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DIRECTIVE 2008-005

May 8, 2008

Re: A JOINT USE AGREEMENT BETWEEN CLEVELAND STATE UNIVERSITY AND THE KENSTON LOCAL SCHOOL DISTRICT.

H.B. 699 of the 126th General Assembly includes a specific capital appropriation of \$300,000 to Cleveland State University for the Kenston Local School District (Kenston). Kenston will own and operate the capital equipment acquired with state capital funds.

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. Cleveland State University and the Kenston Local School District presented a joint use agreement for approval.

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

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 Cleveland State University and the Kenston Local School District.

Sincerely,

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

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Joint Use Agreement between Cleveland State University
and the Kenston Local School District

BACKGROUND

H.B. 699 includes a specific capital appropriation of \$300,000 to Cleveland State University for the Kenston Local School District (Kenston). Kenston will own and operate the capital equipment acquired with state capital funds. As required in Ohio Administrative Code section 3333-1-03, Kenston submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support the acquisition of a wind turbine unit on the Kenston campus located at 17419 Snyder Road, Chagrin Falls, Ohio.

REVIEW

Throughout the entire term of the agreement, Kenston and Cleveland State University agree to provide the following –

- a. Kenston will provide University students and faculty access to the wind turbine unit to conduct engineering analysis, data collection and reverse-engineering exercises on the unit;
- b. University will develop one or several courses pertaining to the understanding and design/analysis of wind turbine systems. The wind turbine unit to be installed at Kenston will support these courses. Such courses will be available for incorporation into Kenston and University curriculums;
- c. Kenston will provide meaningful opportunities for University students to pursue internships, senior projects, practicums, and other educational activities centered on the wind turbine unit on Kenston's campus;
- d. University will provide meaningful opportunities for Kenston students to participate in classes, workshops, post-secondary courses, and other educational activities centered on the wind turbine project on both campuses;
- e. The University and Kenston will mutually sponsor colloquia, conferences and other activities featuring the study and analysis of the wind turbine unit at Kenston and its impact on energy conservation.

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 Cleveland State University and Kenston Local School District.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Cleveland State University/Kenston Local School District

Project Title Kenston Wind Turbine Project

Capital Bill HB 699 Item CAP-168 Kenston Wind Turbine Project in Geauga (CSU Engineering Department)

- 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:	<u>\$300,000</u>
2. Estimated annual debt service on the appropriation:	<u>\$23,063</u>
3. Term of the state bond, in years:	<u>20 years</u>

(Total Debt service = \$461,257)

Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. Graduate Student Tuition Value	<u>\$17,570/year</u>	<u>15</u>
b. Undergraduate Student Tuition Value	<u>\$13,200/year</u>	<u>15</u>
c. Graduate Thesis Faculty (part-time)	<u>\$10,000/year</u>	<u>15</u>
d. Course/Curriculum Development and Implementation (one time expense)	<u>\$15,000</u>	<u>1</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.

II a. And b. were calculated using domestic students' tuition at a rate of ten (10) students per year from five (5) possible Departments in Cleveland State University's Fenn College of Engineering (Two (2) students from each Department).

IIc. Calculated considering one faculty member per year to serve as thesis advisor.

**JOINT USE AGREEMENT
BETWEEN
KENSTON LOCAL SCHOOL DISTRICT
AND
CLEVELAND STATE UNIVERSITY**

THIS JOINT USE AGREEMENT (“Agreement”) is between KENSTON LOCAL SCHOOL DISTRICT, an Ohio non-profit corporation (“KENSTON”) and CLEVELAND STATE UNIVERSITY, an instrumentality of the State of Ohio created and existing under Chapter 3544 of the Ohio Revised Code (“UNIVERSITY”).

RECITALS

WHEREAS, the **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, **KENSTON**, which serves pre-K-12 students in Auburn and Bainbridge Townships in Geauga County, seeks to implement a wind power project on its campus to study, analyze and provide teaching opportunities regarding wind power as an alternative energy source, in addition to realizing energy savings through the construction and installation of a wind turbine unit on the **KENSTON** campus (“the Project”); and

WHEREAS, it is the intention of this Agreement to develop an educational partnership centered on the Project that will be mutually beneficial to both parties; and

WHEREAS, the Ohio General Assembly passed House Bill Number 699, which appropriates a total sum of Three Hundred Thousand Dollars and 00/100 (\$300,000.00) (“Funds”) to **UNIVERSITY** to be used by **KENSTON** for capital construction; and

WHEREAS, the State of Ohio capital appropriations released through the Ohio Board of Regents require compliance with Ohio Board of Regents Rule 3333-1-03(E), which specifically calls for the execution of a joint use agreement; and

WHEREAS, the **UNIVERSITY** has concluded that the value of the use of **KENSTON**'s facilities and resources by the **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 the **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 **KENSTON**'s Facilities and Resources by **UNIVERSITY**.

(a) Before selection of a wind turbine system by **KENSTON** and their consultant, **UNIVERSITY** will be informed about the power rating of the unit. After the purchase and installation of the unit, **UNIVERSITY**'s students and faculty will have access to the system to conduct engineering analysis, data collection and reverse-engineering exercises on the system. These exercises shall not interfere with the normal operation of the wind turbine system.

The departments of Electrical, Mechanical, Industrial, and the Engineering Technology in **UNIVERSITY**'s Fenn College of Engineering ("Fenn College") will be the primary departments that will participate in these exercises. Faculty with research expertise related to wind energy, along with selected students at the freshman, sophomore, junior, senior and graduate levels will observe and analyze the wind turbine system without interfering with its normal operations. As set forth in Section 2 of this Agreement, the parties will mutually develop appropriate times and the logistics of such exercises on **KENSTON**'s campus.

(b) **UNIVERSITY** will develop one or several courses pertaining to the understanding and design/analysis of wind turbine systems. The wind turbine unit to be installed at **KENSTON** will be used by **UNIVERSITY** to support these courses. Such courses will be available for incorporation into **KENSTON** and **UNIVERSITY** curriculums.

(c) **KENSTON** will provide meaningful opportunities for **UNIVERSITY** students to pursue internships, senior projects, practicums, and other educational activities centered on the Project on **KENSTON**'s campus.

(d)UNIVERSITY will provide meaningful opportunities for KENSTON students to participate in classes, workshops, post-secondary courses, and other educational activities centered on the Project on both campuses.

(e)The parties will mutually sponsor colloquia, conferences and other activities featuring the study and analysis of the wind turbine system at KENSTON and its impact on energy conservation.

2. Joint Committee. A Joint Committee comprised of **KENSTON's** representatives and representatives of **UNIVERSITY's** Fenn College of Engineering will develop the details and guidelines for implementation of programs referenced in item (1) above. The Joint Committee shall meet at least semi-annually to review and monitor implementation of the parties' commitments under this Agreement. A written report shall be prepared following each meeting, and submitted to each party's board of trustees, and the Board of Regents upon its request.
3. Annual Reports, Publications and Logo. Each annual report issued by **KENSTON** during the term of this Agreement shall (1) include a description of the **UNIVERSITY-KENSTON** educational partnership created by this Agreement, and (2) mention that the funds were provided via a state appropriation made to the **UNIVERSITY**. Any other publications or advertising related to the Project and generated by the parties, jointly or individually shall describe the educational partnership created herein. The University logo will be prominently displayed as appropriate on the wind turbine unit being installed pursuant to this Agreement.

4. Term: Termination Prior to Expiration of Term. The term of this Agreement shall commence as of the date of execution set forth below and shall end fifteen (15) years thereafter. If any of the material terms or conditions contained in this Agreement are breached by **KENSTON**, then **UNIVERSITY** shall have the right to terminate this Agreement upon forty-five (45) days' written notice to **KENSTON**, provided that **KENSTON** does not cure the breach within 45-day period.
5. Reimbursement of State upon Termination. In the event that this Agreement is terminated for any reason prior to fifteen (15) years from the commencement date, **KENSTON** 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 fifteen (15) and multiplying that sum by fifteen (15) less the number of full years that **KENSTON's** obligations under this Agreement were fulfilled.
6. Compliance with Laws. **KENSTON** shall comply with all pertinent federal, state and local laws as well as state administrative regulations, applicable to the use of funds hereunder and to the operation of the Capital Improvement.
7. Funds Used Only for Capital Improvements. The Funds provided under this Agreement shall be used by **KENSTON** only for capital improvements, including, but not limited to the Project, which involves a wind study, purchase and construction/installation of a wind turbine unit

on the **KENSTON** campus, located at 17419 Snyder Road, Chagrin Falls, Ohio, 44023.

8. Ownership of Project and Insurance. The Project will be owned by **KENSTON**, and will be fully insured by **KENSTON. UNIVERSITY** will be added as an additional insured.
9. Competitive Bidding. **KENSTON**, in connection with the expenditure of funds for the Project, 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. To the extent permitted by law, **KENSTON** shall hold the State of Ohio and the **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 the **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 **KENSTON**, its officers, trustees or employees, including, but not limited to **KENSTON**'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.

11. Amendments. Any amendments to this Agreement shall be in writing, signed by **KENSTON** and **UNIVERSITY**, and shall require approval by the Ohio Board of Regents.
12. Records of **UNIVERSITY** Use. Upon request by the Ohio Board of Regents and/or the **UNIVERSITY**, **KENSTON** shall supply the Ohio Board of Regents and/or the **UNIVERSITY** with all pertinent records, including financial records, which measure the nature and extent of use of **KENSTON**'s facilities by the **UNIVERSITY**, the terms and conditions governing such use and the specific benefits derived by the **UNIVERSITY** under this Agreement.
13. Distribution of Funds; Administrative Costs. Upon execution of this Agreement, **UNIVERSITY** shall submit to the Ohio Board of Regents a formal request for the release of the Funds. After the release of the Funds, **KENSTON** shall submit to **UNIVERSITY** requests for payment of amounts along with documentation of contractor invoices or purchase orders related to obligations incurred by **KENSTON** for permitted uses of the Funds. A tentative disbursement schedule is attached hereto as **Exhibit A**. From the Funds, **UNIVERSITY** shall receive administrative costs in the amount of Four Thousand Five Hundred Dollars and 00/100 (\$4,500.00), 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.

KENSTON LOCAL SCHOOL DISTRICT
17419 Snyder Road
Chagrin Falls, Ohio 44023
Attn: Superintendent

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

With a copy to: University Legal Counsel
Cleveland State University
2121 Euclid Avenue AC327
Cleveland, Ohio 44115

15. Binding Nature. This Agreement shall be binding upon and inure to the benefit of **KENSTON** and the **UNIVERSITY** and their respective successors and assigns.
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.

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

KENSTON LOCAL SCHOOL DISTRICT

**CLEVELAND STATE
UNIVERSITY**

By: Joan Hamilton
President
Kenston Local School District
Board of Education

By: Michael Schwartz
Michael Schwartz
President

Date: 11/20/07

Date: 11/17/07

EXHIBT "A"

DISTRIBUTION OF FUNDS

Kenston Local School District requests a one-time distribution of \$295,500.00, which represents the appropriated amount of \$300,000.00 less the 1½% administration fee of \$4,500.00.