

Joint Use Agreement between the Chancellor of the Ohio Board of Regents, the  
Youngstown Central Area Community Improvement Corporation, and the  
Youngstown Edison Incubator Corporation

**BACKGROUND**

H.B. 699 includes a specific capital appropriation of \$2,750,000 to the Chancellor of the Ohio Board of Regents for the Youngstown Technology Center project. The Youngstown Edison Incubator Corporation will own and operate the facility to receive state capital funds. As required by Ohio Administrative Code section 3333-1-03, the Youngstown Edison Incubator Corporation submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will be used for site development and the design, construction, and equipment costs of a new Youngstown Technology Center which will be located at 201-213 and 265-271 Federal Plaza West, Youngstown, Ohio.

**REVIEW**

Throughout the entire term of the agreement, the Youngstown Edison Incubator Corporation will provide -

- 1) To the extent appropriate space is available, the Youngstown Edison Incubator Corporation (YEIC) and Youngstown Central Area Community Improvement Corporation (YCACIC) will make up to eight thousand total square feet (8,000 s.f.) available per annum to Youngstown State University, Kent State University, the University of Akron and/or Cleveland State University, at 265-271 Federal Plaza West, Youngstown, Ohio, also known as the Semple Building. The space will be free of charge for technology development and commercialization.
- 2) To the extent appropriate space is available, the Youngstown Edison Incubator Corporation (YEIC) and Youngstown Central Area Community Improvement Corporation (YCACIC) will make up to six thousand total square feet (6,000 s.f.) available per annum to Youngstown State University, Kent State University, the University of Akron and/or Cleveland State University, at 241 Federal Plaza West, Youngstown, Ohio, also known as the Youngstown Business Incubator. The space will be free of charge for technology development and commercialization. Space includes broadband internet connectivity and access to a variety of software development equipment available for use free of charge.
- 3) To the extent appropriate space is available, the Youngstown Edison Incubator Corporation (YEIC) and Youngstown Central Area Community Improvement Corporation (YCACIC) will make up to 35 vehicular parking spaces available per annum to Youngstown State University, Kent State University, the University of Akron and/or Cleveland State University.

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 Chancellor of the Ohio Board of Regents, the Youngstown Central Area Community Improvement Corporation, and the Youngstown Edison Incubator Corporation.**

## JOINT USE AGREEMENT ANALYSIS

Institutions Involved The Chancellor of the Ohio Board of Regents, the Youngstown Central Area Community Improvement Corporation, and the Youngstown Edison Incubator Corporation

Project Title Youngstown Technology Center

Capital Bill H.B. 699

Item CAP-087/C23521

- 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 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

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: \$ \$2,750,000
2. Estimated annual debt service on the appropriation: \$ \$211,409
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. <u>8,000 s.f. of space at the Semple Building</u>	\$ <u>\$96,000</u>	<u>15</u>
b. <u>6,000 s.f. of space at the Youngstown Business Incubator</u>	\$ <u>\$60,000</u>	<u>15</u>
c. <u>35 parking spaces</u>	\$ <u>\$25,200</u>	<u>15</u>
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.

## Youngstown Technology Center

Use of Facilities and Resources by the Chancellor of the Ohio Board of Regents and The University of Akron, Cleveland State University, Kent State University, and Youngstown State University

- 1) To the extent appropriate space is available, the Youngstown Edison Incubator Corporation (YEIC) and Youngstown Central Area Community Improvement Corporation (YCACIC) will make up to eight thousand total square feet (8,000 s.f.) available per annum to Youngstown State University, Kent State University, the University of Akron and/or Cleveland State University, at 265-271 Federal Plaza West, Youngstown, Ohio, also known as the Semple Building. The space will be free of charge for technology development and commercialization.

Estimated value: Year 1 = 8,000 s.f. x \$12/s.f. = \$96,000. If no change in market value over 15 years, total value is 15 x \$96,000 = \$1,440,000.

- 2) To the extent appropriate space is available, the Youngstown Edison Incubator Corporation (YEIC) and Youngstown Central Area Community Improvement Corporation (YCACIC) will make up to six thousand total square feet (6,000 s.f.) available per annum to Youngstown State University, Kent State University, the University of Akron and/or Cleveland State University, at 241 Federal Plaza West, Youngstown, Ohio, also known as the Youngstown Business Incubator. The space will be free of charge for technology development and commercialization. Space includes broadband internet connectivity and access to a variety of software development equipment available for use free of charge.

Estimated value: Year 1 = 6,000 s.f. x \$10/s.f. = \$60,000. If no change in market value over 15 years, total value is 15 x \$60,000 = \$900,000.

- 3) To the extent appropriate space is available, the Youngstown Edison Incubator Corporation (YEIC) and Youngstown Central Area Community Improvement Corporation (YCACIC) will make up to 35 vehicular parking spaces available per annum to Youngstown State University, Kent State University, the University of Akron and/or Cleveland State University.

Estimated value: Year 1 = 35 spaces x \$60/month x 12 months = \$25,200. If no change in market value over 15 years, total value is 15 x \$25,200 = \$378,000.

### Total Estimated Value Over 15-Years

\$2,718,000 with no annual increase in value/costs

## JOINT USE AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ of \_\_\_\_\_, 2008, by and between the CHANCELLOR OF THE OHIO BOARD OF REGENTS (hereinafter referred to as “Chancellor”), the YOUNGSTOWN CENTRAL AREA COMMUNITY IMPROVEMENT CORPORATION (hereinafter referred to as “YCACIC”), an Ohio non-profit corporation, and the YOUNGSTOWN EDISON INCUBATOR CORPORATION (hereinafter referred to as “YEIC”), an Ohio non-profit corporation.

### WITNESSETH:

WHEREAS, the 126<sup>th</sup> Ohio General Assembly passed Amended Substituted House Bill 699, Section 235.10.30, line CAP-087 (“Authorizing Legislation”), whereby the sum of two million seven hundred and fifty thousand dollars and no cents (\$2,750,000.00) was appropriated (the “Appropriation”) for site development and the design, construction and equipment costs of a new Youngstown Technology Center (the “Project”), which facility will be located at 201-213 and 265-271 Federal Plaza West, Youngstown, Ohio; and

WHEREAS, the Project will complement, enhance and expand opportunities at the nearby Youngstown Business Incubator (together, the “Project Site”) and the soon-to-be-completed Taft Technology Center, both of which will be owned by the YEIC as part of the Ohio Department of Development’s Edison Incubator network; and

WHEREAS, the YCACIC and the YEIC are partnering on this Project, with the YCACIC solely responsible for constructing the Project; and

WHEREAS, the YCACIC currently has fee-simple title to the land on which the Project will be constructed, which it is donating to the Project; and

WHEREAS, the Chancellor has concluded that the value of the use of the Project and the Project Site by the Chancellor as provided in this Agreement is reasonably related to the amount of the Appropriation; and

WHEREAS, the parties desire to enter into this Joint Use Agreement in order to expressly set forth the parameters for the completion of the proposed Project and subsequent use of the proposed Project Site.

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

#### SECTION 1. PURPOSE OF AGREEMENT

The Chancellor and YCACIC/YEIC desire to enter into this Agreement in order to: (i) advance the State's economic growth by promoting technology development within the State; (ii) increase the State's capacity to attract and create jobs through the commercialization of new technology; (iii) support job attraction, as well as new job creation, in northeast Ohio through high-technology entrepreneurial development and (iv) enable YCACIC/YEIC to collaborate with the Chancellor in applied research and technology commercialization.

#### SECTION 2. USE OF FACILITIES AND RESOURCES BY THE CHANCELLOR

A. The Chancellor, and through the Board the University of Akron, Cleveland State University, Kent State University and Youngstown State University, shall, upon reasonable advance prior written notice to YCACIC/YEIC be entitled to utilize the Project Site facilities and equipment as outlined below for activities that promote technology development and commercialization, and for entrepreneurial development activities (the "Project Purposes"), and such other activities and uses promoting the Project Purposes as YCACIC/YEIC may determine.

- B. It is recognized that the Project will complement and will not supplant the existing facilities governed by the Chancellor.
  
- C. Subject to approval by YCACIC/YEIC, the Chancellor may use the Project Site facilities and equipment for the purposes described herein upon terms and conditions not less favorable than those available to the public or any other user of the Project facilities and equipment for such purposes to the degree that reflects the State's \$2,750,000.00 investment, provided that such use shall be consistent with the normal activities of YCACIC/YEIC at the Project Site. The rate structure for use by the Chancellor of the Project facilities and equipment shall be reasonable and comparable to that charged for similar facility and equipment usage.
  
- D. In the event of any conflict regarding any scheduled use of the physical resources, the decision of YCACIC/YEIC shall be final. All representatives of the Chancellor, including but not limited to employees, agents, independent contractors, invitees and representatives shall obey all policies of YCACIC/YEIC regarding conduct while on the premises.
  
- E. Any alterations, additions, repairs, replacements or other changes or improvements to the Project facilities and equipment, including those required by law, shall be made at YCACIC/YEIC's sole expense and YCACIC/YEIC shall hold the Chancellor harmless therefrom; provided that nothing herein shall apply to any future appropriations received by YCACIC/YEIC from the Chancellor or prevent YCACIC/YEIC from receiving additional State appropriations.
  
- F. It is expressly agreed that nothing herein shall be deemed to impose an affirmative duty upon the Chancellor to use any Project Site facilities or equipment. Furthermore, the Chancellor shall not incur charges in connection with the use of the Project Site facilities or equipment under the terms of this Agreement, unless such charges result from actual use of the Project Site facilities or equipment by the

Chancellor or its employees, agents, independent contractors, invitees or representatives.

- G. To the extent appropriate space is available, the YCACIC/YEIC will make up to eight thousand square feet (8,000 s.f.) available to Akron, Cleveland State, Kent State and Youngstown State Universities, free of charge, for technology development and commercialization at 265-271 Federal Plaza West, Youngstown, Ohio, also known as the Semple Building.
- H. To the extent appropriate space is available, the YCACIC/YEIC will make up to six thousand square feet (6,000 s.f.) available to Akron, Cleveland State, Kent State and Youngstown State Universities, free of charge, for technology development and commercialization at 241 Federal Plaza West, Youngstown, Ohio, also known as the Youngstown Business Incubator. Space includes broad-band internet connectivity and access to a variety of software development equipment available for use free of charge.
- I. To the extent such space is available, the YCACIC/YEIC will provide to Akron, Cleveland State, Kent State and Youngstown State Universities 35 vehicular parking spaces at the Project Site.

### SECTION 3. TERM

Unless earlier terminated, as specified herein, the Agreement shall remain in effect for a term of fifteen (15) years. Said fifteen (15) year period shall commence on the day and year on which the Agreement is signed by both parties.

### SECTION 4. COMPLIANCE WITH LAWS

In the completion of the Project facilities and acquisition of equipment, YCACIC shall comply with all pertinent federal, state and local laws and State Administrative Regulations. In connection with the construction of the Project the YCACIC shall follow the competitive bidding procedures identified in Ohio Revised Code Chapter 153

including but not limited to publishing advertisements to seek bids, receiving sealed bids, and awarding contracts responsive and responsible bidder. YCACIC and all contractors and subcontractors working on the Project shall follow all provisions of Ohio's prevailing wage law, Revised Code Chapter 4115.

#### SECTION 5. FUNDS TO BE USED FOR CAPITAL IMPROVEMENTS

The funds appropriated by the State of Ohio shall be used only for capital improvements as defined in the bill appropriating such funds, including acquisition, construction, improvement and completion of the Project facilities, including the site thereof, and equipment and costs reasonably related thereto.

Upon the execution of this Agreement, subject to applicable law, the Chancellor shall promptly take such actions as are necessary or are otherwise reasonably requested by YCACIC to cause the release to YCACIC of the \$2,750,000 in funds appropriated for the Project facilities and equipment by the State of Ohio.

#### SECTION 6. PROGRAM REQUIREMENTS FOR PROJECT

With respect to the use, maintenance, and operation of the Project, the parties hereto agree as follows:

- A. YCACIC shall be solely responsible for all phases of the completion of the Project facilities and acquisition of equipment.
- B. The Chancellor's sole financial contribution to the Project facilities and equipment under the terms of this Agreement shall be the State of Ohio capital appropriation specified in the Authorizing Legislation, which appropriation shall be a condition precedent to the rights, duties and obligations of the parties under this Agreement.

#### SECTION 7. LOCATION AND OWNERSHIP

The parties agree that the Project will be located at 201-213 and 265-271 Federal Plaza West, Youngstown, Ohio in facilities to be developed by YCACIC.

The use, operation, maintenance, and management of the physical resources of the Project facilities shall be the responsibility of YCACIC/YEIC.

**SECTION 8. REIMBURSEMENT TO STATE UPON TERMINATION**

Upon the termination of this Agreement by YCACIC/YEIC for any reason or upon termination of the Chancellor's right to use the Project facilities and equipment of the Project for any reason prior to the expiration of the fifteen (15) year term of the Agreement, YCACIC/YEIC shall, within thirty (30) days of the date of termination of this Agreement or the Chancellor's right to use the Project facilities and equipment reimburse the State of Ohio the prorated share of the State capital funding, as provided for herein totaling \$2.75 million as of the date of this Agreement (the "Reimbursement"). The Reimbursement shall be calculated by dividing the amount of funds contributed by the State, acting through the Chancellor, as provided for herein by fifteen and multiplying the sum by fifteen less the number of full years the Chancellor has had the right to utilize the Project Facilities for the purposes described herein.

**SECTION 9. INSURANCE**

YCACIC/YEIC, during the term of this Agreement, continuously shall maintain insurance covering the Project facilities and equipment. Such insurance shall be obtained from a responsible and well-rated insurance company or companies doing business in the State of Ohio, and will include coverage against loss or damage by fire, lightning, vandalism and malicious mischief, and all other perils covered by standard "extended coverage" or "all risk" policies of insurance. The Project shall be insured for not less than 100% of the replacement value of the Project facilities and equipment, or the highest percentage of coverage available but not in any event less than the amount appropriated by the State of Ohio as limited by the proration set forth herein. Any policy of insurance shall be written so as to not be subject to cancellation without written notice to the Chancellor.

**SECTION 10. INDEMNIFICATION BY THE CHANCELLOR**

YCACIC/YEIC shall pay all costs associated with the construction, operation and maintenance of the Project facilities and shall hold the Chancellor harmless therefrom. Except for any damage or injury directly resulting from actions or conduct by the Chancellor, its employees, agents, independent contractors, invitees or other users authorized by the Chancellor, YCACIC/YEIC agrees to and shall hold the Chancellor harmless from all expenses, costs, damage or liability of any kind, including attorneys' fees, arising out of the use of the Project facilities and equipment for the purposes described herein. Subject to Section 14 hereof, the Chancellor agrees that the Chancellor shall be responsible for personal injury and/or property damage which are attributable to the reckless or negligent acts of the Chancellor, its employees, agents, independent contractors, invitees or other users authorized by the Chancellor.

SECTION 11. REIMBURSEMENT TO CHANCELLOR FOR ADMINISTRATIVE COSTS

Out of the funds appropriated, YCACIC shall reimburse the Chancellor for administrative costs incurred by the Chancellor associated herewith for management fees and reimbursable expenses. Said reimbursement of administrative costs shall equal no more than one and one-half percent (1.5%) of the amount appropriated by the State of Ohio. The Chancellor hereby states that it will seek reimbursement only of actual out-of-pocket expenses it incurs in administering the request and conveyance of the appropriated funds. Said reimbursement shall be deducted and paid to the Chancellor as those funds are released by the State of Ohio.

SECTION 12. AMENDMENTS

Any amendments to this Agreement shall be in writing, signed by all parties hereto and shall require approval by the Chancellor of the Ohio Board of Regents.

SECTION 13. TERMINATIONS

In the event that any party desires to terminate this Agreement prior to the expiration of its terms, written notice of the party's intent to terminate this Agreement shall be given to the remaining party at least one (1) year prior to the effective date of the

termination. However, it is agreed and understood that the assurances set forth in Section 8 of this Agreement shall remain binding and survive any termination herein provided to the extent provided therein.

SECTION 14. ASSIGNMENT

Neither YCACIC, YEIC nor the Chancellor may assign any right, title, interest, duty or obligation under this Agreement unless the assignment is in writing and approved by the Chancellor of the Ohio Board of Regents.

SECTION 15. CONSTRUCTION WORK DISBURSEMENTS

YCACIC and YEIC agree that the YCACIC is solely responsible for both the construction of the Project and the draw down and use of the Appropriations to construct the Project. After appropriate State of Ohio approvals, the Appropriations will be released to the YCACIC for payment or reimbursement of costs related to the permitted uses of the Appropriations as set forth in this Agreement. The YCACIC shall periodically invoice the Chancellor for such costs, provided that each invoice from the YCACIC to the Chancellor must be properly documented in accordance with the YCACIC's fiscal procedures and Ohio statutes. The YCACIC anticipates no more than six (6) such invoices during the construction of the Project.

SECTION 16. WAIVER

Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the State beyond the waiver provided in Ohio Revised Code Section 2743.02. Except as set forth in Section 8 hereof, nothing in this Agreement shall be deemed or construed to be a waiver of any right, privilege or immunity allowed by the State. It is further provided that nothing herein shall be deemed or construed to create any rights in or benefits to any third parties.

SECTION 17. NOTICE

All mailings and notices to the parties shall be addressed to the parties at the addresses set forth below, or to such other address any party, or its attorney, shall have

designated by notice in accordance with the provisions of this paragraph. All mailings and notices shall be addressed as follows:

The Chancellor  
OHIO BOARD OF REGENTS  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43266-0417  
Attention: \_\_\_\_\_

**YOUNGSTOWN CENTRAL AREA COMMUNITY IMPROVEMENT CORPORATION**

George V. Voinovich Government Center  
242 Federal Plaza West, Suite 404  
Youngstown, Ohio 44503  
Attention: Reid Dulberger, Acting President

**YOUNGSTOWN EDISON INCUBATOR CORPORATION**

Youngstown Business Incubator  
241 Federal Plaza West  
Youngstown, Ohio 44503  
Attention: Julie Michael Smith, Chief Development Officer

In WITNESS WHEREOF, the parties have executed this Agreement as of the date first written.

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

By: [Signature]  
Its: 8/21/08

**YOUNGSTOWN CENTRAL AREA COMMUNITY IMPROVEMENT CORPORATION**

By: [Signature]  
Its: President

**YOUNGSTOWN EDISON INCUBATOR CORPORATION**

By: [Signature]  
Its: Chairman/President

MLC