



# Board of Regents

Ted Strickland, Governor  
Eric D. Fingerhut, Chancellor

University System of Ohio

## DIRECTIVE 2010-043

NOV 17, 2010

### RE: JOINT USE AGREEMENT BETWEEN STARK STATE COLLEGE OF TECHNOLOGY AND THE STARK COUNTY PORT AUTHORITY

H.B. 462 includes a specific capital reappropriation of \$93,525,566 for the Third Frontier Project, also known as the Third Frontier Wright Capital project. Section 105.40.50 in H.B. 462, Third Frontier Project, specifies the funds shall be used to make grants awarded on a competitive basis. The grant awards shall be administered by the Third Frontier Commission.

An Ohio Third Frontier Research & Development Fund award in the amount of \$1,228,417 was ratified by the Third Frontier Commission at its meeting on October 15, 2010. The higher education capital funds will support the construction of a Wind Energy Research and Development Center by the Stark County Port Authority. As required by Ohio Administrative Code section 3333-1-03, Stark State College of Technology 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 Stark State College of Technology and the Stark County Port Authority.

This directive will take effect immediately.

Eric D. Fingerhut  
Chancellor, Ohio Board of Regents

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Joint Use Agreement between Stark State College of Technology and the Stark County  
Port Authority

**BACKGROUND**

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**REVIEW**

Throughout the entire term of the agreement, the Stark County Port Authority will provide the following to Stark State –

- 1) Space in the Wind Energy Research and Development Center to provide one-year certification programs in Wind Turbine Maintenance and in Sustainable Alternative Energy Technologies.

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 Stark State College of Technology and the Stark County Port Authority.**



## JOINT USE AGREEMENT ANALYSIS

Institutions Involved Stark State College/Stark County Port Authority

Project Title Wind Energy Research and Development Center

Capital Bill HB 462 Item Third Frontier Project

- 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 Worksheet

The Ohio Board of Regents

Stark State College of Technology

Wind Bearing Center

October 7, 2010

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>1,228,417</u>
2. Estimated annual debt service on the appropriation:	\$ <u>93,795</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. <u>Addition of 2 certificate programs</u>	\$ <u>110,772</u>	<u>20</u>
b. <u>POM cost avoidance</u>	\$ <u>27,608</u>	<u>20</u>
c. _____	\$ _____	_____
d. _____	\$ _____	_____
e. _____	\$ _____	_____
f. _____	\$ _____	_____

(\* List additional uses on separate page as needed.)

### *Section III*

Explanation of a) Stark State College cannot build two new 1-year certificate programs in Wind Turbine Maintenance and in Sustainable Alternative Energy Technologies without this facility and a corporate partner in the industry. We will enroll approx. 12 FTE in each program each year. These certificate programs average 34 credit hours each per year. This will allow us to earn \$110,772 at the current tuition rate of \$135.75 per credit hour.

Explanation of b) Stark State College is avoiding paying for plant operations and maintenance costs on the shared area of this facility, because the corporate partner will cover those costs. If we created a similar space on our main campus, we would incur costs at around \$7 per square foot per year for 3,944 square feet of space, which is \$27,608 each year if costs remain constant.

**JOINT USE AGREEMENT**  
**between**  
**STARK STATE COLLEGE OF TECHNOLOGY**  
**and**  
**STARK COUNTY PORT AUTHORITY**

THIS JOINT USE AGREEMENT (“Agreement”) is made this 21<sup>st</sup> day of October, 2010 (“Effective Date”), between STARK STATE COLLEGE OF TECHNOLOGY, an accredited Ohio state-supported technical college (“SSCT”) and the STARK COUNTY PORT AUTHORITY, a political subdivision of the State of Ohio administered by the Stark Development Board, Inc. (SCPA) (SSCT and SCPA, collectively, the “Parties”).

**RECITALS**

WHEREAS, the Ohio General Assembly appropriated certain fiscal year 2005 funds to the Third Frontier Commission (“Commission”) for allocation among programs associated with Ohio’s Third Frontier Project; and

WHEREAS, SSCT, as the lead organization among a group including SSCT, SCPA and others (collectively, the “Participants”), applied to the Commission for a Research and Development Center Attraction Program (“RDCAP”) capital grant to develop the Wind Energy Research and Development Center (“Center”) as part of SSCT’s research and development campus, where engineers and students will develop state-of-the-art wind bearing and gearbox component testing capabilities; and

WHEREAS, the Commission awarded SSCT a RDCAP grant of One Million Two Hundred and Twenty Eight Thousand Four Hundred Seventeen Dollars (\$1,228,417) in capital funds (“Funds”); and

WHEREAS, SCPA expects to receive loans from the Ohio Air Quality Development Authority ("OAQDA") in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) supporting the Center ("Funds"); and

WHEREAS, establishment of the Center will further the long standing research, education and economic development affiliation of SSCT and SCPA;

WHEREAS, pursuant to the authority conferred upon the Chancellor of the Ohio Board of Regents ("Chancellor") in the reappropriation act for capital improvements, because the Funds are to be used for capital improvements to facilities not wholly owned by SSCT, prior to the Chancellor's recommending release of the Funds, the parties must submit and the Chancellor must approve a joint use agreement satisfying the requirements of Ohio Administrative Code Rule 3333-1-03(E);

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

1. Purpose of Agreement. SSCT and SCPA desire to enter into this Agreement in order to facilitate establishment of the Center, thereby accelerating development and commercialization of state-of-the art Ohio-based products and processes for the advancement of ultra-large wind energy technologies in Ohio.
2. Location of Facilities and Use of Funds. SSCT and SCPA will use their respective Funds to build out and equip approximately twelve thousand (12,000) square feet of new space on SSCT's R&D campus to be located on the northeast corner of Frank and Shuffel Avenues NW, North Canton, Ohio 44720 ("Real Estate"). The construction of the Center shall be strictly conditioned on SSCT and the SCPA securing the necessary consideration, including but not limited to the Funds, to construct the Center, the transfer of the Real Estate to SSCT, the

execution of a ground lease by and between SSCT and the SCPA, and the execution of a commercial lease(s) by and between the SCPA, as landlord, and the Participant(s), as tenant(s). This project will involve use of three acres of the SSCT R&D Campus, an area to be owned (or leased through a long-term lease) and insured by SSCT. Said acres will be ground leased by SSCT to SCPA for the purposes of developing the Center and the ground lease will remain in effect until such time as the Center is transferred in whole to SSCT. The Center will consist of an ultra-large wind energy laboratory and testing center and classroom outfitted with state-of-the-art equipment and instrumentation. The Funds will only be used for capital improvements. A budget detailing the anticipated capital expenditures is attached as Exhibit A.

3. Use of Facilities, Equipment and Instrumentation. Funds provided under this agreement shall be used by SSCT and SCPA only for capital purchases as defined in House Bill No. 462. Upon completion, the Center will be open to use by the Participants with activities focusing on electrical, mechanical, wind and alternative energy research and educational programs. A list of spaces in the facility is attached as Exhibit B. This arrangement will be expanded to include additional faculty, technicians and undergraduate students as additional programs are developed. SCPA and SSCT will jointly operate the Center until such time as the SCPA loan debt has been serviced and satisfied – which is estimated to be approximately three years. During this initial period, SSCT will utilize a portion of the Center as educational space to enhance its Wind Turbine Maintenance and Alternative Energy Technologies certificate programs in an amount equal to or valued at approximately \$110,772 based on 12 FTE taking 34 credit hours in each program per year. Capital equipment purchased with the Funds or with matching funds will be housed at the Center for the duration of this Agreement. SSCT will own, and its faculty and students will have access to, this equipment. Upon satisfaction of the debt, SCPA agrees to

transfer 100 percent of the Center ownership to SSCT for one dollar. Upon transfer of ownership to SSCT, this joint use agreement shall terminate as SSCT, the owner and operator of the facility, controls access to and use of the facility for educational purposes. Upon transfer, SSCT will establish direct lease agreement with tenant participants. SSCT has determined that the value of SSCT's use of the Center over the term of this Agreement is reasonably related to the value of the Funds.

4. Distribution of Funds: Payment Procedures and Administrative Costs. Upon execution of this Agreement, SSCT shall submit to the Chancellor a formal request for the release of the Funds. After the release of the Funds, SCPA shall submit to SSCT requests for payment of amounts along with documentation of contractor invoices or purchase orders related to obligations incurred by SCPA for permitted uses of the Funds. From the Funds, SSCT shall receive reimbursement for actual project administrative costs in an amount not to exceed Eighteen Thousand Four Hundred Twenty Six Dollars (\$18,426), which is one and one-half percent (1½%) of the total amount of the Funds.

5. Term and Termination. The term of this Agreement shall commence upon the date which the Center is ready for occupancy and will remain in effect for twenty years or until 100% ownership of the Center is transferred by the SCPA to SSCT upon the termination of the ground lease between SCPA and SSCT, whichever occurs first. Either party may terminate this Agreement upon twenty-four (24) months prior written notice to the other. Upon any such termination of this Agreement prior to the transfer of the Center, or of SSCT's right to use the Center, then the SCPA shall reimburse the State of Ohio an amount determined by dividing the total Funds contributed by the State of Ohio by twenty (20) and multiplying that sum by twenty (20) less the number of full years that this Agreement was in effect.

6. Compliance with Laws. Each party shall comply with all applicable federal, state and local laws and state administrative regulations. As a recipient of public funds, SCPA shall follow the competitive bidding procedures with respect to expenditure of the Funds under Ohio Revised Code section 153.

7. Indemnification and Hold Harmless. Each Party agrees to be responsible for any negligent acts or negligent omissions by or through itself or its agents, employees and contracted servants and each party further agrees to defend itself and themselves and pay any judgments and costs arising out of such negligent acts or negligent omissions, and nothing in this contract shall impute or transfer any such liability from one to the other.

Maintenance and Operations: SCPA shall not be responsible for operating and maintenance costs once SSCT owns the facility in whole unless SCPA specifically agrees to such responsibility.

8. Use of Name. Neither party shall use the name, logo, likeness, trademarks, image or other intellectual property of the other party for any advertising, promotion or other purpose without the specific prior written consent of the other party as to each such use.

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

SSCT: Stark State College of Technology  
6200 Frank Avenue NW, Suite S301  
North Canton, OH 44720  
Attn: Thomas A. Chiappini, Chief Operating Officer

SCPA: Stark County Port Authority  
116 Cleveland Ave. NW, Suite 600  
Canton, Ohio 44702

Attn: Steve Paquette, Administrator

with a copy to:

Krugliak, Wilkins, Griffiths & Doughert Co., LPA  
P.O. Box 36963  
Canton, OH 44735  
Attn: Randall C. Hunt, Counsel

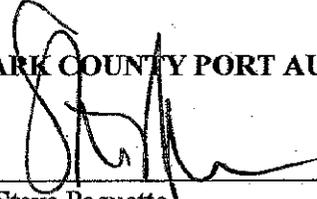
10. Entire Agreement. This Agreement, including Exhibits A and B, attached hereto and incorporated herein by this reference, sets forth the entire agreement of SCPA and SSCT relating to the subject matter of this Agreement. Any amendments to this Agreement shall be (i) in writing, (ii) approved by the SSCT Board and the Chancellor, and (iii) signed by authorized representatives of SCPA and SSCT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the month, day and year first set forth above.

**STARK STATE COLLEGE  
OF TECHNOLOGY**

By:   
Thomas A. Chiappini  
Chief Operating Officer

**STARK COUNTY PORT AUTHORITY**

By:   
Steve Paquette  
Administrator

APPROVED:

**CHANCELLOR OF THE OHIO BOARD OF REGENTS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**

**WIND ENERGY RESEARCH AND DEVELOPMENT CENTER  
Source and Use of Grants, Loans, and Matching Funds**

<u>Uses</u>		<u>Sources</u>	
Construction	2,248,417	RDCAP <sup>1</sup> Bonds	1,228,417
A&E Costs (8%)	179,873	Port Authority loan	1,500,000
Sitework	200,000	State Capital Formula	0
Fixed & Moveable Equip	280,000	SSCT local funds	220,000
Contingency & Reimbs	200,000	Other - Timken A&E	159,873
Phase I Costs	3,108,290	Phase I Funding	3,108,290

<sup>1</sup> Research & Development Center Attraction Program

<sup>2</sup> Targeted Industries Attraction program

## EXHIBIT B

### Wind Energy Research and Development Center Space Usages

Approximately 4,000 sq. ft. of the Wind Energy Research and Development Center has been designated as "common area," to which Stark State College (SSCT) faculty and students will have access. Of this common space, 1,486 sq. ft. or 38 percent has been designated for specific uses by SSCT; 1,506 sq. ft. or 38 percent has been designated for shared uses between SSCT and tenant Participant; and 858 sq. ft. or 22 percent has been designated for specific use by tenant Participant. In the common area SSCT and tenant Participant would share the spaces as follows:

- **Reception Area:** shared by SSCT and tenant Participant;
- **Offices:** Four - 130 sq. ft. offices of which one will be allocated for SSCT and three will be allocated for tenant participant;
- **Conference Room:** One - 288 sq. ft. conference room will be a shared spaced used by both SSCT and tenant participant as needed;
- **Electronics Laboratory:** One - 1,200 sq. ft. will be accessible to externs, co-op and internship students but will be limited for scheduling of regular classes due to presence of active project systems and components in the lab space;
- **Cubical Work Stations:** Three - 156sq. ft. cubical work stations with filing space will be set up in the Center. These will be used by tenant Participant lab technicians, and SSCT co-op and internship students. Because these personnel participate in the project on a rotating basis, no assigned space is allocated but instead the entire space is considered shared;
- **Learning Lab:** One - 1,200 sq. ft. workbench style learning lab will be included in the common areas to serve as a place to hold regular classes and train student on assembly and maintenance. This space will be shared by SSCT and tenant Participant but will be mostly occupied by SSCT as a classroom space for day and evening classes as well as a place to undertake small project work;
- **Restrooms:** will be available in the common area and shared by SSCT and tenant Participant;
- **Coat Closet:** One - 18 sq. ft. coat closet will be shared by SSCT and tenant Participant;

The remaining area will be used for the Main Test Lab and be secured with swipe card access. SSCT right to use would be available with tenant Participant staff oversight during normal working hours. After-hour access to the Main Test Lab will be made available to SSCT on a limited basis with tenant Participant oversight.