



John R. Kasich, Governor
Jim Petro, Chancellor

University System of Ohio
Board of Regents

DIRECTIVE 2011-018

July 18, 2011

RE: JOINT USE AGREEMENT BETWEEN YOUNGSTOWN STATE UNIVERSITY
AND THE TECH BELT ENERGY INNOVATION CENTER

H.B. 462 includes a specific capital appropriation of \$500,000 to Youngstown State University (YSU) for the Tech Belt Energy Innovation Center (TBEIC) project. The TBEIC will own the property to be improved with state capital funds. As required by Ohio Administrative Code section 3333-1-03, Youngstown 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 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 Youngstown State University and the Tech Belt Energy Innovation Center.

This directive will take effect immediately.

Jim Petro
Chancellor, Ohio Board of Regents

03. NJC

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Joint Use Agreement between Youngstown State University and the Tech Belt Energy
Innovation Center

BACKGROUND

H.B. 462 includes a specific capital appropriation of \$500,000 to Youngstown State University (YSU) for the Tech Belt Energy Innovation Center (TBEIC) project. The TBEIC will own the property to be improved with state capital funds. As required by Ohio Administrative Code section 3333-1-03, Youngstown State University submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support the purchase and renovation of approximately 37,000 square feet of commercial and industrial space located at 125 Market Street, Warren, Ohio.

REVIEW

Throughout the entire term of the agreement, the TBEIC will provide the following to YSU –

- 1) Access to the Center to conduct conferences and community seminars for up to one hundred (100) hours per year;
- 2) Access to the Center's laboratory and testing equipment, including technical staff, for up to one hundred (100) hours per year;
- 3) Access to the Center's alternative energy infrastructure (microgrid system) for up to 100 days per year, eight (8) hours for each day.

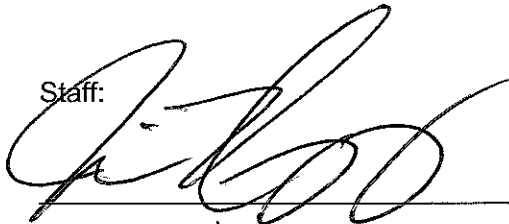
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RECOMMENDATION

**Staff recommends Chancellor approval of the Joint Use Agreement between
Youngstown State University and the Tech Belt Energy Innovation Center.**

Staff:



Print Name

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: \$500,000
2. Estimated annual debt service on the appropriation: \$ _____
3. Term of the state bond, in years: _____

Section II: Estimated value of use of the facility.

Use(s) of the facility* Annual value of use # of years

Use(s) of the Facility*	Annual value of use	# of years
a. Use of the Facility for up to 100 hours per year for conferences and community seminars, which includes use of in-house technical, video conferencing and laboratory equipment, and four onsite parking spaces. The cost to the public to rent the Facility for conferences and seminars would be approximately \$100 per hour. 100 hours of use per year of conferencing space by YSU would provide YSU with \$10,000 in value per year.	\$10,000	20
b. Annual use of laboratory and testing equipment, including technical staff, for up to 100 hours per year for tests and sample analysis. The cost to the public to use laboratory and testing equipment, with technical staff, would be approximately \$100 per hour. 100 hours of use per year of laboratory and testing equipment would provide YSU with \$10,000 in value per year.	\$10,000	20
c. Exclusive use of a designated highly visible area with a table for YSU promotional advertising and informational material. Fair market value to have exclusive use of a highly visible 30 to 40 sq. ft area, along with a table for advertising, is approximately \$4,000 per year.	\$4,000	20
d. Use of alternative energy infrastructure (micro-grid system) for up to 100 days per year. YSU use of the micro-grid system would include design, build and operate in situ device interfaces for developmental testing purposes. The cost to the public to use the micro-grid system would be approximately \$150 per day. 100 days of use per year of a micro-grid system by YSU would provide YSU with \$15,000 in value per year.	\$15,000	20

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Youngstown State University/Tech Belt Energy Innovation Center

Project Title Purchase and Renovation of Building

Capital Bill HB 462 Item C34526 Trumbull County Business Incubator

- 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 Chancellor of 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

This Joint Use Agreement (the "Agreement") is made and entered into this 10 day of June 2011, by and between Youngstown State University (the "University"), a state university of the State of Ohio created and existing under Chapter 3356 of the Ohio Revised Code, and the Tech Belt Energy Innovation Center (the "TBEIC"), an Ohio non-for-profit corporation.

WHEREAS, TBEIC intends to purchase and renovate approximately 37,000 square feet of commercial and industrial space, located at 125 Market Street, Warren, Ohio, to be known as the Center (the "Center"), and formerly known as the Kresge Building; and

WHEREAS, the 128th General Assembly of the State of Ohio enacted Amended Substitute House Bill Number 462, which appropriated Five Hundred Thousand Dollars (\$500,000.00) for the Center (the "Funds"); and

WHEREAS, the University has concluded that the value of the use of the Center by the University as provided in this Agreement is reasonably related to the amount of the Funds appropriated.

NOW THEREFORE, in consideration of the respective benefits to be received by the parties and the undertakings herein, the parties agree as follows:

1. LOCATION

The Center is located in the City of Warren, Trumbull County, Ohio, situated on the historic Warren Square at 125 Market Street, Warren, Ohio. The Center is located approximately 15 miles from the University.

2. EXTENT AND NATURE OF CENTER

The Center is designed to be a state of the art facility that will provide technical and business services necessary to accelerate the commercialization of advanced energy technologies. The Center will have physical and virtual tenants, clients and collaborators, all of which will be actively engaged in the task of solving business and/or technical challenges related to energy technology commercialization. The University will benefit from the use of the Center, as well as the economic development advantages that it will provide to the region.

3. USE OF THE CENTER BY UNIVERSITY

During the term of this Agreement, the University shall be entitled to use the Center upon terms and conditions more favorable than those available to the public to a degree that reasonably reflects the Funds appropriated. Such uses granted at no cost to the University during the term of this Agreement include:

(i) Use of the Center to conduct conferences and community seminars for up to one hundred (100) hours per year. For each conference and/or community seminar at the Center, TBEIC and/or any entity that TBEIC contracts with to operate and manage the Center, shall operate the Center and provide adequate administrative and technical support to the University. In addition, TBEIC shall provide the

University with the use of in-house technical, video conferencing and laboratory equipment; and access to onsite parking for no less than four vehicles;

(ii) Use of the Center's laboratory and testing equipment, including technical staff, for up to one hundred hours per year to conduct tests and sample analysis;

(iii) Use of alternative energy infrastructure (microgrid system) for up to 100 days per year (8 hours per day); and

(iv) Use of a highly visible 40 square feet area on the first floor of the Center that includes a display table appropriate for YSU to utilize for advertising and informational material. The area and display table will be available for exclusive use by YSU.

In addition to the aforementioned uses of the Center, the University shall be granted permanent naming rights to a classroom or highly visible space in the Center, as well as have the University's name associated with the name of the Center.

4. OPPORTUNITIES FOR UNIVERSITY STUDENTS

TBEIC agrees to use its best efforts to work with promoters that utilize the Center so that University students may participate in cooperative learning, internship and other working relationships with Center clients and members.

5. OWNERSHIP AND MAINTENANCE OF CENTER

The University does not own the Center, nor does the University have any responsibility to operate or maintain the Center. The Center is owned by the Tech Belt Land Company, LLC, a wholly owned subsidiary of TBEIC. TBEIC shall maintain and repair the Center during the term of this Agreement, and shall bear all expenses connected with such maintenance and repairs necessary to maintain the availability of the Center to the greatest extent practicable for the continued and uninterrupted use of the Center by the University. In the event alterations, additions, repairs, replacements or other changes or improvements to the Center are required by law or by unilateral action by TBEIC, TBEIC shall make such alterations, additions, repairs, replacements or other changes or improvements and shall bear all expenses connected therewith. The daily administration and operation of the Center is the sole responsibility of TBEIC, and TBEIC shall be responsible for the payment of all ongoing maintenance, utility, and security costs for the Center.

6. USE OF NAMES

TBEIC shall not use the name of Youngstown State University, or any University logo or trademark without the prior written permission of the University. The University may use, without the permission of TBEIC, the name of Center.

7. TERM

Unless earlier terminated, the duration of this Agreement shall be for a term of twenty (20) years, commencing on the date of execution of this Agreement.

8. **TERMINATION**

TBEIC and the University shall exercise good faith in performing and enforcing the provisions of this Agreement. However, if either party desires to terminate this agreement prior to the expiration of its term, written notice of that party's intent to terminate this Agreement shall be given to the other party at least one hundred eighty (180) days prior to the effective date of termination. This Agreement shall not be terminated during the University's academic semester without the prior express written permission of the University. In the event notice of intent to terminate is given, TBEIC and the University shall negotiate in good faith for suitable terms of termination.

9. **REIMBURSEMENT TO STATE UPON TERMINATION**

If the University's right to use the Center is terminated by TBEIC or by the University based on a substantial or material breach of this Agreement by TBEIC prior to the expiration of the twenty (20) year term of this Agreement, TBEIC shall reimburse the State of Ohio the prorated share of Funds. The reimbursement shall be calculated by dividing the amount of the Funds by twenty (20) and multiplying the sum by twenty (20) less the number of full years the Center has been utilized by the University.

10. **FUNDS TO BE USED FOR CAPITAL IMPROVEMENTS**

The Funds shall be used by TBEIC only for capital improvements to the Center as stated in Amended Substitute House Bill Number 462, enacted by the 128th General Assembly of the State of Ohio, and shall not be used for operating costs. Such capital improvements shall include, but are not limited to, site improvements and building construction costs.

11. **COMPLIANCE WITH LAWS**

TBEIC shall comply with all applicable federal, state and local laws, rules and regulations.

12. **NON-DISCRIMINATION**

Neither TBEIC, nor any agent, officer, employee, representative, or person acting on its behalf, shall discriminate by reason of race, color, religion, gender, age, disability, marital status, national origin, ancestry, veteran status, or sexual orientation, in connection with the subject matter of this Agreement.

13. **BIDDING PROCEDURES**

TBEIC, in connection with the Center, shall follow the procedures pertaining to public improvements as set forth in Chapter 153 of the Ohio Revised Code.

14. **AMENDMENTS**

All amendments to this Agreement shall be in writing, signed by TBEIC and the University, and shall require approval by the Chancellor of the Ohio Board of Regents.

15. LIABILITY

TBEIC shall indemnify, defend and hold harmless the State of Ohio, the University and their trustees, officers, employees, agents and representatives, from and against any and all costs or expenses, including attorney fees, liabilities, claims, losses, damages, injuries or death, causes of action, or judgments of any kind, arising directly or indirectly from or related to, the design, construction, operation or maintenance of the Center.

16. INSURANCE

TBEIC shall keep the Center continuously insured during the term of this Agreement with a reliable insurance policy. The Center shall be insured for not less than one hundred percent (100%) of the replacement value of the Center, or the highest percentage of coverage available, but not in any event less than the amount of the Funds as limited by the pro-ration set forth in Section 10 herein. The University shall be designated as an additional named insured. Any policy of insurance shall be written so as not to be subject to cancellation without written notice to the University.

17. DISTRIBUTION OF FUNDS

Upon execution of this Agreement, the University shall submit to the Chancellor of the Ohio Board of Regents a formal request for the release of the Funds. TBEIC may submit to the University requests for payment of amounts due along with contractor invoices or purchase orders related to obligations incurred by TBEIC for permitted uses of the Funds, on or after the time the work is completed. The University shall seek the disbursement of such requested funds and shall transmit such funds, when received, to TBEIC.

18. REIMBURSEMENT TO UNIVERSITY FOR ALL ADMINISTRATIVE COSTS

The University shall receive from the Funds the actual administrative costs incurred as a result of the development of the Center. Said reimbursement of actual administrative costs shall be up to the amount of Seven Thousand Five-Hundred Dollars (\$7,500.00), which is equal to one and one-half percent (1.5%) of the amount of the Funds.

19. HEADINGS

The headings of the sections of this Agreement have been inserted for convenience of reference only, and shall in no way be interpreted to restrict, construe or modify any of the terms or provisions contained herein.

20. GOVERNING LAW AND VENUE

The laws of the State of Ohio shall be applicable to any questions which may arise relating to the validity, interpretation, performance or enforcement of this Agreement and each of its provisions. Jurisdiction for the construction, interpretation and/or enforcement of this Agreement shall be in the appropriate state or federal court in the State of Ohio, except to the extent that exclusive jurisdiction for a cause of action arising from or related to this Agreement may lie in a court outside the State of Ohio.

21. CONFLICT WITH OTHER AGREEMENTS

Neither TBEIC nor the University shall enter into other agreements, arrangements, understandings or relationships inconsistent with the provisions of this Agreement.

22. WAIVER

No delay or failure of either party to enforce any provision of this Agreement shall constitute a waiver or limitation of any rights enforceable hereunder. The failure of either party at any time to require performance of any provision of this Agreement shall in no manner affect the right of such party at a later time to enforce the same. No waiver by either party of any condition, or of any breach of any term of this Agreement, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term or condition.

23. NOTICE

All notices, requests or other communications to be given pursuant to the terms of this Agreement shall be in writing and shall be delivered to the parties at the addresses set forth below, or to such other address as either party shall have designated by prior notice:

If to the University:

Vice President for Administration
Youngstown State University
Tod Hall
Youngstown, Ohio 44555

and

General Counsel
Youngstown State University
Tod Hall
Youngstown, Ohio 44555

If to TBEIC:

Chairperson
Tech Belt Energy Innovation Center
125 Market Street
Warren, Ohio

24. SEVERABILITY

This Agreement is subject to all applicable federal and state laws and regulations. In the event that any provision of this Agreement is determined by a court of competent jurisdiction to be contrary to law or invalid or unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect.

25. VALUE OF USE OF TBEIC CENTER AND PROVISION OF RECORDS


The University has concluded that the value of use of the Center by the University in this agreement is reasonably related to the amount of Funds appropriated and, upon request of the Ohio Board of Regents, TBEIC will provide to the Chancellor of the Ohio Board of Regents all pertinent records which measure the nature and extent of use of the Center by the University, the terms and conditions governing such use and the specific benefits derived by the University under this Agreement.

26. ENTIRE AGREEMENT

This Agreement constitutes the complete and entire agreement and understanding of the University and TBEIC regarding the subject matter of this Agreement, and supersedes any and all prior or contemporaneous representations or agreements, whether oral or written, between the parties regarding the subject matter of this Agreement.

THE TECH BELT ENERGY INNOVATION CENTER

By and through its Board of Directors



CHAIR

DATE

YOUNGSTOWN STATE UNIVERSITY

By and through its VP for Finance & Administration



Eugene P. Grilli



DATE