Ohio | Board of Regents

Ted Strickland, Governor
Eric D. Fingerhut, Chancellor

University System of Ohio

DIRECTIVE 2010-019

April 19, 2010

RE: JOINT USE AGREEMENT BETWEEN NORTHWEST STATE COMMUNITY COLLEGE AND PETTISVILLE SCHOOLS AND ARCHBOLD SCHOOLS

H.B. 562 includes a specific capital appropriation of $250,000 to Northwest State Community College for a Pettisville Schools and Archbold Schools project. Pettisville Schools and Archbold Schools will own the equipment purchased 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. Northwest State Community College 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 Northwest State Community College and Pettisville Schools and Archbold Schools.

This directive will take effect immediately.

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

MC

30 East Broad Street • 36th Floor • Columbus, Ohio 43215-3414 • 614 | 466-6000 • Fax: 614 | 466-5866
www.regents.state.oh.us

Joint Use Agreement between Northwest State Community College and Pettisville Schools and Archbold Schools

BACKGROUND

H.B. 562 includes a specific capital appropriation of $250,000 to Northwest State Community College for a Pettisville Schools and Archbold Schools project. Pettisville Schools and Archbold Schools will own the equipment purchased with state capital funds. As required by Ohio Administrative Code section 3333-1-03, Northwest State Community College submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support the purchase and installation of capital equipment on property owned by Pettisville Schools and Archbold Schools in Fulton County, Ohio.

REVIEW

Throughout the entire term of the agreement, Pettisville Schools and Archbold Schools will provide the following to the College –

1) Access to the Wind Turbine system to conduct engineering analysis and data collection;
2) Access to the Wind Turbine system to develop course materials pertaining to the understanding and design/analysis of wind turbine systems;
3) Access to the Wind Turbine system in order to provide meaningful opportunities for students to participate in classes, workshops, and post-secondary courses for educational activities.

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 Northwest State Community College and Pettisville Schools and Archbold Schools.

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:	$250,000
2. Estimated annual debt service on the appropriation:	$25,625
3. Term of the state bond, in years:	15 years

Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. Course Development (one time expense)	$ $15,000	1
b. Student Tuition Value	$ $235,800	15
c.	$	
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.

Section III: Value Analysis

As area school districts in the Northwest State Community College service area, Pettisville and Archbold Schools are valued educational partners. The equipment purchased through this project is intended for educational and research use by both the Schools and the College. The total estimated value to the College is over $250,000.00 for a period of fifteen (15) years. In addition, this capital purchase will promote the College's mission to address the need for the development of alternative energy classes and related training. Training and research conducted with this capital equipment purchase will advance the College's efforts to address issues in the new technology and in turn will provide skill sets to workers in our area in an emerging and valued industry. Without this Joint Use Agreement, Northwest State Community College would not have access to a commercial grade turbine.

The estimated value of the use of this facility was calculated in the following manner:

$131.00 per credit hour X 3 hours per course = $393.00

40 students per year X $393.00 = $15,720

$15,720 X 15 years = $235,800

$15,000 + $235,800 = $250,800

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Northwest State Community College/Pettisville Schools and Archbold Schools

Project Title Fulton County Wind Project

Capital Bill HB 562 Item C38206 Fulton County Wind 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
BETWEEN
PETTISVILLE SCHOOLS, ARCHBOLD SCHOOLS
AND
NORTHWEST STATE COMMUNITY COLLEGE

THIS JOINT USE AGREEMENT ("Agreement") is between PETTISVILLE SCHOOLS AND ARCHBOLD SCHOOLS, ("SCHOOLS"), both Ohio local school districts, and NORTHWEST STATE COMMUNITY COLLEGE, an instrumentality of the State of Ohio created and existing under Chapter 3358 of the Ohio Revised Code ("COLLEGE").

RECITALS

WHEREAS, the COLLEGE's mission is to provide an education of high quality to students in our communities, as well as serve as a leader and partner to enhance the quality of life and economic viability of our communities; and

WHEREAS the SCHOOLS', which serves pre-K-12 students in Pettisville and Archbold School Districts in Fulton County, seeks to implement a wind power project on their schools' properties to study, analyze and provide teaching opportunities regarding wind power, an alternative energy source, in addition to realizing energy savings through the construction and installation of a wind turbines on both the Pettisville and Archbold school properties; and

WHEREAS, the COLLEGE is developing a certificate and degree program which have courses in alternative energy and concepts of wind energy, design and service, and installation and repair of wind turbines; and

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

WHEREAS, the Ohio General Assembly passed House Bill Number 562, which appropriated a total sum of Two Hundred Five Thousand Dollars ($250,000.00), to the COLLEGE to be used by the SCHOOLS for capital construction (the "Capital Improvement"); and

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

WHEREAS, the COLLEGE has concluded that the value of the use of SCHOOLS facilities and resources by the COLLEGE 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 COLLEGE than to others;

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

1. Use of the SCHOOLS' Facilities and Resources by the COLLEGE.

(a) Before the selection of a wind turbine system by the SCHOOLS, the COLLEGE will be informed about the power rating of the unit. After the purchase and installation of the unit, the COLLEGE students and faculty will have access to the system to conduct engineering analysis and data collection on the system. These exercises will not interfere with the normal operation of the wind turbine system.

(b) The COLLEGE will develop course materials pertaining to the understanding and design/analysis of wind turbine systems. The wind turbine to be installed by the SCHOOLS will be used by the COLLEGE to support these course materials. These course materials may be shared with other colleges for incorporation into their curriculum. (c) The COLLEGE will provide meaningful opportunities for students to participate in classes, workshops, and post-secondary courses for educational

activities. These opportunities would include observation of the various monitors and controls, along with training and field experience, and calculations from commercial sized equipment as compared to the Colleges residential sized equipment.

(d) All parties will be allowed to mutually study and analyze the wind turbine systems located on the SCHOOLS properties and its impact on energy conservation.

2. Term: Termination for Cause Prior to Expiration of Term. The term of this Agreement shall commence as of the date of execution set forth below (the "Commencement Date") and shall end fifteen (15) years thereafter. If any of the material terms or conditions contained in this Agreement are breached by either party, then the other party shall have the right to terminate this Agreement upon forty-five (45) days' written notice to the breaching party, provided that the breaching party does not cure the breach within such 45-day period.

3. 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, SCHOOLS shall remit to the State of Ohio 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 the SCHOOLS' obligations under this Agreement were fulfilled.

4. Compliance with Laws. The SCHOOLS shall comply in all material respects 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.

5. Funds Used Only for Capital Improvements. The Funds provided under this Agreement shall be used by the SCHOOLS only for capital improvements, including,

but not limited to the purchasing of the wind turbines and constructing/installing a wind turbine in Pettisville and Archbold, Ohio.

6. Ownership of Project and Insurance. The wind turbine will be owned by the SCHOOLS, and will be fully insured. The COLLEGE will be added as an additional insured.

7. Competitive Bidding. The SCHOOLS, in connection with the expenditure of Funds for the Project, shall, to the extent required by Ohio 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.

8. Hold Harmless. The SCHOOLS shall hold the State of Ohio and the COLLEGE, its officers, trustees and employees harmless from any and all obligations, expenses, liabilities or claims of any kind and/or the COLLEGE, its officers, trustees or employees being named as a defendant or party to any lawsuit or adjudicatory proceedings, if such lawsuit or adjudicatory proceeding arising out of (1) the construction, renovation, operation, or maintenance of the wind turbine, (2) an alleged action or omission of the SCHOOLS, its officers, trustees or employees, including, but not limited to SCHOOLS' 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.

9. Indemnification. Each party agrees to be responsible for any personal injury or property damage caused by the 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 the agreement shall impute or transfer any such responsibility from one to the other.

10. Amendments. Any amendments to this Agreement shall be in writing, signed by the SCHOOLS and the COLLEGE, and shall require approval by the Chancellor.

11. Records of the COLLEGE's Use. Upon request by the Chancellor and/or the COLLEGE, the SCHOOLS shall supply the Chancellor and/or the COLLEGE with all pertinent records, including financial records, which measure the nature and extent of use of SCHOOLS' facilities by the COLLEGE, the terms and conditions governing such use and the specific benefits derived by the COLLEGE under this Agreement.

12. Distribution of Funds; Administrative Costs. Upon execution of this Agreement, the COLLEGE shall submit to the Chancellor a formal request for permission to release the Funds. Following the competitive bidding selection, funds will be encumbered per State of Ohio requirements for construction and renovation projects. After the encumbrance of the Funds, the SCHOOLS shall submit to the COLLEGE requests for payment of amounts along with documentation of contractor invoices or purchase orders related to obligations incurred by the SCHOOLS for permitted uses of the Funds. The COLLEGE will review the documentation and determine that it meets Ohio Office of Budget and Management (OBM) requirements. The COLLEGE will submit payment requests to OBM for project costs so that the SCHOOLS' contractors are paid for services rendered and materials purchased. The COLLEGE shall receive administrative costs in the amount of Three Thousand Seven Hundred Fifty Dollars ($3,750.00), which is equal to one and one half percent (1.5%) of the total amount of funds.

13. Certification. The parties represent and certify that the value to be derived by the COLLEGE pursuant to this Agreement is reasonably related to the appropriation to be granted pursuant to this Agreement.

14. Binding Nature. This Agreement shall be binding upon and inure to the benefit of SCHOOLS and the COLLEGE and their respective successors and assigns.

15. Entire Agreement. This Agreement sets forth the entire agreement of the parties hereto relating to the subject matter of the Agreement.

16. 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.

PETTISVILLE LOCAL SCHOOL DISTRICT

By: _____
Stephen Switzer
Superintendent

Date: 3-15-10

ARCHBOLD LOCAL SCHOOL DISTRICT

By: _____
David Deskins
Superintendent

Date: 3-17-10

NORTHWEST STATE COMMUNITY COLLEGE

By: _____
Thomas Stuckey
President

Date: 3-10-10