



**Department of
Higher Education**

John R. Kasich, Governor
John Carey, Chancellor

DIRECTIVE 2017-097

October 25, 2017

**RE: JOINT USE AGREEMENT BETWEEN NORTH CENTRAL STATE COLLEGE AND
ASHLAND COUNTY-WEST HOLMES CAREER CENTER.**

North Central State College has been granted appropriations contained in Senate Bill 310 of 131st General Assembly in the amount of four hundred thousand dollars. North Central State College will use the funds to improve the facility owned by the Ashland County-West Holmes Career Center. As required by Ohio Administrative Code section 3333-1-03, North Central State College 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 North Central State College and the Ashland County-West Holmes Career Center.

This directive will take effect immediately.



John Carey
Chancellor, Department of Higher Education

JOINT USE AGREEMENT

This Joint Use Agreement ("Agreement") is entered into by and between North Central State College, an instrumentality of the State of Ohio, created under Chapter 3357 of the Ohio Revised Code, whose address is 2441 Kenwood Circle, Mansfield, Ohio 44906 (hereinafter "NCSC"), and Ashland County-West Holmes Career Center JVSD, a non-profit career technical school, whose business address is 1783 State Route 60, Ashland, Ohio 44805 (hereinafter "JVSD").

WHEREAS, the 131st General Assembly through Senate Bill 310 ("S.B. 310") appropriated \$2,595,000 to NCSC of which a \$400,000 line item is designated as funding for a community project involving JVSD.

WHEREAS, the designated funding will support JVSD for the conversion of heavy shop lab spaces (circa 1973) to create a state-of-the-art engineering, robotics and advanced manufacturing training center located at 1783 State Route 60, Ashland, Ohio 44805 (hereinafter the "Center") to benefit students served by both JVSD and NCSC.

WHEREAS, Ohio Administrative Code §3333-1-03(E) requires a public institution to submit to the Chancellor of the Ohio Department of Higher Education a joint use agreement that contains the requirements in Ohio Administrative Code §3333-1-03 (E)(1)-(11) for review and approval.

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

1. FACILITY OR EQUIPMENT OWNED, TO BE BUILT BY ASHLAND-WEST HOLMES CAREER CENTER. The funds appropriated will go towards the conversion of heavy shop lab spaces (circa 1973) to create the Center and stock the Center with necessary equipment. JVSD owns the real property where the Center will be constructed.
2. USE OF FACILITY AND EQUIPMENT BY COLLEGE. North Central State College will use the Center and its equipment to offer educational programming to secondary students and adult students seeking to improve their skills and prepare for the high-tech jobs. North Central State College, its trustees, employees, volunteers, and students will have access to the Center at no cost, and JVSD agrees it will not charge or cause North Central State College to pay or incur any costs for North Central State College's and its trustees', employees', students', and volunteers access and use.
3. TERM. The term of this Agreement will begin on the date the Center conversion project is complete and the Center is ready for occupancy, and continue in full force and effect for twenty (20) years thereafter.
4. USE OF FUNDS. The \$400,000 of appropriated funds, less NCSC's administrative fee, shall be used only for capital improvements and not operating costs and the funds shall be used only as defined in S.B. 310 referenced hereinabove.

5. REIMBURSEMENT OF FUNDS. Should NCSC's right to use the Center or equipment located therein be terminated prior to the expiration of the 20-year term, JVSD will reimburse the State of Ohio a pro rata portion of the \$400,000 appropriation calculated by dividing \$400,000 by 20 and multiplying that sum by 20 less the number of full years the Center is used by NCSC.
6. LIABILITY AND INSURANCE. JVSD agrees, at its own cost, to procure and continue in force at all times that this Agreement is in effect, in its name, general liability insurance and property insurance, including fire insurance, coverage against any and all claims for injuries to persons or damage to property occurring or arising out of its obligations set forth herein. Such insurance shall at all times be in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and Three Million Dollars (\$3,000,000) aggregate. All of the above insurance limits can be primary or a combination of primary and excess coverage. All of the above insurance shall be written by a company or companies authorized to engage in the business of each specific liability insurance in the State of Ohio with an A.M. Best rating of at least "A" or be otherwise approved in writing by NCSC. Any insurance policy required hereunder shall include an endorsement naming NCSC and the State of Ohio as additional insureds, and waiver of subrogation, and primary/non-contributory coverage in favor of NCSC and the State of Ohio. Prior to the effective date of this Agreement, JVSD shall provide NCSC with (i) a copy of such endorsement and (ii) a certificate reflecting the coverage of the policy, each in a form acceptable to NCSC in its sole discretion. JVSD shall provide written notice to NCSC no less than thirty (30) days prior to a cancellation, non-renewal, expiration or material alteration of the coverage contained in any policy required hereunder, and shall provide to NCSC evidence of continuing coverage of any required policy no less than thirty (30) days prior to its expiration. JVSD must receive written approval from NCSC prior to cancellation, non-renewal, expiration or material alteration of coverage. In addition, JVSD will indemnify and hold harmless NCSC and the State of Ohio from all liability for construction, operation, and maintenance costs of the Center and purchased equipment. In no event shall either party be liable to the other party for indirect, consequential, incidental, special or punitive damages, or lost profits. To the fullest extent permitted by applicable law, JVSD waives all rights against NCSC, the State of Ohio, and its agents and employees for damages to the extent covered by any insurance, except rights to the proceeds of that insurance. All policies shall accomplish the waiver of subrogation by endorsement or otherwise.
7. COMPLIANCE WITH LAWS. JVSD, in the execution of its duties and obligations under this Agreement, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances.
8. COMPETITIVE BIDDING. In performing its obligations pursuant to this Agreement, JVSD agrees to comply with and follow competitive bidding procedures which include, at a minimum, publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidder, as described generally in Ohio Revised Code Chapter 153.

9. APPROPRIATION ADMINISTRATIVE FEE. NCSC shall be reimbursed for administrative costs incurred as a result of the Center conversion project and equipment purchases equal to 1.5% of the appropriated amount.
10. AMENDMENTS. This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto, and are approved by the Ohio Department of Higher Education and submitted to the Chancellor before any amendment takes effect.
11. PAYMENT: That following appropriate state approvals, the funds provided in Senate Bill 310 and subject to this Agreement will be released to NCSC and subsequently transferred to JVSD after presentation by JVSD of invoices or other evidence of expenditures related to obligations incurred by or on behalf of JVSD for permitted use of the appropriated funds. Such obligations must be properly documented to the reasonable satisfaction of NCSC. No payment by NCSC or receipt thereof by JVSD, or any endorsement or statement on any check or any letter accompanying any check or payment, shall prejudice the right of NCSC to audit and recover a balance it deems as unpaid or pursue any other remedy in this Agreement.
12. TERMS AND CONDITIONS OF USE: In addition to any other terms and conditions set forth in this Agreement, JVSD agrees and shall permit NCSC, its employees, students, and agents access and use of the Center at no cost whether that is part of an educational or degree seeking program or otherwise. The parties may expand upon the terms and conditions set forth in this paragraph 12 by jointly executing written amendments in accordance with the procedure set forth in paragraph 10 above. To the extent any amendments conflict with the terms of this Agreement, the terms of this Agreement shall control.
13. STATUS REPORTS TO COLLEGE. JVSD is required to submit to NCSC at least quarterly a written report regarding the status of the Center project. Each report must certify that receipts, contractor and subcontractor invoices, payroll information, and competitive bidding documentation are maintained by JVSD and are available for review by NCSC upon request. Each report must be signed by an appropriate business official of JVSD and delivered to the office of the Treasurer, c/o North Central State College, 2441 Kenwood Circle, Mansfield, Ohio 44906. In addition to the above reports, JVSD agrees to provide information to NCSC upon reasonable request.
14. RECORDS. JVSD shall establish and maintain, during the term of this Agreement and for at least three (3) years after the termination hereof, such records as may be required by the Ohio Department of Higher Education, the Ohio Auditor of State, and NCSC, or to comply with all applicable laws, including laws and regulations governing standards for accounting and reporting of funds. Such records include, but are not limited to, financial reports, activity reports, participant information, and all other relevant information. The parties further agree that records required by NCSC with respect to any questioned costs, audit disallowances, or any other disputes shall be maintained for the time needed for the resolution of said question and that in the event of early termination of this Agreement, JVSD shall separate and make

available to NCSC all such records related to the Center project activities for which NCSC has disbursed funds.

15. RELATIONSHIP OF PARTIES.

- a. JVSD shall be responsible for all of its own business expenses, including, but not limited to, computers, email and internet access, software, phone service and office space. JVSD will also be responsible for all licenses, permits, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.
- b. Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.
- c. It is fully understood and agreed that JVSD is an independent entity and neither JVSD nor its personnel shall at any time, or for any purpose, be considered as agents, servants, or employees of NCSC or the State of Ohio.

16. CERTIFICATION OF FUNDS. It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, R.C. 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that grant funds are used, until such time that NCSC gives JVSD written notice that such funds have been made available to NCSC by the NCSC's funding source.

17. SAFETY PRECAUTIONS. JVSD shall take reasonable precautions to ensure the safety of individuals doing the work on the Center. JVSD is responsible for designing and implementing its own safety program, including compliance with Occupational Safety and Health Administration regulations.

18. DRUG-FREE SAFETY PROGRAM. Throughout the performance of the work on the Center, JVSD shall be enrolled in and remain in good standing in the Ohio Bureau of Workers' Compensation ("OBWC") Drug-Free Safety Program ("DFSP") or a comparable program approved by the OBWC that meets the requirements specified in R.C. 153.03 ("OBWC-approved DFSP"). As required under R.C. 153.03(E):

- a. JVSD shall require all subcontractors with whom JVSD is in contract for the public improvement to be enrolled in and be in good standing in the DFSP or an OBWC-approved DFSP prior to a subcontractor providing labor at the project site of the public improvement.
- b. Each subcontractor shall require all lower-tier subcontractors with whom the subcontractor is in contract for the public improvement to be enrolled in and be in

good standing in the DFSP or an OBWC-approved DFSP prior to a lower-tier subcontractor providing labor at the project site of the public improvement.

- c. Failure of JVSD to require a subcontractor to be enrolled in and be in good standing in the DFSP or an OBWC-approved DFSP prior to the time that the subcontractor provides labor at the project site will result in JVSD being found in breach of this Agreement and that breach shall be used in the responsibility analysis of JVSD or the subcontractor who was not enrolled in a program for future contracts with the state for five years after the date of the breach.
 - d. Failure of a subcontractor to require a lower-tier subcontractor to be enrolled in and be in good standing in the DFSP or an OBWC-approved DFSP prior to the time that the lower-tier subcontractor provides labor at the project site will result in the subcontractor being found in breach of this Agreement and that breach shall be used in the responsibility analysis of that subcontractor or the lower-tier subcontractor who was not enrolled in a program for future contracts with the state for five years after the date of the breach.
19. **QUALIFICATIONS TO DO BUSINESS.** JVSD affirms that it has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and that all are current. If at any time during the term of this Agreement JVSD, for any reason, becomes disqualified from conducting business in the State of Ohio, JVSD will immediately notify NCSC in writing.
20. **DEBARMENT.** JVSD represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. 153.02 or R.C. 125.25.
21. **DRUG FREE WORKPLACE.** JVSD agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places.
22. **NON-DISCRIMINATION OF EMPLOYMENT.** JVSD agrees that it, any subcontractor, and any person acting on behalf of JVSD or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry against any citizen of this state in the employment of any person. JVSD further agrees that it, any subcontractor, and any person acting on behalf of JVSD or a subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee on account of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry.
23. **CONTROLLING LAW.** This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. JVSD consents to jurisdiction in a court of proper jurisdiction in Richland County, Ohio.
24. **WAIVER.** A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

25. SUCCESSIONS AND ASSIGNS. Neither this Agreement nor any rights, duties or obligations hereunder may be assigned or transferred in whole or in part by JVSD, without the prior written consent of NCSC and the Ohio Department of Higher Education.
26. NOTICES. Except to the extent expressly provided otherwise herein, all notices, consents and communications required hereunder (each, a "Notice") shall be in writing and shall be deemed to have been properly given when: 1) hand delivered with delivery acknowledged in writing; 2) sent by U.S. Certified mail, return receipt requested, postage prepaid; 3) sent by overnight delivery service (Fed Ex, UPS, etc.) with receipt; or 4) sent by fax or email. Notices shall be deemed given upon receipt thereof, and shall be sent to the addresses first set forth above. Notwithstanding the foregoing, notices sent by fax or email shall be effectively given only upon acknowledgement of receipt by the receiving party. Any party may change its address for receipt of Notices upon notice to the other party. If delivery cannot be made at any address designated for Notices, a Notice shall be deemed given on the date on which delivery at such address is attempted.
27. CONFLICT. In the event of any conflict between the terms and provisions of the body of this Agreement and any exhibit hereto, the terms and provisions of the body of this Agreement shall control.
28. HEADINGS. The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.
29. SEVERABILITY. The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.
30. EXECUTION. This Agreement is not binding upon NCSC unless executed in full, and is effective as of the last date of signature by NCSC.
31. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
32. FACSIMILE SIGNATURES. Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile signature of any other party delivered in such a manner as if such signature were an original.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

ASHLAND COUNTY-WEST HOLMES NORTH CENTRAL STATE COLLEGE
CAREER CENTER JVSD

By: [Signature]

Name: MICHAEL J. PARRY

Title: SUPERINTENDENT

Date: 8/18/17

By: [Signature]

Name: Kofi C. Akakpo

Title: CFO

Date: 8/08/2017

Treasurer Certification:

This signature certifies the amount required to meet the obligation in the fiscal year in which the Agreement is made has been lawfully appropriated for such purpose, and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

Date: 8/08/2017

By: [Signature]
North Central State College's Treasurer

ATTACHMENT A

Project: ACWHCC

Date: _____

Section I: State appropriation information.

- | | |
|--|--------------------|
| 1. Amount of state appropriation provided: | <u>\$400,000</u> |
| 2. Estimated annual debt service on the appropriation: | <u>\$30,750.46</u> |
| 3. Term of the state bond, in years: | <u>20</u> |

Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. 5 courses taught in RAMTEC Center each day for one term	\$ 36,360	20
b. Operations Management Certificate at the RAMTEC Center	\$ 12,928	
c. Workforce training Sessions at the RAMTEC Center Each year, in either Hydraulics, Pneumatics, PLS's or Motor Controls each two half days each	\$ 2,424	
d.	\$	
e.	\$	
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 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.

Section III:

- A. As a Joint Use Agreement between North Central State College (NCSC) and Ashland County West Holmes Career Center (ACWH) for utilization of the RAMTEC Facility at ACWH. It is understood that the specifics of use will be negotiated on an annual basis within the context of the value agreed upon.

2017-2018 Academic Year

ACWH currently has approximately thirty (30) students taking thirteen (13) hours of NCSC course work, which is expected to increase next year to seventeen (17) hours of course work (credit + contact). These five (5) courses taught in the RAMTEC Center each day for one term each.

90 days @ 404 per day = \$36,360

- B. NCSC will offer our Operations Management Certificate at the RAMTEC Center; this is a fifteen (15) hour credit (PELL Eligible) program.

1 night per week 32 weeks per year @ \$404.00 = \$12,928

- C. NCSC in partnership with ACWH will offer six (6) workforce training sessions at the RAMTEC Center each year, in either Hydraulics, Pneumatics, PLS's or Motor Controls each two half days each.

6 training sessions @ \$404.00 each per year = \$2,424

Total value to NCSC: \$51,712