL," must be submitted to by March 11, 2014. Pursuant to O.A.C. 3333-1-03(E)(10), UA may deduct and retain from the Funds an amount up to 1.5% of the Funds to compensate it for actual costs of administration.

All other terms and conditions set forth in the Agreement shall not be affected by this Amendment and shall remain in full force and effect.

**IN WITNESS WHEREOF**, the respective Parties hereto have caused this Agreement to be executed by their properly and duly authorized officers or representatives.

THE UNIVERSITY OF AKRON

By: \_\_\_\_\_  
Kathryn Watkins  
Director, Research Services and Sponsored Programs

Date: \_\_\_\_\_

NORTHEAST OHIO MEDICAL UNIVERSITY

By: \_\_\_\_\_  
Walter E. Horton, Jr., Ph.D.  
Vice President for Research

Date: \_\_\_\_\_

SUMMA HEALTH SYSTEM

By: \_\_\_\_\_  
Joseph Zarconi, M.D., F.A.C.P  
System Vice President, Medical Education  
Chief Academic Officer

Date: \_\_\_\_\_