

OHIO BOARD OF REGENTS

Consideration of a Joint Use Agreement between Kent State University and
the Columbiana County Port Authority.

RESOLUTION

WHEREAS, the 126th Ohio General Assembly enacted H.B. 699 which includes a specific capital appropriation of \$500,000 to Kent State University for the Columbiana County Port Authority Coal Liquification Project; 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, Kent State University and the Columbiana County Port 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 Kent State University and the Columbiana County Port Authority, and attached and made a part hereof, be approved.



Eric D. Fingerhut
Chancellor

10/7/07

Date

Joint Use Agreement between Kent State University and Columbiana County
Port Authority

BACKGROUND

H.B. 699 includes a specific capital appropriation of \$ 500,000 to Kent State University for the Columbiana County Port Authority (CCPA). CCPA owns and operates the facility to be improved with state capital funds. As required in Ohio Administrative Code section 3333-1-03, Kent State University submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support various capital improvements to a Fiber Network located in Columbiana County.

REVIEW

Throughout the entire term of the agreement, CCPA agrees to provide the following to Kent State University -

- a. Network connections to the Salem and East Liverpool campuses at cost to CCPA.
- b. Work with Kent State to develop distance learning opportunities for students, locate and develop content for use by students and the community, and provide continuing education, job placement, and specialized training to regional businesses.

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 Kent State University and Columbiana County Port Authority.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Kent State University/Columbiana County Port Authority

Project Title Fiber Network

Capital Bill HB 699 Item CAP-288, Columbiana County Port Authority Coal Liquification 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 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' education 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: | \$ 390,000 |
| 3. Term of the state bond, in years: | 20 years |

Section II: Estimated value of use of the facility:

Uses of the facility*	Annual value of use	# of years
a. Basic Network Connectivity	\$36,000	15 years
b. One time connection cost	(16,000)	15 years
c. Expanded 155MB service	\$84,000	15 years
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
 Columbiana Joint Use Agreement
 Funding Justifications

Operational savings associated with the utilization of the Columbiana County Port Authority fiber backbone in lieu of other fiber sources were calculated by Kent State University's Department of Information Systems, Engineering and Operations. The estimated Port Authority charges were compared to current university contracts and estimates of proposed improvements to the existing systems.

Potential Savings, basic connection service:

Today's Environment provide 45MB throughput			Monthly Cost	Yearly Cost	One Time Costs	15 Years Total Costs
From	To					
Kent	Salem	Current DS3	\$2,000	\$24,000	\$0	\$ 360,000
Kent	E Liverpool	Current DS3	\$2,000	\$24,000	\$0	\$ 360,000
		Proposed				
Salem	E Liverpool	DS3	\$2,000	\$24,000	\$0	\$ 360,000
		Total	\$6,000	\$72,000	\$0	\$1,080,000
Future Environment with Columbiana Ring – 45 MB			Monthly Cost	Yearly Cost	One Time Costs	5 Years Total Costs
From	To					
Ring	Salem	45 MB	\$ 500	\$ 6,000	\$120,000	\$210,000
Ring	E Liverpool	45 MB	\$ 500	\$ 6,000	\$120,000	\$210,000
Kent	Salem	DS3	\$2,000	\$24,000	\$ 0	\$360,000
		Total	\$3,000	\$36,000	\$240,000	\$780,000
Savings (Loss) at 45 MB						\$300,000

Potential Savings, if system is upgraded to 155 MegaByte access speed:

Today's Environment provide 155MB throughput			Monthly Cost	Yearly Cost	Time Costs	15 Years Total Costs
From	To					
Kent	Salem	Proposed OC3	\$5,000	\$60,000	\$0	\$ 900,000
Kent	E Liverpool	Proposed OC3	\$5,000	\$60,000	\$0	\$ 900,000
Salem	E Liverpool	Proposed OC3	\$5,000	\$60,000	\$0	\$ 900,000
		Total	\$15,000	\$180,000	\$0	\$2,700,000
Future Environment with Columbiana Ring – 155 MB, \$1,500 monthly rate			Monthly Cost	Yearly Cost	One Time Costs	5 Years Total Costs
From	To					
Ring	Salem	155 MB	\$1,500	\$18,000	\$120,000	\$390,000
Ring	E Liverpool	155 MB	\$1,500	\$18,000	\$120,000	\$390,000
Kent	Salem	Proposed OC3	\$5,000	\$ 6,000	\$ 0	\$ 90,000
		Total	\$8,000	\$96,000	\$240,000	\$168,000
Savings (Loss) at 155 MB						\$1,020,000

JOINT USE AGREEMENT

THIS JOINT USE AGREEMENT ("AGREEMENT") made and entered into as of the 4/27/2007, between KENT STATE UNIVERSITY ("UNIVERSITY"), having an office in the Kent State University Library on the Campus of Kent State University in Kent, Ohio, 44242 in Portage County and the COLUMBIANA COUNTY PORT AUTHORITY ("PORT AUTHORITY") having an office at 1250 St. George Street, East Liverpool, Ohio, 43920, in Columbiana County.

WITNESSETH:

WHEREAS, the UNIVERSITY and PORT AUTHORITY mutually intend to enhance their community and share opportunities as well as mutual benefits that the UNIVERSITY and the PORT AUTHORITY can derive by joint collaboration through this Agreement; and

WHEREAS, the General Assembly has enacted *House Bill 699* which includes a specific appropriation of capital improvement resources in the sum of *Five Hundred Thousand Dollars (\$500,000.00)* directed to the UNIVERSITY for the use by the PORT AUTHORITY to be utilized by the Port Authority for the fiber optic network, the availability of which had a direct and positive impact in attracting the Coal Liquification Project. Beard Energy will utilize the fiber network in its operation for information and manufacturing technology education and support services; *and*

WHEREAS, the Port Authority has undertaken to purchase a fiber optic network capable of providing high-speed high-volume broadband service, not otherwise available, in order to attract advanced manufacturing companies to the area. One such company that was so attracted is Beard Energy, which has publicly stated that access to the fiber was a key consideration in choosing Wellsville to locate its Four Billion Dollar Coal Liquification Project.

WHEREAS, the UNIVERSITY will submit to the Ohio Board of Regents a request for the release of the *\$500,000.00* appropriation herein identified which will be used by the PORT AUTHORITY for the fiber optic network that will provide support services for *the Coal Liquification Project*; and

WHEREAS, in consideration of the UNIVERSITY's assistance in the release of the above-mentioned appropriation the PORT AUTHORITY desires to enter into a joint use arrangement with the UNIVERSITY under the terms set forth herein; and

WHEREAS, the UNIVERSITY has concluded that the value of the information and manufacturing technology education and support services provided pursuant to this agreement is reasonably related to the amount of the appropriation and the terms of use are likely to be more favorable to the UNIVERSITY than to others.

NOW THEREFORE, it is mutually agreed by and between the UNIVERSITY and the PORT AUTHORITY as follows:

- 1). PORT AUTHORITY shall provide the UNIVERSITY's local campuses of Salem and East Liverpool ("local campuses"), which are located near the Fiber Network in Columbiana County with access to make connection to the Fiber Network and use thereof at the cost to PORT AUTHORITY of such connection and usage.
- 2). Connection to the PORT AUTHORITY Fiber Network and usage will increase the Local Campuses information technology capabilities and provide additional pathways to communicate between campuses of the UNIVERSITY at a reduced cost.
- 3). PORT AUTHORITY and UNIVERSITY shall mutually cooperate to improve the local community by developing distance learning opportunities for students, locating and developing programming content for use by students and the community, and interfacing with regional businesses for continuing education, job placement and specialized training.
- 4). The UNIVERSITY shall apply to the Board of Regents for release of the funds provided in *House Bill 699* via the Controlling Board and provide for the full disbursement thereof to PORT AUTHORITY.
- 5). Commencement of this Agreement is subject to approval by the Ohio Board of Regents and continue for a period of FIFTEEN (15) years after which time these mutual obligations will terminate unless otherwise extended.
- 6). The potential value of such connection, usage and mutual cooperation efforts for information and manufacturing technology education and support services utilizing the fiber optic network over the term of the Agreement as expressed in support of the pass-through of the **\$500,000.00** capital appropriations shall not serve as definition of precedent of actual value of specific uses or services should a fee be requested for any of those benefits after expiration of the agreement.

7). In the event this agreement is terminated due to the PORT AUTHORITY's failure to *initiate the fiber optic network that will service the Coal Liquification Project*, the PORT AUTHORITY shall remit to the State of Ohio the Funds.

8). The PORT AUTHORITY shall comply with all pertinent federal, state and local laws as well as state administrative regulations.

9). The funds provided under this Agreement shall be used by the PORT AUTHORITY only for the purpose as defined in *House Bill 699* which are to facilitate the PORT AUTHORITY'S *Coal Liquification Project*.

10). As permitted by the Ohio State's Board of Regents, The UNIVERSITY shall be paid a fee of 1-1/2% or *Seventy-Five Hundred Dollars (\$7,500.00)* for the administrative costs incurred by the UNIVERSITY as a result of the project; such payment shall be made at the time the funds are released by the State Controlling Board.

11). The PORT AUTHORITY shall hold the UNIVERSITY, its officers, trustees and employees and the State of Ohio harmless from any obligations, expenses, liabilities or claims of any kind arising out of (i) the construction, general operation or maintenance costs of the PORT AUTHORITY'S *Coal Liquification Project* and/or (ii) the UNIVERSITY, its officers, trustees or employees or the State of Ohio being named as defendant in or party to any lawsuit or adjudicatory proceeding, if such lawsuit or adjudicatory proceeding arises out of an action or omission, or an alleged action or omission, of the PORT AUTHORITY, its officers, trustees or employees, including, but not limited to the PORT AUTHORITY'S 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.

12). Any amendments to this Agreement shall be in writing signed by the PORT AUTHORITY and the UNIVERSITY and approved by the Ohio Board of Regents.

13). The PORT AUTHORITY shall, upon request, supply the UNIVERSITY with all pertinent records which measure the nature and extent of use of the PORT AUTHORITY *Coal Liquification Project* by the UNIVERSITY, the terms and conditions governing such use and the specific benefits derived by the UNIVERSITY under this Agreement.

14). 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;

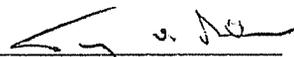
national emergencies; insurrections; riots, wars; or strikes, lockouts, work stoppages or other labor difficulties (collectively, "Force Majeure Events").

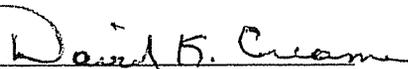
15). The relationship between the PORT AUTHORITY and the UNIVERSITY shall not be that of partners or agents for one another and nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture or agency Agreement between the Parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the latest date set forth below.

COLUMBIANA COUNTY
PORT AUTHORITY

KENT STATE UNIVERSITY

By: 
Tracy V. Drake
Chief Executive Officer

By: 
David K. Creamer
Vice President for Administration

Date: 3.3.7

Date: April 27, 2007

REVIEWED BY

MAR 28 2007


UNIVERSITY
COUNSEL