



**Department of
Higher Education**

John R. Kasich, Governor
John Carey, Chancellor

DIRECTIVE 2017-091

October 3, 2017

**RE: JOINT USE AGREEMENT BETWEEN CLEVELAND STATE UNIVERSITY AND
CLEVELAND MUSEUM OF ART.**

Cleveland State University has been granted appropriations contained in Senate Bill 260 of 131st General Assembly in the amount of three million dollars. Cleveland State University will use the funds to improve the facility owned by the Cleveland Museum of Art. As required by Ohio Administrative Code section 3333-1-03, Cleveland State University submitted a Joint Use Agreement for consideration and approval by the Chancellor.

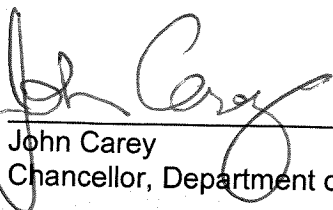
The agreement conforms to Ohio Administrative Code as follows –

- 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 Department's website for the purpose 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 Cleveland State University and the Cleveland Museum of Art.

This directive will take effect immediately.



John Carey
Chancellor, Department of Higher Education

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mlc

**JOINT USE AGREEMENT
BETWEEN
CLEVELAND MUSEUM OF ART AND
CLEVELAND STATE UNIVERSITY**

THIS JOINT USE AGREEMENT (this "Agreement") is between CLEVELAND MUSEUM OF ART, 11150 East Blvd, Cleveland, OH 44106, and Ohio non-profit corporation (hereinafter "CMA"), and CLEVELAND STATE UNIVERSITY, 2121 Euclid Avenue, Cleveland, Ohio 44115, an instrumentality of the State of Ohio created and existing under Chapter 3344 of the Ohio Revised Code (hereinafter "CSU" or "University").

RECITALS

WHEREAS, UNIVERSITY's mission is to provide an education of high quality to students with diverse backgrounds, experiences, and educational needs, as well as serve as a catalyst, leader, and partner in the ongoing enhancement of the quality of life and economic viability of the region and the State of Ohio; and

WHEREAS, CMA is an Ohio non-profit corporation that is one of the world's most distinguished comprehensive art museums and one of northeastern Ohio's principal civic and cultural institutions. CMA seeks to bring the pleasure and meaning of art to the broadest possible audience in accordance with the highest aesthetic, intellectual, and professional standards by augmenting, preserving, obtaining exhibits, and fostering understanding of the outstanding collections of world art for the public; and

WHEREAS, it is the intention of this Agreement that University and CMA will develop and maintain an educational relationship that will be mutually beneficial to both parties through this Joint Use Agreement; and

WHEREAS, the Ohio General Assembly passed Amended Senate Bill Number 260, which appropriates, in the sum of Three Million Dollars (\$3,000,000.00) ("Funds") to UNIVERSITY to be used for the Project (as defined in Section 7 below); and

WHEREAS, the State of Ohio capital appropriations released by the Chancellor of the Ohio Department of Higher Education (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, University has concluded that the value of the use of CMA facilities and resources by 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 University than to others.

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

1. Use of CMA's Facilities and Resources by University.

- (a) Provide a total of one thousand nine hundred (1,900) student memberships as further detailed in Exhibit A.
- (b) Provide five hundred (500) parking vouchers for CSU students, faculty and staff.
- (c) Provide two (2) undergraduate unpaid coop work experience for students in the University's Art Department annually.
- (d) Provide one (1) rental of the Ames Family Atrium to CSU annually.
- (e) Provide CSU with a CMA Corporate Membership at the Sustainer Level, as further described in Exhibit B.

2. Promotion. CMA shall recognize CSU as a donor equivalent to the annual value of the debt service of this appropriation as part of the CMA's donor recognition program during the term of this Agreement.
3. Joint Committee. A Joint Committee comprised of CMA's representatives and representatives of University's Art Department will develop the details and guidelines for implementation of program referenced in Section 1 above. The University will ensure that the Joint Committee meets at least annually to audit, review, and monitor implementation of the parties' commitments under this Agreement and will designate one person to oversee and facilitate the administration and implementation of this Agreement. A written report shall be prepared following each meeting, and submitted to each party's board of directors or trustees, and the Chancellor.
4. Term; Termination Prior to Expiration of Term. The term of this Agreement shall commence as of the date the University has access to the CMA facilities and shall end twenty (20) years thereafter.
5. Reimbursement of State upon Termination. In the event that this Agreement is terminated for any reason prior to twenty (20) years from the commencement date, CMA shall remit to the State of Ohio a prorated portion of the Funds received by CMA, which shall be calculated by dividing the Funds contributed by the State of Ohio and received by CMA by twenty (20) and multiplying that amount times the difference between twenty (20) and the number of full years during which CMA's obligations under this Agreement have been fulfilled.

6. Compliance with Laws. CMA shall comply with all pertinent federal, state and local laws as well as state administrative regulations, applicable to the use of the Funds hereunder and to the operation of the Project. University shall comply with all pertinent federal, state and local laws as well as state administrative regulations, applicable to the disbursement of the Funds hereunder and to the use of the Project as provided hereunder.
7. Funds Used Only for Project. The Funds provided under this Agreement shall be used by CMA only for capital improvements related to (the "Project"), including but not limited to, costs related to the renovation, expansion, and reinstallation of the Cleveland Museum of Art building located at 1150 East Boulevard, Cleveland OH 44106.
8. Ownership of Insurance. CMA will obtain and maintain insurance for the Project and owns the premises. University will be added as an additional insured.
9. Competitive Bidding. CMA, in connection with the expenditure of the Funds hereunder, shall, to the extent required by law, follow the competitive bidding procedures for educational facilities construction identified in Ohio Revised Code Chapter 153, including, but not limited to, publishing advertisements to seek bids, and awarding contracts to the lowest responsive and responsible bidder.
10. Hold Harmless. CMA shall hold the State of Ohio and University, its officers, trustees and employees harmless from any and all obligations, expenses, liabilities or claims of any kind arising out of the construction, renovation, operation, or maintenance of the Project, and/or University, its 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 CMA, its officers, directors or employees, including, but not limited to CMA's failure or alleged failure to comply with applicable public bidding requirements or any other federal, state or local law, ordinance, rule, order, directive or regulation. Notwithstanding the foregoing, CMA shall have no obligation to indemnify or hold harmless any party hereunder in the event such party acted in a negligent or willful manner.

11. Amendments. Any amendments to this Agreement shall be in writing, signed by CMA and University, and shall require approval by the Chancellor.
12. Records of University Use. Upon request by the Chancellor and/or University or CMA, as the case may be, either party shall supply the Chancellor and/or University or CMA, as the case may be, with all pertinent records, including financial records, which measure the nature and extent of use of CMA's facilities and resources by University, the terms and conditions governing such use and the specific benefits derived by University under this Agreement.
13. Distribution of Funds; Administrative Costs. Upon execution of this Agreement, University shall submit to the Chancellor a formal request for the release of the Funds. See Exhibit C, attached hereto and incorporated herein. After the release of the Funds, CMA shall submit to University requests for payment of amounts along with documentation of contractor invoices or purchase orders related to obligations incurred by CMA for permitted uses of the Funds. Upon University's receipt of any such approved request for payment and documentation of invoices or purchase orders, University shall disburse to CMA the Funds so requested.

From the Funds, University shall receive administrative costs in the amount of Forty-Five Thousand Dollars (\$45,000.00), which is equal to one and one-half percent (1½%) of the total amount of the Funds.

14. Notices. All notices to the parties shall be sent by registered or certified mail, postage prepaid and addressed to the parties at the addresses set forth below, or to such other address as either party shall have designated by prior notice.

Cleveland State University
2121 Euclid Avenue AC 333
Cleveland, Ohio 44115
Attn: Provost

With a copy to:

Office of General Counsel
Cleveland State University
2121 Euclid Avenue AC327
Cleveland, Ohio 44115

And:

Cleveland Museum of Art
11150 East Blvd,
Cleveland, OH 44106
Attn: Chief Financial Officer

With a copy to:
Division of Advancement
11150 East Blvd,
Cleveland, OH 44106

15. Binding Nature. This Agreement shall be binding upon and inure to the benefit of CMA and University and their respective successors.
16. Entire Agreement. This Agreement sets forth the entire agreement of the parties hereto relating to the subject matter of this Agreement.

17. Heading. 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.
18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

[No further text on this page. Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the month, day
and year signed last signed below.

APPROVED AS TO LEGAL FORM
Signature: [Signature]
Title: General Counsel
Office of General Counsel
Cleveland State University
Date: 7/26/2017

CLEVELAND STATE UNIVERSITY

By: [Signature]

Print Name: Ronald M. Berkman

Title: President

Date: July 27, 2017

CLEVELAND MUSUEM OF ART:

By: [Signature]

Print Name: William M. Griswold

Title: Director and President

Date: July 25, 2017

"Exhibit A"

Under the terms of this Joint Use Agreement, the Cleveland Museum of Art shall provide the following:

1. 1,900 student memberships per year, Value: \$90.00 per membership = \$171,000 in-kind benefit
2. Memberships are non-renewable and are valid for a period of one-year
3. Benefits of memberships include but are not limited to:
 - i. Free, unlimited admission to all of the Cleveland Museum of Art ticketed exhibitions (one adult member ticket per visit)
 - ii. Discounts to museum events and programs
 - iii. Priority registration and discounts for museum classes for adults and children
 - iv. 15% discount in the museum store
 - v. 10% discount in the museum restaurant and café
 - vi. Member appreciation days
 - vii. Invitations to members-only special exhibition Preview Days
 - viii. Annual subscription to Cleveland Art members magazine
 - ix. Research library privileges
 - x. One personalized, membership card
 - xi. Unused memberships will be made available to faculty
 - xii. The membership is valid for one calendar year from the date of issue ensuring students enrolling at various times have the benefit for a full year.
 - xiii. CMA will provide CSU with the total of memberships used in June of each year.

Note that the Cleveland State University Art Department students and faculty are the primary beneficiaries of this Joint Use Agreement and have priority consideration in the benefits hereunder.

"Exhibit B"

Corporate Membership at the Sustainer Level. In-Kind benefit: \$25,000

1. Value: \$25,000
2. Highest level of recognition of CMA corporate membership program.
3. Benefits of membership include, but are not limited to:
 - i. Invitations to exhibition opening receptions (6 faculty or staff)
 - ii. Guest passes to ticketed exhibitions (100)
 - iii. Invitations to the annual Founders Circle Dinner (2)
 - iv. Recognition on the museum's website, the Donor Digital Wall, and the annual philanthropy issue of Cleveland Art magazine
 - v. Event space rental privileges and discounts during **open** hours (3 free rentals excludes atrium, subject to availability, museum service fees, parking, and catering apply)
 - vi. Event space rental privileges and discounts during **closed** hours (1 free rental excludes atrium, subject to availability, museum service fees, parking, and catering apply)
 - vii. 6 free tickets to the annual Solstice Celebration
 - viii. Corporate memberships cards (4) to be used for a 15% corporate discount in the museum store
 - ix. Private museum tours based on availability
 - x. Specific benefits may change according to the needs of the program

Note that the Cleveland State University Art Department students and faculty are the primary beneficiaries of this Joint Use Agreement and have priority consideration in the benefits hereunder.

"Exhibit C"

Tentative Disbursement Schedule

There will be a single disbursement request for The Project in the amount of \$3 million dollars less the 1.5% administrative fee of \$45,000 due to the University under this Agreement.

Joint Use Agreement Worksheet

The Ohio Board Department of Higher Education

Project: Cleveland Museum of Art: Renovation, Expansion & Reinstallation

Date: April 2017

Section I: State appropriation information.

1. Amount of state appropriation provided: \$3,000,000.00
2. Estimated annual debt service on the appropriation: \$ 230,628.43
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. <u>Provide 1,900 student memberships</u>	<u>\$ \$171,000</u>	<u>20</u>
b. <u>Corporate Membership – Sustainer Level</u>	<u>\$ \$ 25,000</u>	<u>20</u>
c. <u>500 Parking vouchers for staff & students</u>	<u>\$ \$ 5,000</u>	<u>20</u>
d. <u>One rental of Ames Family Atrium</u>	<u>\$ \$ 10,000</u>	<u>20</u>
e. <u>Two undergraduate coop opportunities</u>	<u>\$ \$ 20,000</u>	<u>20</u>
f. <u></u>	<u>\$</u>	<u></u>

(* 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

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 \$384,381 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 \$384,381 per year for 20 years.

Joint Use Agreement Worksheet
The Ohio Board Department of Higher Education

Section III: Basis for values shown in Section II.

a. Provide one thousand nine hundred [1,900] student memberships. In-kind benefit:

\$171,000

1. Value: \$90.00 per membership * 1,900 students per year = \$171,000
2. Memberships are non-renewable and are valid for a period of one-year
3. Benefits of memberships include but are not limited to:
 - i. Free, unlimited admission to all of the Cleveland Museum of Art ticketed exhibitions (one adult member ticket per visit)
 - ii. Discounts to museum events and programs
 - iii. Priority registration and discounts for museum classes for adults and children
 - iv. 15% discount in the museum store
 - v. 10% discount in the museum restaurant and café
 - vi. Member appreciation days
 - vii. Invitations to members-only special exhibition Preview Days
 - viii. Annual subscription to Cleveland Art members magazine
 - ix. Research library privileges
 - x. One personalized, membership card
 - xi. Unused memberships will be made available to faculty
 - xii. The membership is valid for one calendar year from the date of issue ensuring students enrolling at various times have the benefit for a full year.
 - xiii. CMA will provide CSU with the total of memberships used in June of each year.

b. Corporate Membership at the Sustainer Level. In-Kind benefit: \$25,000

1. Value: \$25,000
2. Highest level of recognition of CMA corporate membership program.
3. Benefits of membership include, but are not limited to:
 - i. Invitations to exhibition opening receptions (6 faculty or staff)
 - ii. Guest passes to ticketed exhibitions (100)
 - iii. Invitations to the annual Founders Circle Dinner (2)

Joint Use Agreement Worksheet
The Ohio Board Department of Higher Education

- iv. Recognition on the museum's website, the Donor Digital Wall, and the annual philanthropy issue of Cleveland Art magazine.
 - v. Event space rental privileges and discounts during **open** hours (3 free rentals excludes atrium, subject to availability, museum service fees, parking, and catering apply.)
 - vi. Event space rental privileges and discounts during **closed** hours (1 free rental excludes atrium, subject to availability, museum service fees, parking, and catering apply.)
 - vii. 6 free tickets to the annual Solstice Celebration
 - viii. Corporate memberships cards (4) to be used for a 15% corporate discount in the museum store
 - ix. Private museum tours based on availability
 - x. Specific benefits may change according to the needs of the program
- c. Provide five hundred (500) parking vouchers for CSU staff and students. In-kind benefit: \$5,000.
- 1. Value: $\$10.00 \text{ per voucher} * 500 \text{ vouchers per year} = \$5,000$
- d. One (1) free rental of the Ames Family Atrium. In-kind benefit: \$10,000.
- 1. Museum service fees, parking, and catering fees apply.
 - 2. Subject to availability
- e. Provide two (2) undergraduate unpaid coop work experiences for students in various departments. In-kind benefit: \$20,000.
- 1. Value: $\$10,000 \text{ per coop experience} * 2 \text{ students per year} = \$20,000$
 - 2. Subject to availability

JOINT USE AGREEMENT ANALYSIS

Date: June 9, 2017

Institutions: Cleveland State University and Cleveland Museum of Art

Project Title: Cleveland Museum of Art Renovation

Capital Bill: Amended S.B. 260

Line Item (ALI): C26040

1	¶7	Is the facility to be built/improved identified specifically by address or location?
2	¶¶4,8	Does the non-profit organization now own the property or have a long term lease? If not, when will it control the property?
3	¶4	Does the agreement provide for use of the facility for at least 20 years from the time that it is ready for occupancy?
4	¶5	If the agreement is terminated, is there a pro rata reimbursement clause? Is the reimbursement formula correct?
5	¶7	Will funds be used only for capital improvements and not operating costs?
6	¶10	Will the non-profit hold the institution harmless for all construction, operation, and maintenance costs?
7	¶6	Will the non-profit comply with federal, state, and local laws and rules?
8	¶9	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.)?
9	¶13	Does the contract provide for a 1.5% administrative fee for the institution?
10	¶11	Does the agreement require that amendments be approved by the Board of Regents?
11	Ex. C	Is a drawdown schedule or payment procedure included?
12	¶1, Exhibits A & B	Are the extent and nature of spaces and uses adequately described?
13	¶1, Exhibits A & B	Are the terms and conditions of use of the facility described?

	Worksheet and page 2	
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)
15	¶8	Is the facility insured?