OHIO BOARD OF REGENTS

Consideration of a Joint Use Agreement between Bowling Green State University and the Wood County Regional Airport Authority.

RESOLUTION

WHEREAS, the 126th Ohio General Assembly enacted H.B. 699 which includes a specific capital appropriation of $500,000 to Bowling Green State University for the BGSU Aviation Improvements; and

WHEREAS, 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; and

WHEREAS, Bowling Green State University and the Wood County Regional Airport Authority have presented a joint use agreement for approval by the Ohio Board of Regents; and

WHEREAS, the agreement has been reviewed and its format is found to be appropriate, its description of extent and nature of use has been specified, and the commitment extends no less than fifteen years, and it is in conformity with Rule 3333-1-03; and

WHEREAS, the parties have determined that the value of the use is reasonably related to the amount of the appropriation; and

NOW, THEREFORE,

BE IT RESOLVED: that the Joint Use Agreement between Bowling Green State University and the Wood County Regional Airport Authority, and attached and made a part hereof, be approved.

Eric D. Fingerhut
Chancellor

10/7/07
Date

Joint Use Agreement between Bowling Green State University and Wood County Regional Airport Authority

BACKGROUND

H.B. 699 includes a specific capital appropriation of $ 500,000 to Bowling Green State University (BGSU) for the Wood County Regional Airport Authority (WCRAA). WCRAA will own and operate the facility to be built with state capital funds. As required in Ohio Administrative Code section 3333-1-03, Bowling Green State University submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support the construction of a new WCRAA facility located at 1255 E. Poe Road, Bowling Green, Ohio.

REVIEW

WCRAA agrees to provide the facility to BGSU faculty and students as a site for conducting the academic programs and activities of the institution. The programs and activities include, but are not limited to, BGSU aviation and training programs.

During the term of the agreement, WCRAA agrees to provide the following –

- Access to WCRAA's activities and operations
- Opportunities for faculty and students to collaborate with WCRAA for community activities
- Access to WCRAA data regarding the number and type of daily airport operations
- Aviation student field placements, as appropriate for student internships and as requested by BGSU
- Reasonable best efforts to obtain funding for student field placements or internships

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 Bowling Green State University and Wood County Regional Airport Authority.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Bowling Green State University/Wood County Regional Airport Authority

Project Title BGSU Aviation Improvements

Capital Bill HB 699 Item CAP-133, BGSU Aviation Improvements

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

May, 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: $_____500,000_____
2. Estimated annual debt service on the appropriation: $_____38,438_____
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._Asst Manager, co-op position	$_____10,400_____	____20___
b._Asst Operations Officer, co-op position	$_____ 9,360_____	____20___
c._Line Service Personnel, co-op-4 positions	$_____31,200_____	____20___
d._Mechanics Helper, co-op-2 positions	$_____15,600_____	____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.

Joint Use Agreement Worksheet

Wood County Regional Airport Authority

Estimated Value of Use Calculations

a. Asst. Manager's position, co-op	1 student, 20 hours/week, $10/hour, for 52 weeks
b. Asst. Operations Officer, co-op	1 student, 20 hours/week, $9/hour, for 52 weeks
c. Line Service personnel, co-op	4 students, 20 hours/week, $7.50/hour, for 52 weeks
d. Mechanics Helper, co-op	2 student, 20 hours/week, $7.50/hour, for 52 weeks

Please note that in this analysis we attempted to capture only the student hours and experiences, and not any of the faculty or administrative hours and benefits that come with this agreement. Beyond the $66,560 per year noted in the worksheet for the students, we feel that the faculty and staff will gain benefits from the agreement through their hours of oversight of the student activities as well as any additional working relationships which will naturally develop as a result of these programs.

JOINT USE AGREEMENT
BETWEEN
BOWLING GREEN STATE UNIVERSITY
AND
THE WOOD COUNTY REGIONAL AIRPORT AUTHORITY

THIS JOINT USE AGREEMENT ("Agreement") is made by and between **WOOD COUNTY REGIONAL AIRPORT AUTHORITY**, a body corporate politic established and existing under Section 308.03 of the Ohio Revised Code ("WCRAA"), and **BOWLING GREEN STATE UNIVERSITY** ("University"), an institution of higher education and instrumentality of the State of Ohio, established and existing under Chapter 3541 of the Ohio Revised Code. The University and WCRAA may each be referred to herein as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, through the provision and interdependence of teaching, learning, scholarship and service, the University has established and continues to foster an environment that is grounded in intellectual discovery, community engagement, and multicultural academic and social experiences, while guided in all such pursuits by rational discourse and civility to others;

WHEREAS, the University provides an education of high quality to students with diverse backgrounds, experiences, and educational needs and serves as a resource to address the concerns of local businesses, governments, and communities;

WHEREAS, WCRAA's mission is to: (1) preserve, promote and enhance general aviation in the Wood County, Ohio region; (2) be the primary caretaker of University owned land leased to WCRAA to promote such mission; and (3) be a conduit and a major supporter for aviation pilot and management training and instruction provided through the University's aviation programs, whether military or civilian, as WCRAA has done since 1939;

WHEREAS, one purpose of this Agreement is to develop and pursue an engagement relationship that will be mutually beneficial to both Parties;

WHEREAS, during the term of this Agreement the Parties desire to further their cooperative and collaborative efforts, better align the common elements of their respective missions, and set forth their current understandings concerning various aspects of their prospective relationship;

WHEREAS, such cooperative and collaborative efforts include expanding existing relationships by and between WCRAA and the aviation programs and activities of the University, including aviation students completing internships/field placements at WCRAA, and aviation students actively volunteering at WCRAA;

WHEREAS, in December 2006 the Ohio General Assembly enacted Am. Sub. HB 699, an Act that made capital appropriations for fiscal years 2007-08 (the "ACT");

WHEREAS, in Section 235.10.80, Line Item CAP-133 of the ACT, the University was appropriated $500,000 (the "Funds") to construct a capital project commonly known as the *BGSU Aviation Improvements* ("the Project"), that will provide, among other things, for the increased use and efficiency for WCRAA operations and programs and thereby benefit the University's aviation programs and related activities;

WHEREAS, the Project includes the construction of an Aviation Maintenance Facility ("Facility") and upon completion of the Facility it will be used, in part, to advance the common mission elements of both Parties;

WHEREAS, pursuant to Ohio law such Funds appropriated for capital improvements are released by the State upon the approval of the Ohio Board of Regents ("OBOR");

WHEREAS, OBOR has promulgated rules and regulations regarding the release of such appropriated amounts (Ohio Administrative Code §3333-1-03) and such rules and regulations require that the Parties execute a Joint Use Agreement containing certain terms and conditions; and

WHEREAS, the Parties have determined that this Agreement contains all such terms and conditions, is otherwise fully compliant with all controlling laws, rules and regulations, and in reliance thereupon, the Parties have elected to enter into this Agreement.

COVENANTS

NOW THEREFORE, in consideration of the Recitals and the mutual promises herein contained, and intending to be legally bound thereby, the Parties agree as follows:

1.0 Use of WCRAA's Facilities and Resources by University.

1.1 As further described in Section 1.2, WCRAA agrees to provide the faculty and students of the University the use of the Facility, described more fully in Section 7.0, as a site for conducting the academic programs and activities of the University, including but not limited to, the University's aviation programs, its community engagement activities, and its training programs for University aviation faculty.

1.2 During the term of this Agreement the WCRAA shall:

(a) provide University aviation students and faculty access to WCRAA's activities and operations so that students may learn about the nature, functioning, and extent of the WCRAA's services including, but not limited to: aviation trends, airport management and aviation maintenance operations;

(b) provide University's aviation faculty and students continued opportunities to collaborate with WCRAA for community engagement activities based on

mutually-agreed goals such as Fly-Ins and fund raising activities, student practicums, student co-operatives, and public aviation classes;

(c) provide University aviation faculty access to data regarding the number and type of daily airport operations, including operations during adverse weather conditions, airport management operations, and airport maintenance operations;

(d) provide University aviation students field placements, as appropriate for student internships and as requested by the University. Such students shall be given priority in the provision of all field placements/internships if the number of available spots, as determined by WCRAA, are not sufficient to accommodate all the requests made of the WCRAA;

(e) use reasonable best efforts to obtain funding for University student field placements/internships; if any such funding is received, the WCRAA shall make the internships available to University aviation students; and

(f) make notation on promotional and program information that funding for the Project has been "in part" provided through a joint use agreement with the University and its College of Technology's aviation program.

1.3 In the performance of those collaborative efforts described in Sections 1.1 and 1.2, the Parties agree to the extent of their legal ability to do so, to respect and observe the relevant policies of each and to work cooperatively with one another.

2.0 Joint Committee.

A Joint Committee comprised of WCRAA's representatives and representatives of the University will develop the details and guidelines for implementation of the efforts, programs, and activities described in Section 1.0. The Joint Committee shall meet at least semi-annually to review and monitor implementation of the Parties' respective commitments arising under this Agreement.

3.0 Reports.

3.1 On or before December 31 of each year during the term of this Agreement, WCRAA shall issue an Annual Report to the Trustees of the University. Each such Report shall include: (a) a description of the University-WCRAA relationship established by this Agreement including, but not limited to, the nature and extent of University participation in each of the collaborative efforts, programs, and activities described in Section 1.0; and (b) mention that the Funds for the construction of the Facility were provided pursuant to a state appropriation made to the University.

3.2 Upon request by OBOR or the University, WCRAA shall provide the requestor all relevant records, including financial records, that measure the nature and extent of the

University's use of the Facility and other WCRAA resources, the terms and conditions governing such use, and the benefits otherwise derived by the University under this Agreement.

4.0 Term; Termination Prior to Expiration of Term.

4.1 Subject to the provisions of Section 4.2, this Agreement shall be effective as of the later date of the signatures set forth below (the "Effective Date"), and shall expire on the fifteenth (15) annual anniversary of such date, or upon the expiration or termination of the Lease Agreement described in Section 8.2 herein, whichever shall occur first (the "Expiration Date").

4.2 This Agreement shall be deemed terminated in its entirety prior to the Expiration Date specified in Section 4.1 upon:

(a) the provision of forty-five (45) days prior written notice by the University to WCRAA due to WCRAA's material breach of this Agreement; provided that, such breach is not cured by WCRAA within such forty-five (45) day period (the "cure period");

(b) the provision of thirty (30) days prior written notice by either Party to the other;

(c) termination of the Lease Agreement prior to its term, as stated therein; or

(d) **the University fails to obtain OBOR approval of this Agreement, as required under the Ohio Administrative Code §3333-1-03, within thirty (30) days after the Effective Date, or such other period of time as may be mutually agreed to by the Parties.**

5.0 Reimbursement to the State Upon Early Termination.

5.1 In the event that this Agreement is terminated for any reason prior to the fifteenth (15) annual anniversary of the Effective Date, WCRAA shall remit to the State of Ohio a prorated portion of the Funds received by WCRAA, 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 Facility was made available to the University for the purposes described in Section 1.0.

5.2 Notwithstanding the provisions of Section 5.1, if this Agreement is in effect as of December 31, 2020 but is deemed terminated thereafter solely because of the termination of the Lease Agreement between the Parties, then WCRAA shall remit to the State of Ohio a prorated portion of the Funds received by WCRAA, 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 sum of: (a) the number of full years that the Facility was made available to the University for the purposes described in Section 1.0, and (b) the

number of full years that would have been remaining under this Agreement if it had not been terminated prior to fifteen (15) years from its Effective Date.

5.3 Under the circumstances described in Section 5.2, the University shall continue to use the Facility in support of its aviation program, as generally described herein, and/or in furtherance of other academic endeavors of the University, for a period that is at least fifteen (15) years commencing with the Effective Date of this Agreement.

6.0 Compliance with Laws.

Throughout the term of this Agreement WCRAA shall comply with all relevant federal, state, Wood County, and local laws, as well as, all relevant administrative rules and regulations of any agency, political subdivision, or instrumentality of the Federal Government and the State of Ohio.

7.0 Funds Used Only for Capital Improvements; Identification of the Project.

7.1 Except for the payment of administrative costs to the University pursuant to Section 13.0, the Funds shall be used by WCRAA only for capital improvements, as defined in and intended by the ACT and further described in Section 7.2 of this Agreement. All such funds disbursed to the WCRAA shall be forwarded to its secretary-treasurer who shall be the custodian thereof in accordance with the provisions of Section 308.12 of the Ohio Revised Code.

7.2 Such capital improvement shall include, but not limited to, construction of a new Aviation Maintenance Facility located at 1255 E. Poe Road, Bowling Green, Ohio, and related capital improvements incident thereto, that will enable WCRAA to provide enhanced aviation services to the University, and will serve as an economic enhancement tool for the City of Bowling Green, Wood County, and the region.

8.0 Ownership of the Facility by WCRAA; Insurance.

8.1 Subject to the provisions of Section 8.2, during the term of this Agreement the Facility will be owned by WCRAA and will be fully insured by WCRAA at market replacement value from and against hazards including, but not limited to, fire and such other forms of property damage as the WCRAA may reasonably determine to be appropriate. As landowner, the University will be listed on all policies required as an additional insured and loss payee.

8.2 In accordance with the terms and conditions of a certain lease agreement entitled: *AGREEMENT BETWEEN BOWLING GREEN STATE UNIVERSITY AND WOOD COUNTY REGIONAL AIRPORT AUTHORITY,* that commenced in 1995 (the "Lease Agreement"), and unless the Lease Agreement is extended by mutual consent of the Parties, all right, title and interest in the Facility shall belong to and vest in the University effective on January 1, 2021. The provisions of the preceding sentence shall be deemed

self-executing and no further action shall be required of the University for such title, right and interest to vest in the University.

9.0 Competitive Bidding.

WCRAA, in connection with the expenditure of the Funds, shall conduct itself ethically and shall follow such competitive bidding procedures as are required by Section 308.13 of the Ohio Revised Code and all rules, regulations, and policies adopted pursuant thereto. WCRAA shall avoid, to the maximum extent practicable, any act that is or may reasonably appear to be a conflict of interest.

10.0 Hold Harmless.

WCRAA shall hold harmless the State of Ohio and the University, its officers, trustees, employees, and students from and against any and all obligations, expenses, liabilities, or claims of any kind whatsoever arising out of: (1) the construction, renovation, operation, or maintenance of the Facility; (2) the acts or omissions of WCRAA, its officers, trustees, employees, or volunteers; or (3) any failure or alleged failure of WCRAA, its officers, trustees or employees to comply with any provision of law, including, but not limited to, WCRAA's failure or alleged failure to comply with applicable statutory bidding requirements, or any other federal, state or local law, ordinance, rule, order, directive or regulation. Nothing contained herein shall be deemed to make WCRAA responsible for the negligence or misconduct of the University, its trustees, officers, employees, or students.

11.0 Entire Agreement; Amendments.

This Agreement and its attachments represent the entire and integrated agreement between the University and the WCRAA and supersedes all prior negotiations, representations or agreements, either written or oral. No representations were made or relied upon by any Party other than those expressly set forth herein. No agent, employee, or representative of a Party is empowered to alter or modify any of the terms in this Agreement unless such alteration or modification is done in writing, signed by the signatories below, or their successors, or other authorized persons designated, in writing, by such signatories or successors, **and is approved by OBOR**. This Agreement may not be assigned in any form or to any extent by either Party without the written consent of the other Party.

12.0 Distribution of Funds; Administrative Costs.

12.1. Within ten (10) work days after the Effective Date, WCRAA shall submit to the University a tentative disbursement schedule (the "Schedule"). Upon receipt, such Schedule shall be attached hereto as Exhibit A and shall be incorporated herein by this reference.

12.2 Within ten (10) business days after the receipt of the Exhibit A, the University shall submit to OBOR a formal request for the release of the Funds pursuant to and in accordance with such Schedule.

12.3 The University shall provide prompt notice to WCRAA upon receipt of the Funds. Disbursements of the Funds to WCRAA shall be made in material conformance with such Schedule and pursuant to properly documented requests for payment. For the purpose of this section a "properly documented request for payment" shall consist of at least the following:

(a) a sequentially numbered claim for payment;

(b) the amount requested and the cumulative amount requested and paid to date;

(c) the estimated percent completion of the Facility; and

(d) copies of original source documentation of the costs incurred for architects, engineers, contractors, trades, supplies, equipment, and other costs incurred for which a disbursement of a portion of the Funds is requested.

12.4 WCRAA agrees to keep separate written records in reasonable detail of all costs incurred and work performed by it with the Funds provided under this Agreement. All written records and any other data, drawings, prints, and information of whatever form prepared during or evolved from or associated with constructing the Facility shall be made available for inspection and copying upon request of the University, or OBOR, or a designated representative of either, at all reasonable times.

13.0 Administrative Costs.

From the Funds, University shall receive administrative costs in the amount of Seven Thousand Five Hundred Dollars ($7,500), a sum equal to one and one-half percent (1.5%) of the total amount of the Funds.

14.0 Notices.

All notices, designations and other communications contemplated under this Agreement shall be in writing and shall be either personally delivered, or transmitted by certified mail, facsimile transmission, wire, or other device reasonably calculated to effect delivery of documents within three (3) calendar days. All such notices shall be effective only when received by the addressee. Unless otherwise agreed to in writing by the Parties, such notices, designations, and communications shall be sent to the Parties' representatives at the addresses noted below:

If to the University:	Ms. Sherideen S. Stoll Vice President of Finance & Administration Bowling Green State University McFall Center Bowling Green, Ohio 43403
With a copy to:	Dr. Wayne C. Unsell Dean, College of Technology Bowling Green State University Bowling Green, Ohio 43403
If to WCRAA:	Mr. C. Michael Solley President The Wood County Regional Airport Authority 1261 E. Poe Road Bowling Green, Ohio 43402
With a copy to:	Mr. Michael Hodges Manager The Wood County Regional Airport Authority 1261 E. Poe Road Bowling Green, Ohio 43402

15.0 Binding Nature.

The University and WCRAA each bind themselves, their successors, assigns and legal representatives, to the other Party to this Agreement and to the successors, assigns and legal representatives of the other Party with respect to all terms of this Agreement; provided that, WCRAA shall not assign, or transfer any right, title or interest in this Agreement without the prior written consent of the University, which consent shall not be unreasonably withheld.

17.0 Headings.

The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.

18.0 Governing Law.

This Agreement shall be interpreted, controlled, and enforced in accordance with the substantive laws of Ohio.

19.0 **Authority to Act.**

The Parties hereto warrant and represent to each other that they have the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby and have been duly authorized by their respective Boards of Trustees to execute this Agreement.

IN WITNESS WHEREOF, the Parties, intending to be legally bound thereby, have executed this Joint Use Agreement on the date indicated below under their respective signatures.

WOOD COUNTY REGIONAL AIRPORT AUTHORITY

By: C. Michael Solley

C. Michael Solley
President

Date: July 25, 2007

BOWLING GREEN STATE UNIVERSITY

By: Sheri D. Stoll

Sherideen S. Stoll
Vice President of Finance
& Administration

Date: 8/6/07

EXHIBIT "A"

PROPOSED DISBURSEMENT SCHEDULE

WOOD COUNTY REGIONAL AIRPORT AUTHORITY
and
BOWLING GREEN STATE UNIVERSITY

JOINT USE AGREEMENT WORKSHEET

THE OHIO BOARD OF REGENTS