

OHIO BOARD OF REGENTS

Consideration of a Joint Use Agreement between Wright State University
and the Advanced Technical Intelligence Center for Human Capital
Development.

RESOLUTION

WHEREAS, the 126th Ohio General Assembly enacted H.B. 699 which includes a specific capital appropriation of \$2,500,000 to Wright State University for the Advanced Technical Intelligence Center (ATIC); 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

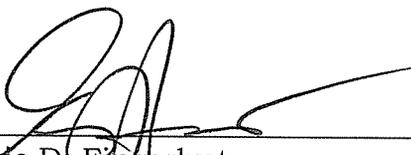
WHEREAS, Wright State University and the Advanced Technical Intelligence Center for Human Capital Development have presented a joint use agreement for approval by the Ohio Board of Regents; and

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 Wright State University and the Advanced Technical Intelligence Center for Human Capital Development, and attached and made a part hereof, be approved.



Eric D. Fingerhut
Chancellor

10/7/09

Date

Joint Use Agreement between Wright State University and Advanced Technical
Intelligence Center

BACKGROUND

H.B. 699 includes a specific capital appropriation of \$ 2,500,000 to Wright State University for the Advanced Technical Intelligence Center (ATIC). ATIC will use the state capital funds to build and operate a new facility or to lease a facility for at least 15 years and improve the leased facility with state capital funds. As required in Ohio Administrative Code section 3333-1-03, Wright State University submitted a Joint Use Agreement for consideration and approval by the Chancellor.

REVIEW

Plans and specifications for the facility are in their preliminary stages. However, Wright State and ATIC anticipate the facility will include -

- Classified classrooms with video teleconferencing
- Classified laboratory space
- Student work areas
- Staff offices
- 250-person secure auditorium
- Ohio Supercomputer Node
- Modern meeting and conference facilities
- Robust network connectivity
- State-of-the-art secure communications

The agreement conforms to Ohio Administrative Code as follows –

- The format of the agreement is appropriate
- The commitment extends no less than fifteen years
- If ATIC leases a facility, the lease term for the facility will be at least 15 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 Wright State University and Advanced Technical Intelligence Center.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Wright State University/Advanced Technical Intelligence Center

Project Title ATIC Facility

Capital Bill HB 699 Item CAP-135, Advanced Technical Intelligence Center (ATIC)

- 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

April, 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: \$ 2, 500,000
2. Estimated annual debt service on the appropriation: \$ 192,190
3. Term of the state bond, in years: 20
(\$3,843,807)

Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. Classrooms	\$ 256,253.80	15
b. Laboratory	\$	
c. Student Work Area	\$	
d. Staff Offices	\$	
e. Supercomputer Node	\$	
f. Secure Communications	\$	

(* 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.

Addendum

As is indicated in the Agreement, Wright State expects to be involved with ATIC on a consistent, perhaps daily, basis. University officials serve on the board, one as an officer, we will be involved in curriculum development, and will have students and faculty regularly taking advantage of Center facilities for all uses indicated on the worksheet and more, as described in the agreement.

JOINT USE AGREEMENT

**WRIGHT STATE UNIVERSITY
and
ADVANCED TECHNICAL INTELLIGENCE CENTER**

This Joint Use Agreement (the "Agreement") is made and entered into this 14th day of June 2007 by and between Wright State University (hereinafter referred to as the "University") and the Advanced Technical Intelligence Center For Human Capital Development, an Ohio non-profit corporation, (hereinafter referred to as "ATIC").

W I T N E S S E T H, T H A T:

WHEREAS, the 126th General Assembly of Ohio has enacted House Bill 699 which includes a specific appropriation of capital improvement resources directed to the University for the benefit of ATIC in the total amount of two million five-hundred thousand dollars (\$2,500,000); and

WHEREAS, the University desires to participate with ATIC in generating human capital with the knowledge and skills to exploit advanced technologies under development by the Department of Defense, National Intelligence organizations, and service and national acquisition programs, including nurturing a professional workforce capable of meeting national security requirements (the "Mission"). For these and other purposes, a facility is needed, to be located near Wright Patterson AFB (WPAFB), and funded in part through the present appropriation; and

WHEREAS, the University's participation with ATIC will allow the University to expand its existing curriculum, expand recruitment opportunities and become a center of excellence in various technical intelligence subjects; and

WHEREAS, the University has concluded that the value of its use of the facility, other ATIC resources, and numerous mutually beneficial collaborations resulting from its participation with ATIC in the described endeavors is reasonably related to the amount of the appropriation; and

WHEREAS, the University and ATIC desire to facilitate the goals of higher education by allowing the University access to ATIC resources, including facilities; and

WHEREAS, the State of Ohio capital appropriations released through the Ohio Board of Regents require compliance with Ohio Board of Regents Rule 3333-1-03, which specifically calls for execution of a Joint Use Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, conditions and terms to be kept and performed, it is hereby agreed between the parties hereto as follows:

1. That the University will submit to the Ohio Board of Regents a request for the release of Two Million Five Hundred Thousand Dollars (\$2,500,000) of the appropriation identified in this Agreement. The University will collect an amount equal to the administrative fee permitted by House Bill 699, but will invest these funds in curriculum development and other collaborative activities related to this effort.
2. ATIC will expend the funds to either acquire, build or substantially modify, improve, and secure a facility located near WPAFB, which will house a Sensitive Compartmented Information Facility (SCIF) and possess connectivity and equipment to support classified training and education in furtherance of the Mission (the "Facility"). The parties acknowledge that plans and specifications for the Facility are in their preliminary stages as of the date of this Agreement, however, the parties anticipate that the Facility will include:
 - Classified classrooms with video teleconferencing
 - Classified laboratory space
 - Student work areas
 - Staff offices
 - 250-person secure auditorium
 - Ohio Supercomputer Node
 - Modern meeting and conference facilities
 - Robust network connectivity
 - State-of-the-art secure communications
3. ATIC will own or lease the Facility from a third party (the "Owner") so that ATIC will be able to fulfill its obligations pursuant to this Agreement. In the event ATIC leases the Facility, the term of the lease shall be at least fifteen years. Throughout the term of this Agreement, ATIC will maintain adequate insurance coverage for the Facility regardless of whether ATIC owns or leases the Facility.
4. Subject to all applicable laws and regulations including but not limited to federal regulations related to national security admittance, access and clearance requirements, ATIC agrees to make the Facility, including the SCIF, and resources available to the University faculty, staff, and students participating in collaborative teaching, research, and development activities consistent with the mission of ATIC, including human capital development and the teaching of curriculum developed for purposes consistent with executing said mission throughout the term of this Agreement.

5. To the extent ATIC or the Owner, as applicable, charges tenants or users of the Facility rental fees related to the use of the Facility, ATIC shall charge or shall cause the Owner, as applicable, to charge the University a rate for such rental or use that considers the benefits of this Agreement to both ATIC and the University and that is no greater than the rental fees charged to other tenants or users. The Ohio Board of Regents shall, upon request, be provided with pertinent records of the Facility that measure the nature and extent of the use of the Facility by the University, and the terms and conditions governing such use and the University shall cooperate with ATIC in developing and maintaining such records.
6. The parties acknowledge that, as of the date of this Agreement, the University is an appointing organization pursuant to the Code of Regulations of ATIC, with the authority to appoint a representative member to the Board of Trustees of ATIC. The parties anticipate that given the importance of the University to the ATIC mission, the University will maintain its status as an appointing organization throughout the term of this Agreement, however, the parties recognize that the majority of the members of the Board of Trustees entitled to vote may amend the Code of Regulations at any time. To the extent that the Trustees amend the Code of Regulations such that the University ceases to be an appointing organization and no longer has a representative serving on the ATIC Board of Trustees, the University shall be entitled to terminate this Agreement and the provisions of Section 8 shall apply.
7. That the term of this Agreement shall be fifteen (15) calendar years (ending in calendar year 2022) commencing upon its execution by the parties.
8. Either party may terminate this Agreement for any reason or no reason prior to the expiration of its term, upon providing written notice of such party's intent to terminate this Agreement to the other party at least six (6) months prior to the effective date of the termination. In the event this Agreement is terminated: (i) by the University pursuant to Section 6 of this Agreement; (ii) by ATIC prior to the expiration of the term; or (iii) by the University as a result of ATIC's use of the funds in connection with a Facility that is not completed in a way that permits the University to substantially prosecute the Mission, then ATIC shall return to the State of Ohio a pro rata portion of the state appropriation received by ATIC to be calculated by: (i) dividing the amount of the state appropriation received by ATIC by fifteen (15); multiplied by: (ii) the result of fifteen (15), minus the number of years, complete or

partial, of the term that have transpired since the effective date of this Agreement.

9. That ATIC shall hold the University harmless from liability for any and all costs, liabilities, and claims that arise from or are attendant to the construction, operation and maintenance costs of the Facility.
10. That ATIC use where applicable competitive bidding procedures equivalent to those enumerated in relevant provisions of Chapter 153 Ohio Revised Code involving (1) publishing advertisements to seek bids, (2) receiving sealed bids, and (3) awarding contracts to the lowest, responsive and responsible bidders.
11. That the funds appropriated for the project by the State of Ohio shall be used only for capital improvements as defined in House Bill 699, 126th General Assembly.
12. That after appropriate state approvals, the funds provided in House Bill 699 will be released to the University and subsequently transferred by the University to ATIC after presentation by ATIC to the University of invoices related to obligations incurred by ATIC for permitted uses of the appropriated funds. Such obligations must be properly documented to the reasonable satisfaction of the University.
13. That ATIC shall comply with all pertinent rules, regulations, and laws of the federal, state, and local government.
14. That all mailings and notices to the parties shall be addressed to the parties at the addresses set forth below or to such other address, as either party shall have designated by notice given in accordance with the provisions of this paragraph. All mailings and notices shall be addressed as follows:

Matthew V. Filipic
Office of Business and Fiscal Affairs
Wright State University
3640 Colonel Glenn Hwy
Dayton OH 45435-0001

Nick R. Coorough
Chief Executive Officer
Advanced Technical Intelligence Center for Human Capital
Development
P.O. Box 0208
Beavercreek, Ohio 45434-0208

With a copy to:

Beverly F. Shillito, Esq.
Sebaly, Shillito + Dyer
1900 Kettering Tower
Dayton, Ohio 45423

- 15. That all amendments to this Agreement shall require the prior approval of the University and ATIC, as well as the express prior approval of the Ohio Board of Regents.
- 16. That this Agreement shall be binding upon and inure to the benefit of the University and ATIC and their respective successors and assigns.
- 17. That this Agreement sets forth the entire agreement of the parties concerning the subject matter and any and all other oral or written agreements, discussions, representations, promises and understandings made or arrived at prior to or contemporaneously with this Agreement are hereby mutually revoked, withdrawn, rescinded and rendered null and void by the parties.
- 18. That the invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 19. That this Agreement shall be construed under and governed by the laws of the State of Ohio.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the later date below written.

Advanced Technical Intelligence Center For Human Capital Development

By: *[Signature]*
Its: CEO

Wright State University
By: *[Signature]*
Its: VP for Business and Fiscal Affairs

6/14/2007
Date