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DIRECTIVE 2008-003

March 31, 2008

**Re: A JOINT USE AGREEMENT BETWEEN THE VILLAGE OF NEW ALBANY AND
THE CHANCELLOR OF THE OHIO BOARD OF REGENTS.**

The 126th Ohio General Assembly enacted H.B. 699 which includes a specific capital appropriation of \$250,000 to the Chancellor of the Ohio Board of Regents to be used by the Village of New Albany for construction of certain capital infrastructure to facilitate the New Albany Fiber Optic Network project.

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. The Village of New Albany 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 the Ohio Board of Regents and Village of New Albany.

Sincerely,



Eric D. Fingerhut
Chancellor, Ohio Board of Regents

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Joint Use Agreement between the Ohio Board of Regents and the Village of New Albany

BACKGROUND

H.B. 699 includes a specific capital appropriation of \$250,000 to the Ohio Board of Regents for the New Albany Fiber Optic Network project. The Village of New Albany will own and operate the facility to receive state capital funds. As required by Ohio Administrative Code section 3333-1-03, the Village of New Albany submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support the construction of capital infrastructure to facilitate the fiber optic network.

REVIEW

Throughout the entire term of the agreement, the Village of New Albany will provide the following -

- a. Four of its fibers in the New Albany Fiber Optic Network to OSCnet for the purpose of providing telecommunications, video, data, and/or information services for the purpose of furthering research and education.
- b. Allow access to the Chancellor to use certain other property owned by the Village, including, but not limited to, inner duct, conduit, building entrance facilities and associated appurtenances.

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 the Ohio Board of Regents and the Village of New Albany.

Joint Use Agreement Worksheet

The Ohio Board of Regents

October, 2007

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: \$_____19,219_____
3. Term of the state bond, in years: _____20_____

Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. ___ Grant of New Albany/OSCnet Fibers	\$13,200_____	___20___
c. ___ Access to New Albany Businesses	\$20,000_____	___20___

(* 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.

Estimated Value of Facility Use

This joint use agreement is somewhat different than most joint use agreements. As a result of the award of the capital appropriation \$250,000 to the Village of New Albany, OSCnet a dedicated high-speed fiber-optic network that serving K-12, colleges and universities, hospitals and public broadcasting will receive more than just the right to use the assets that will be possessed by the Village of New Albany. They will receive an indefeasible right to use for 20 years of 4 fibers from the 96 fibers that will be possessed by the Village of New Albany.

The values of the uses identified on the previous page are very conservatively estimated. The value of these uses was estimated in the following manner:

Grant of New Albany & OSCnet Fibers (\$13,222/yr). This value is based on the total construction cost of the fiber backbone along with costs to construct planned loops that will allow connection to the OSCnet fibers. The total construction cost is estimated at \$1.2 million. Therefore the total value of 96 fibers is estimated at 13,200yr for 20 years.

Access to New Albany Businesses (\$20,000). The fibers donated by the Village of New Albany to OSCnet will give OSCnet access to the businesses who connect to the New Albany Fiber Network and to new business sites in Dublin, e.g. their planned business park. This has a tremendous intangible value to OSCnet and higher education because it will create the possibility for universities and colleges to work with those businesses over the OSCnet. The value of this use has been estimated based on the costs of the leased circuits that might otherwise be used to connect to those businesses. High speed leased circuits to a single one of these businesses could easily cost \$20,000/yr.

**JOINT USE AGREEMENT BETWEEN
THE VILLAGE OF NEW ALBANY AND
THE CHANCELLOR OF THE OHIO BOARD OF REGENTS**

THIS JOINT USE AGREEMENT (hereinafter referred to as the "Agreement") made and entered into as of the 28th day of January, 2008, between the VILLAGE OF NEW ALBANY, OHIO, an Ohio municipal corporation (hereinafter referred to as the "Village"), having an office at 99 West Main Street, P.O. Box 188, New Albany, Ohio, 43054, and the CHANCELLOR OF THE OHIO BOARD OF REGENTS, whose powers and duties are set forth in Chapter 3333 of the Ohio Revised Code (hereinafter referred to as the "Chancellor"), having an office at 30 East Broad Street, Columbus, Ohio 43215, and which are, sometimes referred to individually as "Party" and collectively as "Parties."

RECITALS

WHEREAS, Section 235.10.30 of Amended Substitute House Bill 699 passed by the 126th Ohio General Assembly appropriates Two Hundred and Fifty Thousand Dollars (\$250,000) ("Funds") to the Chancellor to be used by Village for construction of certain capital infrastructure to facilitate the New Albany Fiber Optic Network project; and

WHEREAS, this Agreement is being entered into between the Chancellor and the Village as the Funds were appropriated to the Chancellor rather than the Village, although it is intended that OSCnet benefit from the terms hereof; and

WHEREAS, the Chancellor has concluded that the value of the Village's facilities as provided to OSCnet in this agreement is reasonably related to the amount of the Funds; and

WHEREAS, Columbus Southern Power will facilitate construction of the New Albany Fiberoptic Network simultaneous with its construction of fiber to be used at its planned New Albany operation center; and

WHEREAS, the Village desires to interconnect with Ohio's Universities and Colleges for the purpose of furthering research and education; and

WHEREAS, the Village will possess an Indefeasible Right to Use ("IRU") fibers in the New Albany Fiberoptics Network and will provide four (4) of its fibers ("Fibers") to OSCnet has been granted an IRU (attached hereto as an Exhibit "A") in and to such fibers for the purpose of providing telecommunications, video, data, and/or information services; and

WHEREAS, OSCnet is operating the Third Frontier Network ("TFN"), which will connect schools, research universities, medium and smaller universities and colleges, government agencies and others in order to foster new collaborations between and among these entities, while at the same time promoting critical educational, scientific and industrial capacities and research thereby advancing a technology based economy; and

WHEREAS, in connection with the grant to OSCnet of an IRU in and to such Fibers, the Village is willing to allow the Chancellor to use certain other property owned by the Village, including, but not limited to, inner duct, conduit, building entrance facilities and associated appurtenances; and

WHEREAS, in connection with undertaking one or more projects for which the Village will provide Fibers in the New Albany Fiberoptics Network to OSCnet, the Parties have agreed to enter into this Agreement which embodies the mutual covenants and agreements for the long term relationship between the Parties hereto and for each such project; and

WHEREAS, the Parties may in the future agree to enter into additional separate agreement(s) for additional and/or separate optical fiber uses which will incorporate the covenants and agreements of this Agreement and which will also set forth the terms and provisions unique to each additional or different specific project.

WHEREAS, Village has obtained, for the benefit of Chancellor and the Village, a \$250,000 grant (hereinafter "Grant") from the State of Ohio Capital Fund, with the belief that this Grant would be spent to develop a fiberoptics network in Franklin County and New Albany, Ohio.

NOW, THEREFORE, in consideration of the mutual benefits hereunder and the benefits conferred upon OSCnet, the Parties hereto do hereby agree as follows:

1. Indefeasible Right-to-Use. Columbus Southern Power has assigned the use and ownership rights of four fiber optic cables covering approximately 22 miles in Franklin County, to OSCnet pursuant to the attached Fiber Agreement.
2. Cost Reimbursement. Chancellor agrees to pay Village \$250,000.00 as partial reimbursement for the costs associated with its purchase of the Fibers.
3. Connectivity. Village agrees to cooperate with OSCnet to facilitate a reliable interface and satisfactory operational connectivity between the TFN backbone and the Fibers granted to OSCnet by the IRU.
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 twenty (20) years thereafter. If the Village fails to execute the attached IRU, then the Chancellor shall have the right to terminate this Agreement upon forty-five (45) days' written notice to the Village, provided that the Village does not cure the breach within 45-day period.
5. Guidelines and Reports. Upon request, the Village shall prepare a report that shall include documentation of the transfer of the fiber and the facilities connected to the fiber.
6. Reimbursement of State upon Termination. In the event that this Agreement is terminated because the Village's failure to execute the IRU, the Village shall remit to the State of Ohio the Funds. In the event that this agreement is terminated prior to the

expiration of the term in paragraph 4, the IRU shall remain the property of OSCnet pursuant to its terms.

7. Funds Used Only for Capital Improvements. The Funds provided under this Agreement shall be used only to reimburse the Village for purchase of the Fibers.
8. Amendments. Any amendments to this Agreement shall be in writing, signed and approved by The Village and signed and approved by the Chancellor.
9. Records of University Use. Upon request by the Chancellor and/or University, the Village shall supply the Chancellor with a copy of the executed IRU.
10. Distribution of Funds; Administrative Costs. Upon execution of this Agreement the Chancellor shall release the Funds to the Village for the uses specified herein.
11. Public Relations. The Parties will cooperate to issue mutually agreed upon press releases to assist Village in its economic development efforts.
12. Force Majeure. Neither Party shall be liable to the other for any failure of performance under this Agreement due to causes beyond its control (except for the fulfillment of payment obligations as set forth herein), including, but not limited to: acts of God, fire, flood, earthquake or other catastrophes; adverse weather conditions; material or facility shortages or unavailability not resulting from such Party's failure to timely place orders therefore; lack of transportation; national emergencies; insurrections; riots, wars; or strikes, lockouts, work stoppages or other labor difficulties (collectively, "Force Majeure Events").
13. Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors or assigns; provided, however, that no assignment hereof or sublease, assignment or licensing (hereinafter collectively referred to as a

“Transfer”) of any rights or obligations hereunder, except for those contained herein, shall be valid for any purpose without the prior written consent of each Party hereto.

14. Relationship not a Partnership or an Agency. The relationship between Chancellor and the Village shall not be that of partners or agents for one another and nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture or agency Agreement between the Parties hereto.
15. Self-Insurance. Both the Village and OSCnet are self-insured, and damage to the system shall be repaired pursuant to the terms of the IRU.
16. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective permitted successors and assigns, and except for the requirements herein, shall not be construed as granting rights to any person or entity other than the Parties or imposing on either Party obligations to any person or entity other than a Party.
17. Effect of Section Headings. Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.
18. Notices. Any written notice under this Agreement shall be deemed properly given if sent by registered or certified mail, postage prepaid, or by nationally recognized overnight delivery service or by facsimile to the address specified below, unless otherwise provided for in this Agreement:

If to Chancellor to:

Ohio Chancellor
30 East Broad Street
Columbus, OH 43215

If to Village to:
Village Administrator
Village of New Albany, Ohio
99 West Main Street P.O. Box 188
New Albany, OH 43054

With a Copy to:
Law Director
Village of New Albany, Ohio
250 West Street Columbus, OH 43215

Either Party may, by written notice to the other Party, change the name or address of the person to receive notices pursuant to this Agreement.

19. Severability. In the event any term, covenant or condition of this Agreement, or the application of such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that the invalid term, covenant or condition is not separable from all other terms, covenants and conditions of this Agreement.
20. Compliance with Law. Each Party hereto agrees that it will perform its respective rights and obligations hereunder in accordance with all applicable laws, rules and regulations.
21. Governing Law and Venue. This Agreement shall be interpreted in accordance with the Charter and Codified Ordinances of the Village of New Albany, as amended, the laws of the State of Ohio, and all applicable federal laws, rules and regulations as if this Agreement were executed and performed wholly within the State of Ohio. No conflict of law provisions shall be invoked so as to use the laws of any other jurisdiction. The exclusive venue for all cases or disputes related to or arising out of this Agreement shall be the state and federal courts in Franklin County, Ohio.
22. Entire Agreement. This Agreement, including any Exhibit attached hereto, all constitute the entire agreement between the Parties with respect to the subject matter. This Agreement cannot be modified except in writing signed by both Parties.

IN WITNESS HEREOF, the parties have executed and delivered this Agreement effective the day and year first above written:

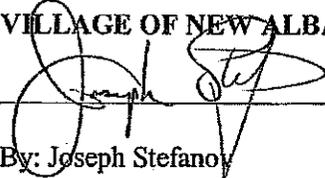
**THE CHANCELLOR OF THE OHIO BOARD OF
REGENTS:**

By:  3/31/08

Its: Chancellor, Ohio Board of Regents

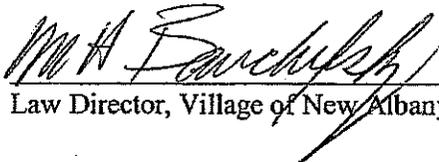
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VILLAGE OF NEW ALBANY:


By: Joseph Stefano

Its: Village Administrator

Approved As To Form:


Law Director, Village of New Albany, Ohio.