



**Department of
Development**

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Ohio Third Frontier Research and Development Center Attraction Program

**Fiscal Year 2010
Request for Proposals (RFP)**

- RFP Released – August 19, 2009
- Proposals due – Open
- Review - Continuous
- Awards - Quarterly
- RFP Closes 2:00 PM – June 30, 2010



RFP Administered by:
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Ohio Third Frontier Research and Development Center Attraction Program

Fiscal Year 2010 Request for Proposals (RFP)

1 Ohio Third Frontier Statement of Solicitation

1.1 Background

The Ohio Third Frontier (OTF) represents an unprecedented and bipartisan commitment to expand Ohio's technological strengths and promote commercialization that leads to economic prosperity throughout Ohio. Designed to build world-class research programs, nurture early-stage companies, and foster technology development that makes existing industries more productive, OTF creates opportunity through innovation. In targeted areas of technology, the ten-year, \$1.6 billion State of Ohio initiative is catalyzing the growth of existing and emerging industry clusters by:

- Increasing the quantity of high-quality research that has commercial relevance to Ohio companies;
- Expanding access and availability of investment capital to create, grow, and attract technology-based enterprises;
- Growing and nurturing an increasingly experienced pool of entrepreneurial management talent;
- Addressing the technical needs of existing companies pursuing new products and production processes; and,
- Contributing to the expansion of a technologically proficient workforce.

Consistent with the strategic goals, OTF investments represent a balanced portfolio of programming that proactively identifies opportunities throughout the Technology Commercialization Framework. As a result, all OTF Programs share a common goal — to promote technology-based economic development within Ohio by funding activities that move technology from idea to market. This goal requires the State to design programs, evaluate proposals and projects, leverage resources, and provide management oversight within the context of the Technology Commercialization Framework.

Adopted early in the life of OTF, the Technology Commercialization Framework (Framework) is a commonly accepted model and language for representing how a technology moves from the laboratory through various stages of commercialization and into the marketplace. The Framework facilitates strategic and programmatic planning, communication of expectations to program applicants and award recipients, and the development of meaningful metrics.

The ultimate utility of the Framework is that it aids understanding of the real world market gaps that hinder the commercialization process for companies and industries in Ohio. Historically, new technologies and companies are most at risk in the incubating and demonstrating phases of the Framework, commonly called the

"Valley of Death." Therefore, a significant portion of Ohio Third Frontier resources has gone to programs that directly address those stages.

It is expected that every proposal seeking OTF funding will clearly demonstrate its understanding of the Technology Commercialization Framework, and will be able to articulate its scope of work within the Framework's model. To learn more about the guiding principles contained within the Technology Commercialization Framework, please see [Appendix A](#).

The nine member Ohio Third Frontier Commission (OTFC) has overall responsibility for OTF. In addition, a 16-member Ohio Third Frontier Advisory Board (OTFAB) of leaders from industry, academia, and government was created to provide advice and counsel to OTFC.

1.2 Request for Proposals Issuance

This Request for Proposals (RFP) is being issued for grants to be awarded under OTF. OTFC reserves the right to fund any Proposal in full or in part, to request additional information to assist in the review process, to reject any or all proposals responding to this RFP, and to re-issue the RFP and accept new proposals if OTFC determines that doing so is in the best interests of the State of Ohio. Issuing this RFP does not bind the State to make an award of Grant Funds. Any award of Grant Funds in respect to this RFP will be subject to availability of funds as provided in Ohio Revised Code Section 126.07.

All capitalized words and phrases not otherwise defined in this RFP have the meanings given them in [Appendix B – Definitions](#).

All costs incurred in preparation of a Proposal shall be borne by the Lead Applicant and its team. Proposal preparation costs are not recoverable from Grant Funds. The State shall not otherwise contribute to or be liable for the costs of Proposal preparation.

If requested, Lead Applicants must attend the OTFC meeting at which proposals will be considered for funding. The funding decisions of OTFC are final. All Lead Applicants will be notified of the outcome of their applications after OTFC makes its funding decisions. Award of Grant Funds is subject to approval of the State's Controlling Board. If requested, Lead Applicants selected by OTFC for funding must attend the Controlling Board meeting at which their applications for funding are to be considered.

The Ohio Department of Development (Development) administers this RFP. Development reserves the right to adjust the dates for this RFP for whatever reason it deems appropriate. Development's Technology and Innovation Division will administer all Grants made under this RFP.

1.3 The RFP Process

The RFP process will consist of the following steps:

- Release of RFP
- Questions & Answers (Q&A)

- Submittal of Proposals

Each of these steps is discussed below.

1.3.1 Release of RFP

This RFP will be released by publication on the OTF website:
www.thirdfrontier.com

1.3.2 Questions and Answers

All questions regarding this RFP must be submitted in writing via email. Substantive questions and answers will be posted in a Frequently Asked Questions section on the OTF website. Questions should be sent to OTFRDCAP2010@development.ohio.gov with a subject line “OTFRDCAP Q&A.” Development reserves the right to edit questions for brevity and clarity and to consolidate the same general question if received from more than one individual.

1.3.3 Submittal of Proposal

A Lead Applicant must ensure that a Proposal submitted in response to this RFP complies with all the requirements set forth in this RFP. All Lead Applicants are advised to read this RFP carefully to ensure a complete understanding of the Proposal requirements. In particular, the form, format, and content of all proposals must follow the directions provided in Sections 2 and 3 and use the forms presented in Appendix C.

The Lead Applicant is solely responsible to ensure its Proposal is complete, accurate, responsive to the requirements of this RFP, and received by Development’s Technology and Innovation Division on time. Upon timely receipt of the Proposal, Development staff will conduct an administrative review using an established written protocol to screen proposals for compliance with the objective content requirements defined in this RFP. Proposals complying with the RFP requirements are forwarded to a panel composed of staff of Development and Ohio Board of Regents (OBR). This panel will review the Proposal and opportunity for the attraction of a research and development center. Proposals found to not comply with this RFP’s requirements may be eliminated from the competition and not reviewed further.

In the case of non-profit or federally sponsored research and development centers which have deadline driven application processes, the Proposal for RDCAP funding must be received by Development at least three (3) weeks prior to the primary sponsor’s deadline for proposals. Any commitment of RDCAP support from Development must be formally included in the application to the primary sponsor.

2 Program Description

2.1 Purpose, Goals, and Objectives

The Ohio Third Frontier's (OTF) Research and Development Center Attraction Program (RDCAP) is designed to attract large, nationally designated and highly visible corporate, non-profit, and federal research and development centers or laboratory facilities (hereafter referred to as Center) to Ohio. RDCAP will achieve this goal by enhancing and supplementing Ohio organizations' proposals for such Centers by providing funding that serves as cost share or matching dollars, thereby improving the competitiveness of the Proposal and enhancing the potential for a Center being located in Ohio.

The specific goals and objectives of the RDCAP are to:

- Secure new-to-Ohio research and development funding and facilities with "center" designations by their primary sponsor;
- Increase the reputation and visibility of Ohio within selected fields of research and development that are aligned with OTF technology focus areas, and;
- Support equipment acquisition for Centers that will conduct applied research, commercialize new technologies, form new companies, and address competitiveness issues of industries that are strategically significant to Ohio.

RDCAP funded activities in Ohio are expected to create new jobs, new technology-based products, and new technology-based companies in Ohio that will have beneficial economic impacts for Ohio in the coming years. RDCAP compliments other OTF activities by directly supporting initiatives that build research and development capacity and quality as well as catalyzes technology development in Ohio.

2.2 Eligibility

2.2.1 Scope and Technology Subject Matter

The RDCAP Proposal must involve the attraction and build-out of a high-quality, large, nationally designated and highly visible corporate, non-profit, or federal research and development center or laboratory facility that involves one or more of the following criteria: 1) conducts value-added applied research; 2) performs industry-directed and industry-oriented problem solving; and, 3) develops technologies that can be commercialized in partnership with a for-profit company.

The RDCAP, for which a Lead Applicant applies, must first receive the "Center" designated award from the primary sponsor before the State funds will be awarded. In the case of large federal or non-profit awards to multi-institutional consortia led by an Ohio institution, total award funds from the primary sponsor that remain in Ohio for the Center should be at least \$5

million in order to also apply for RDCAP funding. In the case of corporate research and development centers, the Center must represent significant company investment to capitalize and operate the Center in order to also apply for RDCAP funding.

Furthermore, the primary sponsor's competitive selection and award process must have a provision for the consideration of RDCAP cost share as a key differentiator. For corporate Centers, the company must demonstrate that RDCAP funds will be influential in its location decision regarding the Center.

RDCAP proposals must be for Centers that are new to Ohio. Proposals for renewing an existing Center in Ohio are not eligible. Congressional earmarked Centers are also not eligible for funding.

RDCAP proposals may address any of the following opportunity areas or combinations thereof:

- Advanced Energy (with an emphasis on fuel cells, photovoltaics, wind, biomass, and storage)
- Advanced Materials (with an emphasis on advanced polymers, carbon nanocomposites, and bioproducts)
- Advanced Propulsion (aerospace)
- Biomedical (with an emphasis on biomedical imaging, cardiovascular, regenerative medicine and orthopedics)
- Instruments, Controls, Electronics (with an emphasis on sensors)

2.2.2 Lead Applicant

The Lead Applicant must either be a State supported or State assisted Ohio university, a non-profit public or private research organization in Ohio that will have a Joint Use Agreement with a State-supported or State-assisted Ohio university, or a for-profit company that will have a Joint Use Agreement with a State-supported or State-assisted Ohio university. An Ohio university is an accredited institution of higher education in Ohio. A non-profit public or private research organization in Ohio is an organization having business lines that include research and development, that has a significant portion of its research and development activities in Ohio, and that has a Principal Place of Business in Ohio. A for-profit company is a company considering establishing or moving a significant portion of its research and development activities in/to Ohio.

The Lead Applicant will be responsible for the administration of the Proposal should it be awarded. The Lead Applicant must also serve as both administrative and technical director of the Project. In the case of a Lead Applicant who is either an Ohio non-profit or a for-profit company, the State supported or State assisted Ohio university would serve as fiscal agent of the Project.

2.3 Funding

Funding for RDCAP will come from the Wright Capital Fund. RDCAP funds will support applied research and commercialization activity rather than basic research. OTFC has made \$25 million available for RDCAP in FY 2010. The typical amount for each RDCAP award will be approximately fifteen percent (15%) of the primary sponsor funding received to establish the Center. There is a typical award cap from OTFC of \$5 million for any one RDCAP award although OTFC reserves the right to award larger RDCAP grants.

Funds can be used to satisfy any capital equipment acquisition allowable provided the equipment will be owned by an Ohio non-profit or a State-supported or State-assisted Ohio university, the equipment will remain in Ohio, and the equipment will serve an Ohio higher education purpose. No indirect charges can be applied to expenses paid for with RDCAP funds.

2.4 Term of Project

The term of RDCAP Grant Agreements will be five (5) years, including two (2) years during which equipment funded by RDCAP must be acquired. For an additional three (3) years, the Grantee will be required to submit an annual report detailing the overall status of the Center and the economic impacts of the Center on Ohio.

3 General Proposal Requirements

3.1 General Instructions

- Proposals must be submitted in the following manner:
 - One original paper copy marked as “Original”, four additional paper copies marked “Copy” and one CD containing a complete single, unlocked PDF file of the Proposal.
- Proposals must be received at the location specified below. Proposals may not be submitted by fax or email.

Ohio Department of Development
Technology and Innovation Division, Attention: RDCAP
77 South High Street, 25th Floor
Columbus, OH 43215

- Proposals are to be submitted on 8.5 x 11-inch paper.
- Margins must not be less than $\frac{3}{4}$ of an inch on all sides, with the exception of forms found in [Appendix C](#) of this RFP.
- Font must be 11 point or larger with no more than 6 lines per inch.
- All pages must be numbered consecutively using the format “Page [#] of [total number of pages]” (e.g., Page 2 of 8).

- The Proposal title and Lead Applicant name must appear at the bottom of each page.
- Proposals should not include color figures that cannot be understood when photocopied in black and white.
- The first page of the Proposal must be the Application Information Page.
- Do not include a cover or cover letter other than the Application Information Page.
- Proposals must be stapled once in the upper left hand corner and must not be bound.
- Once the Lead Applicant has submitted their Proposal to the primary sponsor, the Lead Applicant will be required to submit to Development a copy of the Proposal. Likewise, the Lead Applicant must submit a copy of the Center award notification from the primary sponsor. Development will review both the Proposal and Center award to ensure they still meet requirements of RDCAP.

3.2 Trade Secret Information

All Lead Applicants are strongly discouraged from including in a Proposal any information that the Lead Applicant considers to be a “trade secret,” as that term is defined in Section 1333.61(D) of the Ohio Revised Code. All information submitted in response to this RFP is public information unless a statutory exception exists that exempts it from public release. If any information in the Proposal is to be treated as a trade secret, the Proposal must:

- Identify each and every occurrence of the information within the Proposal with an asterisk before and after each line containing trade secret information and underline the trade secret information itself.
- Check the “This Application Does include information considered a ‘trade secret’” box on the Applicant Information Page.
- Include a page immediately after the Application Information Page that lists each page in the Proposal that includes trade secret information and the number of occurrences of trade secret information on that page.

To determine what qualifies as trade secret information, refer to the definition of “trade secret” in the Ohio Revised Code, which is reproduced below for reference:

- (D) “Trade Secret” means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:
- (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily

ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Development requires non-disclosure agreements from all non-Development persons who may have access to Proposals containing trade secret information, including evaluators.

3.3 Order and Content of Proposal Sections

3.3.1 Application Information Page

The first page of the Proposal must be the completed Applicant Information Page found in Appendix C to this RFP.

3.3.2 Trade Secret Information

This section of the Proposal must disclose any trade secret information included in the Proposal. This page is only required and must be included if there is any information to be treated as a trade secret in the Proposal. Follow the instructions in Section 3.2 of this RFP.

3.3.3 Lead Applicant and Collaborator Information

Complete and include the Lead Applicant Contact Information Page. One individual may serve in more than one capacity.

Complete and include the Collaborator Information Form for each Collaborator. Include the lead individual for each Collaborator on this form.

3.3.4 Abstract

Prepare an Abstract that summarizes the proposed Project and its expected commercial and technical outcomes. This section should minimize use of jargon and technical language and be written so that a non-technical person can understand it. This section will be used in public documents, including press releases, and must be understandable by the general public. The Abstract may not contain any trade secret information.

3.3.5 Table of Contents

Prepare a Table of Contents with detail for two levels of headings in the Proposal. This section should also include a list of Charts, Figures, and Tables that appear in the Proposal with a page number for each.

3.3.6 Proposal Narrative

The Proposal Narrative should address all of the following items in the order presented.

- **Description of the Primary Sponsor's Process to Award or Locate the Center.** The description of the process to award or locate the Center must

name the primary sponsor and tell how the process is being conducted to select a location for the Center. This section should focus on information related to the purpose and intent of the Center, the review/evaluation process to be used, evidence that cost share is an evaluation factor for the primary sponsor (required by RDCAP), what the major evaluation factors are, and a schedule of major steps including expected start date of the Center. If the sponsoring organization has issued an RFP, or equivalent, the Lead Applicant must provide the URL address.

- **Description of Lead Applicant's Proposal Plans.** The description of the Lead Applicant's Proposal plans should discuss the composition of the team that has been organized to attract the Center to Ohio, the roles of team members, the management structure that will be used to implement the Center, and the expected budget for the Center with an emphasis on 1) the funds remaining in Ohio from the primary sponsor's overall expected award and 2) how those Ohio funds build upon prior OTF investments.
- **Description of the Center.** The Center description should include the name of the Center, purposes and activities (e.g., applied research, problem solving, engineering/testing services, and commercialization) of the Center, technological focus of the Center, duration of the Center award, expected magnitude of the Center award, and any other information necessary to understand the opportunity.
- **Description of Ohio's Competitive Position.** Ohio's competitive position section should summarize the experience, skills, and unique factors that make Ohio a competitive location for the Center. Brief descriptions of related key experience or qualifications are required.
- **Projected Impacts.** The projected impacts section should describe the national prominence, recognition, and importance to Ohio of winning the Center. This section should also describe the importance and relevancy of the Center to key existing and/or emerging Ohio industry and who, especially among Ohio companies, is collaborating on the Center and what this collaboration will mean to the company in the way of anticipated new technologies, new product, and/or commercialization. Finally, this section should also project what the likely success metrics and leverage of the Center will be beyond just the initial Center award. More specifically, describe the anticipated leverage this Center will generate in the way of new business attraction to Ohio as well as other grant awards.

3.3.7 Budget

Capital Funds: The Wright Capital Funds must be used solely to acquire, renovate, or construct facilities and purchase equipment that is part of property or facilities owned by an Ohio college or university or by a non-profit public or private research organization or public body in Ohio that provides access and use of the facilities or equipment to a collaborating Ohio college or university. If the facilities or equipment will be owned, or will be part of facilities owned, by a non-profit public or private research organization or public body in Ohio, the corporation must enter into a Joint Use Agreement with a

collaborating Ohio State-supported or State-assisted institution of higher education. In no case may capital assets acquired with funds awarded through this RFP be owned by a for-profit entity.

In accordance with Ohio Revised Code Chapter 4115, Projects involving State funds may require the recipient to pay prevailing wage rates for workers involved in any construction activity. The Ohio Department of Commerce's Division of Labor and Worker Safety, Wage and Hour Bureau, will make all determinations on the requirements of paying prevailing wage. If the Wage and Hour Bureau determines that prevailing wage rates are to be paid, then pursuant to Ohio Revised Code Section 4115.032, the Grantee shall designate a Prevailing Wage Coordinator who shall be vested with all the powers, duties, and responsibilities required by law of a Wage Coordinator. The parties agree that it is the responsibility and duty of the Grantee to comply with all prevailing wage requirements as set forth in the Ohio Revised Code Chapter 4115.

Capital funds awarded through this RFP may not be used for operating expenses of the Project.

Cost Share Requirements: No mandatory Cost Share is required for RDCAP other than winning the primary sponsor's competition for the new Center.

Indirect Costs: Indirect costs may not be charged to RDCAP funds awarded as part of this RFP.

Budget Forms and Narrative: A Lead Applicant must use the Budget Forms contained in [Appendix C](#) of this RFP. The following Budget Forms are contained in [Appendix C](#).

Budget Form 1 (Appendix C) is to be used by the Lead Applicant. The total RDCAP Grant Funds requested in the Proposal must be represented on this form as the Grant amounts that will be used by the Lead Applicant and Collaborators. The Subcontract/Sub-Grant line on this form refers to the RDCAP funds provided to Collaborators by the Lead Applicant or Cost Share provided by Collaborators. A Lead Applicant can detail Cost Share already committed to the overall effort although that's not required.

Budget Form 2 ([Appendix C](#)) is to be completed for each Collaborator. A Collaborator is any entity that is receiving a Subcontract/Sub-Grant from the Lead Applicant of RDCAP funds or is committing Cost Share to the proposed Project.

A detailed Budget Narrative must also be included covering an explanation of the costs for both the RDCAP Grant Funds requested and any Cost Share committed.

Please note that the Lead Applicant must identify its requirements for high performance computing facilities and services, including hardware, software, and infrastructure services in its Proposal. If a Lead Applicant's computing requirements exceed approximately \$100,000 for a proposed Project, the Lead Applicant will notify Development, and the Ohio Supercomputer Center may convene a panel of experts. The panel will review the Proposal to

determine whether the Proposal's requirements can be met through Ohio Supercomputer Center facilities or through other means and report such information to OTFC. All Lead Applicants are encouraged to consult with the Ohio Supercomputer Center in advance of submitting a Proposal with \$100,000 or more in high performance computing facilities, equipment, or infrastructure services.

3.3.8 Letters of Commitment

For any Center attraction effort lacking a formal, published solicitation, such as with the attraction of a corporate research and development center or for any Lead Applicant who is either an Ohio non-profit or a company, letters of collaboration must be included in the RDCAP Proposal from both an Ohio State-supported or State-assisted institution of higher education and the Lead Applicant agreeing that mutual use, benefit, and access of the equipment to be purchased with RDCAP funds has been agreed to.

3.4 Page Limitations

Any pages beyond the page limits listed below will be eliminated from the Proposal before it is sent for review and evaluation. Except as otherwise noted, appendices or other methods to augment the information presented in the Proposal are not allowed. Reference to web-based information to supplement the Proposal is not permitted, and such references will not be considered in the evaluation.

- Abstract – 1 page
- Proposal Narrative – 8 pages
- Budget – use specified forms
- Budget Narrative – Minimum of 1 and maximum of 3 pages total
- Letters of Commitment - 2 pages per letter

4 Award Process

4.1 Proposal Review and Evaluation Procedures

OTF uses a competitive, objective, and transparent process to make awards to projects based on proposals that reflect meritorious scientific and technical content, sound business and commercialization plans, and potential for positive impacts on the economic conditions in Ohio.

An annual strategic plan, recommended by OTFAB and approved by OTFC in open, public meetings, drives program framework and budget allocations. Following the OTFC established program framework, this RFP establishes specific award criteria and describes in detail the competitive peer review process. This RFP process complies with ORC Section 184.02 (B) which states:

In addition to the powers and duties under sections 184.10 to 184.20 of the Revised Code, the Commission shall do all of the following:

(1) Establish a competitive process for the award of grants and loans that is designed to fund the most meritorious proposals and, when appropriate, provide for peer review of proposals.

Upon receipt of proposals, Development staff will conduct an administrative review using an established written protocol to screen proposals for compliance with the objective content requirements defined in the RFP. Proposals complying with the RFP requirements are forwarded for final review by staff of Development and the OBR. Proposals found to not comply with this RFP's requirements may be eliminated from the competition and not reviewed further.

4.2 Evaluation Criteria

Only the most meritorious proposals are sought for funding. Proposals passing the administrative review will be evaluated based on responsiveness to all the requirements of this RFP and on the Lead Applicant's response to any additional information that may be requested. Implicit in those requirements and evaluation criteria is the quality of the proposal and budget. The following criteria, however, have been designated with the highest relevance to and weighting for OTFRDCAP.

- Alignment of the Proposal with the OTFFCP purpose, goals, objectives, eligibility, funding, and requirements as described in Section 2 of this RFP
- Quality of the responses to the requirements of this RFP as outlined in Sections 3.3.6, 3.3.7, and 3.3.8
- Compliance with this RFP's administrative requirements

The evaluation criteria are designed to support the mission and goals of OTF and its various programs.

4.3 Award Decision

At a public meeting, proposals recommended for funding will be presented, and Development staff will provide necessary programmatic details including information about funds available and program goals and criteria. If requested, Lead Applicants must attend the OTFC meeting at which proposals are considered for funding. Development staff will be available to respond to questions from OTFC members. During the public meeting, and only at the specific request of an OTFC member, Development staff will provide a funding recommendation.

OTFC members will deliberate and exercise their independent judgment regarding award decisions based on all the information exchanged. OTFC may approve awards subject to conditions identified during its deliberation. OTFC acts by the affirmative vote of a majority of its members. The funding decisions of OTFC are final. All Lead Applicants will be notified of the outcome of their Proposals after OTFC makes its funding decisions.

All decisions taken by OTFC, including votes and a summary of any award conditions, will be recorded in minutes of the OTFC meeting. If and to the extent OTFC deviates from a recommendation, those deviations will be reflected in meeting minutes.

4.4 Award and Grant Agreement Preparation and Execution

Awards of Grant Funds will be made based on Proposals as submitted (including such modifications as may be agreed by the Lead Applicant), the Project budget, and any conditions set forth by OTFC. The grant will remain open for the duration of the Project, plus a three-year reporting period during which annual reports are required to be submitted to Development.

Following selection by OTFC, an award of Grant Funds must be approved by the State's Controlling Board, a legislative body that reviews appropriation of State funds. Development will request Controlling Board review as soon as possible after the OTFC funding decision. The Controlling Board process normally takes a minimum of forty-five to sixty (45-60) days to complete.

Development will prepare a Grant Agreement. The Grant Agreement will incorporate the Proposal and Project budget, as either may have been modified by evaluation findings, funding decisions, or other terms or conditions consistent with the approval by OTFC. Development may require the Lead Applicant to provide cash flow projections on a quarterly basis.

Grant Agreements are sent to Lead Applicants for review and signature. Development executes Grant Agreements on behalf of OTFC after the Grant Agreement is accepted by the Lead Applicant. After Development executes the Grant Agreement, the Grant is entered on the State's accounting system and invoices may be submitted. Once the Grant Agreement is fully-executed, the Lead Applicant will be considered and referred to as a "Grantee."

A Grantee is required to complete the Project as described in the Grantee's Proposal as submitted and with only those modifications as agreed by the Grantee and Development in finalizing the Grant Agreement. Development will assign a Program Administrator who will work with the Grantee throughout the Project Period. Development staff and the Grantee will develop a series of performance metrics that will be used to measure progress on the Grant Agreement.

All Grantees will be required to submit to Development quarterly progress and metrics reports, as well as invoices and expenditures reports, to document achievement of Project milestones, to report Project-related success stories, and to submit post-Project completion annual reports for a period of three (3) years. All reports and invoices will be submitted in the form and format required by Development which may change from time to time.

From time to time during the Term of the Agreement, Grantee may organize conferences or other events open to industry representatives or the general public related to the Project, the subject matter of the Project or associated work of Grantee or its Collaborators. In consideration of the Grant, up to two (2) representatives of Grantor may attend such conferences and events for the purposes of sharing information between Grantee, its Collaborators and other constituents, and Grantor. Grantee shall provide Grantor reasonable advance notice of any such conferences and events. Grantor will not be charged registration fees to attend such events.

4.5 Mandatory Compliance

The following restrictions apply to all OTF Projects:

4.5.1 Human and Animal Research

For any Proposal that includes use of human subjects, the Lead Applicant's and each Collaborator's human subject policies and procedures must comply with the Code of Federal Regulations, Title 45, Part 46. For any Proposal that includes use of animal subjects, the Lead Applicant's and each Collaborator's animal subject policies and procedures must comply with US Code, Title 7, Sections 2131-2156.

4.5.2 Obligations to the State; Compliance with Laws

Grantees will be required to certify in the Grant Agreement that they do not owe: (1) any delinquent taxes to the State or a political subdivision of the State; (2) any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State; and (3) any other moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.

Grant Agreements will require Grantees to comply with all applicable federal, state, and local laws in the performance of the Project. Grantees must accept full responsibility for payments of all unemployment compensation, insurance premiums, workers' compensation premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by Grantees on the performance of the work authorized by the Grant Agreements.

4.5.3 Other Compliance

Grant Funds may not be used for research involving tissue obtained from aborted fetuses. (See Ohio Revised Code Section 2919.14)

5 APPENDICES

- A. Technology Commercialization Framework**
- B. Definitions**
- C. Forms**
- D. Information Related to Joint Use Agreements**

Appendix A

Third Frontier Grant Programs

Technology Commercialization Framework

Technology Commercialization Framework

All OTF Programs share a common goal – to promote technology-based economic development within Ohio by funding activities that move technology from ideas to market. This goal requires the State to design programs, evaluate Proposals and Projects, leverage resources, and provide management oversight within the context of a commercialization framework. Development has adopted the Technology Commercialization Framework based on an extensive literature review on the subject.¹

The Commercialization Framework consists of three major components:

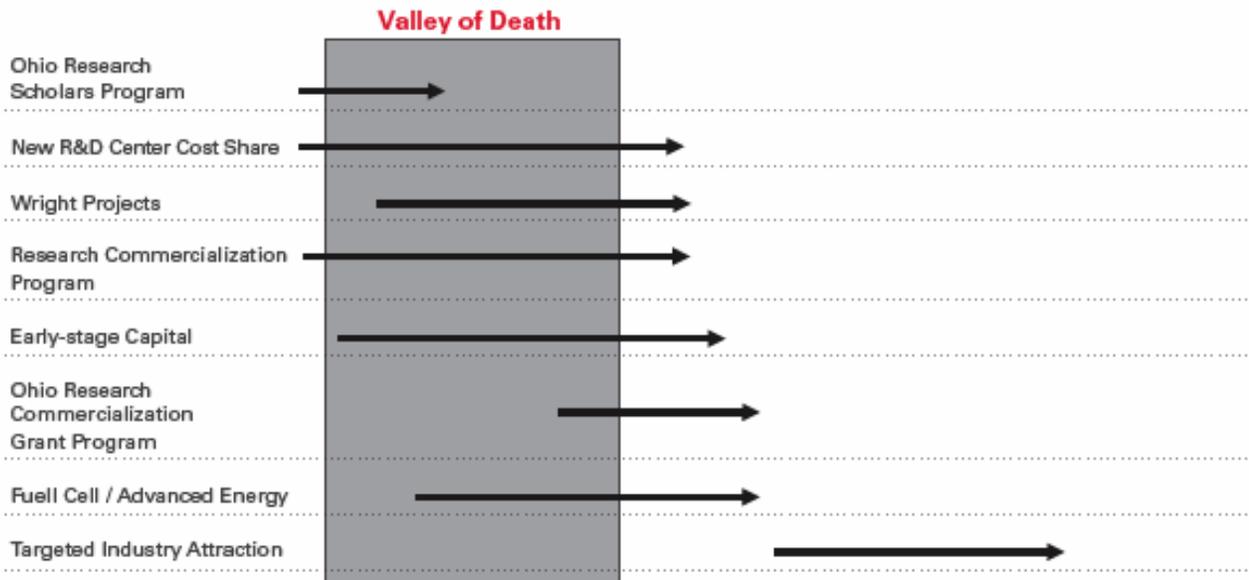
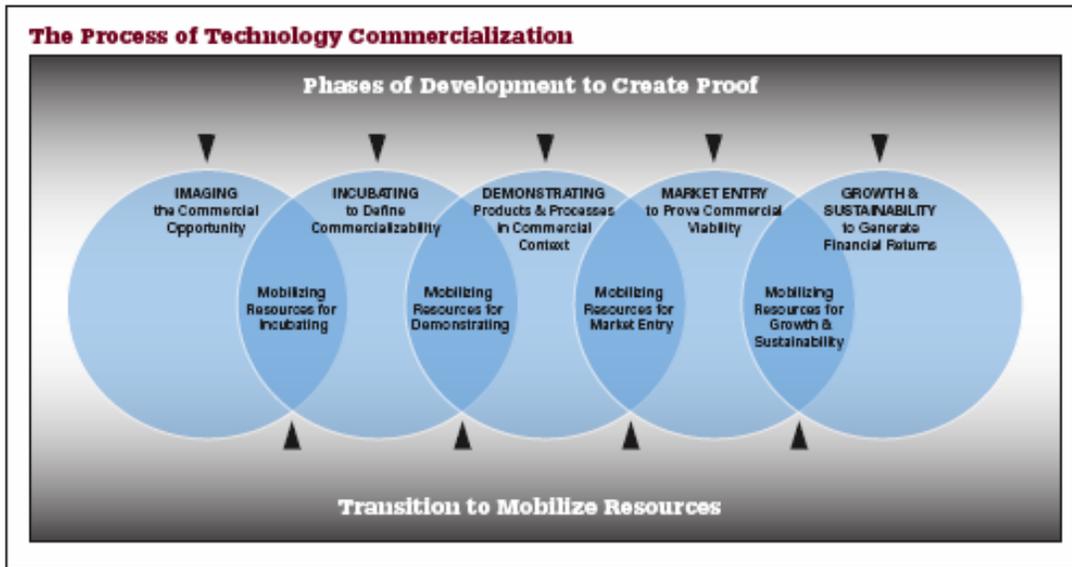
- A description of the five phases of commercialization, including an overview of two categories of activities and required proof within each phase – (i) the development of the technology, and (ii) the development of the commercial concept;
- A system of metrics (the ABC metrics) designed to provide objective interim measures of commercial progress well before the project can achieve traditional metrics (e.g. customers, revenues, profits, etc.); and
- A series of steps (the Analytical Framework) to help improve the probability of success or reduce the unproductive use of scarce resources.

The Phases of Commercialization

Figure 1 illustrates the five phases of commercialization: (1) Imagining, (2) Incubating, (3) Demonstrating, (4) Market Entry, and (5) Growth and Sustainability. In each phase, the primary goal is to generate the proof needed to attract resources required to move to and engage in the proof generating activities generally associated with the next phase of commercialization. The process is inherently iterative, with numerous starts, restarts, successes, and failures – sometimes within a particular phase and sometimes between phases. In Figure 1, each phase overlaps with the next to illustrate transitions, the process of interaction among investors, partners, customers, and the project team that results in the project's acquisition of the resources necessary to enter the next phase of the commercialization. Although the project's ability to attract resources, primarily in the form of funding, is fundamental to the measurement of commercial progress, resource acquisitions alone do not evidence commercialization. Only resource acquisitions that fund a transition demonstrate the project's movement toward market.

Figure 1. Technology Commercialization Framework

¹ BizLogx LLC, "The Technology Commercialization Framework", September 30, 2004.



The FY 2010 OTF RFP's have been placed in the stages of commercialization as shown in Figure 1.

To help determine the phase of commercialization, identify those activities most likely to lead to required resources, and measure progress, the Framework looks at two classes of activities: (i) the development of the technology, and (ii) the development of the commercial concept. The following chart (Figure 2) summarizes the activities, objectives, and desired proof within each class:

Figure 2. Summary of Commercialization Phases

Phase	Technology	Commercial Concept
IMAGINING	The <i>Imagining Phase</i> begins with the techno-market insight - the linking, if only in concept, of a technology and a market opportunity. Activities focus on the generation of a “proof of principle”, generally defined as the demonstration in a laboratory setting of critical components of the technology.	During the <i>Imagining Phase</i> , the commercial concept is highly speculative. Often, the concept is only supported by conjecture regarding technical viability and the market opportunity.
INCUBATING	The <i>Incubating Phase</i> focuses on the performance of the technology in context of product performance specifications. Activities revolve around defining required performance specifications and then determining whether the technology can meet those specifications. For the most part, the activities prove the technical capabilities in a laboratory rather than a commercial setting.	During the <i>Incubating Phase</i> , the participants define the commercial concept (business model and market opportunity). The commercial concept depends primarily on secondary rather than market research or proof. The commercial concept lacks market confirmation and is still highly speculative since the proof is primarily in the form of research and planning.
DEMONSTRATING	The <i>Demonstrating Phase</i> focuses on the performance of the technology in a commercial context – generally, in the hands of a current or prospective customer. In the <i>Demonstrating Phase</i> , the source of proof begins to switch from internal to external – from the lab to the market. Resource providers generally require the following types of proof: (i) the incorporation of the technology into a market-ready product with the performance characteristics required by prospective customers; (ii) evidence that the product meets the required performance specifications in the hands of customers; and (iii) evidence of manufacturing capabilities that meet performance, quality, and cost requirements (those assumed in the Commercial Concept or Business Plan).	During the <i>Demonstrating Phase</i> , participants create and refine a business plan based on direct evidence of the demand for the product. Proof generally takes the form of a limited number of sales to customers at or near the price projected in the business plan. Proof helps address through direct evidence that customers are willing to pay for and use the product, and that they are generating the expected value or benefits.
MARKET ENTRY	In the <i>Market Entry Phase</i> , the activities are those typically	In the <i>Market Entry Phase</i> , the activities are those that any business would

Phase	Technology	Commercial Concept
	associated with the introduction of a new product to market by an existing business - production, quality, service, product performance. The company has embedded the technology in a product or service and is aggressively marketing the product or service to prospective customers. The product or service is used by an increasing number of existing customers. The opportunity has attracted the resources necessary to expand marketing, sales, and support.	engage in when attempting to determine the commercial value or viability of a new product or service. Types of proof include, but are not limited to meeting sales forecasts, maintaining projected pricing and margins, achieving manufacturing efficiencies, and meeting production projections. The proof frequently focuses on direct feedback from the market, measured in terms of sales, revenue, margins and growth.
GROWTH & SUSTAINABILITY	The <i>Growth & Sustainability Phase</i> involves the execution of a comprehensive product development plan to increase market share and/or extend the existing or new technologies into new products, services, and markets.	In the <i>Growth & Sustainability Phase</i> , the objective is to achieve the ongoing growth of revenue, margins, and profits in ways typically associated with a viable and profitable business.

The ABC Metrics

Given the multiple phases and non-linear nature of commercialization, the years or sometimes decades between idea and market, and the lack of traditional measures (e.g. customers, revenues, and profits), all interested parties (e.g. the project team or company, the investors, and the State) found it difficult to answer the following question using objective evidence - "Is commercial progress being made?" To answer this question, the State developed and implemented a measurement framework that includes three categories of metrics, referred to as A Metrics, B Metrics, and C Metrics.

A Metrics are synonymous with attracting the resources required to engage in the next phase of commercialization (a Transition) and are the best evidence that a project is successfully progressing towards commercialization. A Metrics also include the acquisition of resources required to continue the generation of proof within the current phase, although repeated resource acquisitions without the occurrence of a Transition will, in most cases, lead to the conclusion that the project is not progressing towards commercialization. Almost always, A Metrics take the form of cash rather than in-kind or other similar contributions or investments.

B Metrics are tangible evidence that a project is on the path to achieving A Metrics. The relevant "tangible evidence" of a B Metric is the commitment of resources by the resource provider to evaluate the project for funding.

As an example, an A Metric for a project in the Demonstrating Phase would be an investment by a venture capital fund to provide the resources necessary to engage in Market Entry Phase activities. A B Metric for this project might include a substantial Due Diligence effort by the investor and the subsequent receipt by the Lead Applicant of a term sheet detailing a potential investment.

C Metrics measure activities and are the equivalent of “project milestones.” These activities (e.g. hiring qualified personnel, preparing patent applications, preparing a business plan, achieving certain technical milestones, etc.) are often critically important, but do not represent evidence of progress toward the goal of Transition or commercial success. Rather, they indicate that the participants are executing their plan.

The primary distinction between the A and B Metrics and the C Metrics is that the A and B Metrics measure the commitment of resources by a current or potential resource provider, while the C Metrics measure activities and resource commitments by the project participants or by others who are not current or potential resource providers.

Post-award and within thirty (30) days of execution of the Grant Agreement, the Grantee will submit for Development’s approval a forecast of A Metrics that the Grantee anticipates generating as a result of the project. The forecast of A Metrics must include a description of the anticipated sources and amount of A Metrics. In describing the sources, the Grantee should be as specific as possible. The Grantee will also submit a project plan that includes the primary C Metrics (e.g. hiring a fund or project manager, anticipated deal flow [including sources], anticipated timing and amounts of investments, etc.) and related dates. Development, through the Grant Agreement and the activities of program administrators, will manage grants and investments in accordance with the agreed set of A and C metrics. Development will not require the Grantee to project B Metrics, but may require the Grantee to report on B Metrics when the A and C Metrics are insufficient to provide Development with a clear picture of progress or to explain unusual circumstances.

The Analytical Framework

Successful commercialization is about successful Transitions, and the Analytical Framework focuses on the mechanism of successful Transitions. The steps of the Analytical Framework are listed below.

1. Identify the appropriate phase of commercialization;
2. Determine the amount of resources required to complete the current and next phase of commercialization;
3. Identify resource providers who can fund the next phase of commercialization activities;
4. Determine the proof required by the targeted resource providers;
5. Identify the contextual factors that are likely to have a material impact on the chances of resource acquisition;
6. Determine the appropriate measures of success; and

7. Develop a plan to produce the proof the resource providers desire and a plan to pursue the Transition.

A more extensive discussion of the Commercialization Framework is found on the OTF web site at:

http://www.ohiochannel.org/your_state/third_frontier_project/featured_publications.cfm

1.1 Commercialization Questions

Many of the Third Frontier programs are focused on the Imagining, Incubating, and Demonstrating phases of the Commercialization Framework. The following guide may prove useful in identifying the phase of an opportunity and the type of work normally associated with that phase.

Imagining Phase

The following items are representative of the proof and related activities in the Imagining Phase:

- Develop the business case (e.g. market, potential customers, value proposition, and competitive alternatives);
- Develop a firm understanding of how the technology might be developed into a commercial application;
- Develop a proof of principle – demonstrate in a laboratory setting the critical components of the technology that enable the core functionality of the commercial application;
- Assess the work needed to achieve reduction to practice;
- Investigate the freedom to operate within the target markets and the constraints imposed by existing patents or other forms of IP; and
- Develop an intellectual property strategy for the application of this technology.

Incubating Phase

The following items are representative of the proof and related activities in the Incubating Phase:

- Develop a comprehensive business plan and financial projections;
- Perform the work necessary to understand how to adapt the technology to a commercial application that addresses the market needs;
- Confirm the “freedom to operate” for the IP in context of the commercial application and then acquire adequate IP protection for the technology and related applications to allow for market introduction;
- Complete the reduction to practice and produce a working model based on well-defined and fixed commercial specifications; and
- Produce product designs and production processes that support the manufacture of a reliable product at a cost reasonably consistent with the constraints of the particular market applications.

Demonstrating Phase

The following items are representative of the proof and related activities in the Demonstrating Phase:

- Finalize the technical and commercial specifications for the market ready version of the product;
- Produce prototypes in the approximate form and with the functionality required for general market release;
- Finalize a business plan including detailed plans for sales, marketing, pricing, financing, etc.;
- Develop credible plans for manufacturing at or near the costs required by the business plan;
- Sell the product or service at or near the price contemplated by the business plan;
- Secure several customers who use the product in a commercial environment;
- Establish the reliability of the technology as embedded in a commercial product;
- Incorporate feedback from lead users into the design based on alpha and beta versions of the technology;
- Produce pilot runs that demonstrate functionality consistent with the product concept; and
- Secure facilities adequate for near-term production.

Market Entry Phase

In this Phase, the company attempts to prove the viability of the business opportunity. The proof and related activities in the Market Entry Phase are those generally associated with an ongoing business. Representative examples of proof and related activities are:

- Achieving quarterly and annual sales projections;
- Meeting production targets, including cost and quality requirements;
- Achieving financial performance measures, including, but not limited to price per unit, gross margins, operating margins, etc.; and
- Meeting product performance requirements in “real world” situations.

Growth and Sustainability Phase

In this Phase, the company attempts to establish the long-term viability of the business. As in the Market Entry Phase, the proof and related activities in the Growth and Sustainability Phase are also those generally associated with an ongoing business. Representative examples of proof and related activities are:

- Achieving quarterly and annual sales projections;
- Introducing new and improved products;
- Increasing revenues and profitability;
- Increasing market share; and
- Expanding into new markets.

The previous lists of activities are not meant to be exclusive. Rather, the purpose is to help Applicants and Grantees accurately identify the phase and scope of expected activities and required proof.

Applicants should consider and address how the ABC Metrics and Commercialization Framework relate to their investment strategies, and how progress by portfolio companies will be measured consistent with the Commercialization Framework.

Development will consider projects successful (A Metrics) if, at the proposed Project's completion, the Lead Applicant has invested in and/or provided services to opportunities or companies that have attracted follow-on funding to finance the next phase of commercialization.

Appendix B

Third Frontier Grant Programs

Definitions

Appendix B

Definitions

Collaborator – An individual not employed by or related to the Lead Applicant or an organization, institution, company or other legal entity that is not an affiliate of the Lead Applicant which is anticipated to receive State Grant Funds and/or is contributing to Cost Share. All Collaborators must be represented by a Co-Investigator.

Co-Investigator – See Principal Investigator.

Cost Share – See Appendix D.

Effective Date – The date upon which a Grant Agreement between a Lead Applicant and the State of Ohio is effective.

Equipment – Any item of equipment which both costs \$5,000 or more and has a useful life of more than one year.

Grant Accounts – Accounts established and maintained by a Grantee to record separately in its books and records receipt and use of Grant Funds and Cost Share.

Grant Agreement – A legal agreement setting forth the terms and conditions upon which Grant Funds are awarded and the respective rights and obligations of the Lead Applicant and the State of Ohio with respect to Grant Funds and the Project for which they are to be used.

Grant Funds - Financial assistance in the form of money awarded by a government agency to an eligible applicant in order to accomplish a public purpose of support or stimulation of development authorized by statute.

Indirect Cost – A cost that is incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project but nevertheless is necessary to the operation of the organization. Also known as “Facilities & Administrative (F&A) cost.”

Key Personnel - Individuals from the Lead Applicant and/or Collaborators who represent a Project’s leadership from the technical, commercial, and managerial perspectives.

Lead Applicant – The entity that submits a Proposal and will be legally and financially responsible for the administration of any resulting award of Grant Funds.

OTF Website – www.thirdfrontier.com

Principal Investigator– The individual responsible and accountable for designing, conducting, and monitoring the Project. “Co-Investigators” are two or more investigators who share the responsibilities of a Principal Investigator.

Principal Place of Business - A facility located in the State of Ohio where the Lead Applicant, who is registered with the Secretary of State to conduct business in Ohio, maintains physical

operations managed by a senior representative of the Lead Applicant who is authorized to make decisions and to obligate the Lead Applicant and its resources. This facility must be owned by the Lead Applicant or be subject to a lease, the balance of which matches or exceeds the term of the Grant Period. The facility must be a recipient or beneficiary of a significant amount of the funds awarded to the Grantee.

Program Administrator – Personnel of the Ohio Department of Development assigned to monitor the progress of a Project awarded Grant Funds.

Project – The plan of activity or activities that make up the total scope of work for which an award of Grant Funds is requested and for which a Proposal is approved.

Project Completion Date – The date by which the Grantee shall complete the Project and incur all eligible expenses.

Project Period – The period of time from the Effective Date until the Project Completion Date.

Proof of Principal – A research effort to prove that the core ideas of a concept or theory are workable and feasible.

Proposal – A proposal as submitted by a Lead Applicant seeking an award of Grant Funds in response to a Request for Proposals issued for a particular Third Frontier Program.

Subcontract/Subgrant – A subcontract/subgrant is a legal agreement between a Grantee and an individual or entity that has expertise in a particular area or access to specialized resources or materials that the Grantee lacks. A subcontract/subgrant is identified in the Proposal for performance of a specific function.

Supplies – Materials, including equipment, which both costs less than \$5,000 and has a useful life of less than one year.

Transition – The acquisition of the resources required to engage in the next phase of technology commercialization.

Appendix D

Third Frontier Grant Programs

*Information Related to Joint Use Agreements
(JUA)*

FY 2009 – FY 2010 Capital Bill (Am. Sub. H.B. 562)
Extract regarding Joint Use Agreements

“SECTION 233.60.50. (A) No capital improvement appropriations made in sections of this act prefixed with the section number "233" shall be released for planning or for improvement, renovation, construction, or acquisition of capital facilities if the institution of higher education or the state does not own the real property on which the capital facilities are or will be located. This restriction does not apply in any of the following circumstances:

(1) The institution has a long-term (at least fifteen years) lease of, or other interest (such as an easement) in, the real property.

(2) The Board of Regents certifies to the Controlling Board that undue delay will occur if planning does not proceed while the property or property interest acquisition process continues. In this case, funds may be released upon approval of the Controlling Board to pay for planning through the development of schematic drawings only.

(3) In the case of an appropriation for capital facilities that, because of their unique nature or location, will be owned or will be part of facilities owned by a separate nonprofit organization or public body and will be made available to the institution of higher education for its use, the nonprofit organization or public body either owns or has a long-term (at least fifteen years) lease of the real property or other capital facility to be improved, renovated, constructed, or acquired and has entered into a joint or cooperative use agreement with the institution of higher education that meets the requirements of division (C) of this section.

(B) Any foregoing appropriations that require cooperation between a technical college and a branch campus of a university may be released by the Controlling Board upon recommendation by the Board of Regents that the facilities proposed by the institutions are:

(1) The result of a joint planning effort by the university and the technical college, satisfactory to the Board of Regents;

(2) Facilities that will meet the needs of the region in terms of technical and general education, taking into consideration the totality of facilities that will be available after the completion of the projects;

(3) Planned to permit maximum joint use by the university and technical college of the totality of facilities that will be available upon their completion; and

(4) To be located on or adjacent to the branch campus of the university.

(C) The Board of Regents shall adopt rules regarding the release of moneys from all the foregoing appropriations for capital facilities for all state-supported or state-assisted institutions of higher education. In the case of capital facilities referred to in division (A)(3) of this section, the joint or cooperative use agreements shall include, as a minimum, provisions that:

(1) Specify the extent and nature of that joint or cooperative use, extending for not fewer than fifteen years, with the value of such use or right to use to be, as is determined by the parties and approved by the Board of Regents, reasonably related to the amount of the appropriations;

(2) Provide for pro rata reimbursement to the state should the arrangement for joint or cooperative use be terminated;

(3) Provide that procedures to be followed during the capital improvement process will comply with appropriate applicable state statutes and rules, including the provisions of this act; and

(4) Provide for payment or reimbursement to the institution of its administrative costs incurred as a result of the facilities project, not to exceed 1.5 per cent of the appropriated amount.

(D) Upon the recommendation of the Board of Regents, the Controlling Board may approve the transfer of appropriations for projects requiring cooperation between institutions from one institution to another institution with the approval of both institutions.

(E) Notwithstanding section 127.14 of the Revised Code, the Controlling Board, upon the recommendation of the Board of Regents, may transfer amounts appropriated to the Board of Regents to accounts of state-supported or state-assisted institutions created for that same purpose.”

JOINT USE AGREEMENT ANALYSIS

Institutions Involved _____

Project Title _____

Capital Bill _____ Item _____

- _____ 1. Is the amount of the grant specified?
- _____ 2. Is the facility to be built/improved identified specifically by address or location?
- _____ 3. Does the non-profit organization now own the property/equipment or have a long term lease? If not, who does and when will the non-profit control the property/equipment?
- _____ 4. Does the agreement provide for use of the facility/equipment by the institution of higher education for at least 15 years from the time that it is ready for occupancy and what is the nature of that use?
- _____ 5. If the agreement is terminated, is there a pro rata reimbursement clause? Is the reimbursement formula correct?
- _____ 6. Will funds be used only for capital improvements and not operating costs?
- _____ 7. Will the non-profit hold the institution harmless for all operation/maintenance costs?
- _____ 8. Will the non-profit comply with federal, state and local laws and rules?
- _____ 9. 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.) and is Chapter 153 referenced by name?
- _____ 10. Does the contract provide for a 1.5% administrative fee for the institution?
- _____ 11. Does the agreement require that amendments be approved by the Board of Regents?
- _____ 12. Is a drawdown schedule or payment procedure included?
- _____ 13. Are the extent and nature of spaces/equipment and uses adequately described?
- _____ 14. Are the terms and conditions of use of the facility/equipment described?
- _____ 15. Has the institution demonstrated that the value of the use of the facility/equipment is reasonably related to the amount of the appropriation? (See attached worksheet.)
- _____ 16. Is the facility/equipment insured?

Joint Use Agreement Worksheet

The Ohio Board of Regents

April 2005

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. Estimated annual debt service on the appropriation: \$ _____
3. Term of the state bond, in years: _____

Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. _____	\$ _____	_____
b. _____	\$ _____	_____
c. _____	\$ _____	_____
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.

**GUIDELINES FOR DETERMINING PRIVATE BUSINESS USE
and
INSTRUCTIONS FOR COMPLETING THE PRIVATE BUSINESS USE REPORT**

Guidelines for Determining “Private Business Use”

Private business use can involve the use of space or facilities or a program by:

- A private for-profit business
- A natural person
- A private nonprofit organization (501(c)(3) or otherwise)
- An agency or instrumentality of the federal government

For this purpose, the above users are referred to as “private users”. Private users do *not* include state or local governmental units, or any private person acting solely and directly as an officer or employee of or on behalf of the academic institution or another governmental unit.

Private business use exists when there is direct or indirect use by one or more private users in a manner or on a basis different than normal use of that space or facility or program by the general public (general public includes students, faculty and staff).

In the case of renovations, expansions or improvements of existing space, the use of the facility or space as renovated, expanded or improved is the issue. In the case of site improvements and equipment, the use of the space or facility(ies) to be served by those improvements or equipment, as well as the use of the financed improvements themselves, are to be considered. In reviewing for possible private business use, all uses (except general public use) of a financed project and any portions of the project are to be considered.

Private business use exists if there is, or the Institution expects or intends that there will be, an oral or written understanding, arrangement, agreement or contract under which any of the following apply:

- The private user will be a lessee, tenant or user of space or facilities (other than as a member of the general public).
- The private user will manage the space or facility, or use or operations of the space or facility. (There are detailed IRS “management contract” regulations that apply.)
- The private user is entitled to a portion of the output or services of operations of the space or facility, and the general public is not entitled to a portion of the output or services on the same basis.
- The facility is so situated that it is useful only or predominantly to one or a few private users or to their customers, clients or business visitors.

AND

The private user pays, directly or indirectly, for use of the space or facility. Direct or indirect payments to or on behalf of an Institution that meet this “payment test” includes *any* of the following:

- Rent
- A share of receipts from the use
- Donations of money or other items or services in exchange for the use
- Other tangible benefits to or on behalf of the Institution

Instructions for Completing the Private Business Use Report

Before State bond proceeds may be released for a capital project, the attached Private Business Use Report must be completed and filed. A separate Private Business Use Report must be completed for each appropriation line item created in each capital act (or created via a transfer of appropriation authority). Just one copy need be submitted. Regents and OBM will not approve a Controlling Board request unless a Private Business Use Report has been submitted for the particular appropriation line item/capital act.

The report should be completed in the context of the financed project only. A project may involve one or more of the following:

- Building or adding new space
- Renovating or reconfiguring existing space
- General improvements (interior or exterior) that do not alter existing space but which benefit or serve that space (such as a new roof, HVAC system, utility line serving the facility, communications/computer wiring)
- Site improvements (such as land clearance, landscaping, sidewalks, parking)
- Equipment.

Please follow these steps to complete each Private Business Use Report:

- 1/ Enter name of institution, project title, appropriation act and line item numbers, appropriation amount and the total project amount.
- 2/ Briefly describe the financed project/facility. Generally, the same phrasing of project scope in a program plan or budget request can be used.
- 3/ Determine if there will be or will not be “private business use” in or of the financed project/facility, and check the appropriate line. If you check WILL BE, the reverse side of the report must be completed.
- 4/ Review the certification for accuracy and institutional understanding, and sign and date it.

Reverse Side of Private Business Use Report

The reverse side of the Report seeks information as to how the facility or improvement being financed will be used when the project is completed.

Column

- (1) Lists a number of potential private business uses. Write in other uses on additional lines provided.
- (2) Check each of the reasonably anticipated "private business uses". It is understood that uses may change in the future; this Report is designed to measure your honest, reasonable expectations as to the intended use of the financed facilities or space served.
- (3) Provide an estimate of the portion of the cost of the financed project/facility that is allocable to the particular private business use.
- (4) State the approximate net assignable square feet set aside for or assignable to the private business use. Measuring space should follow procedures similar to those used for the Board of Regents Uniform Information System reporting. Specific space may be allocable to more than one use during particular time periods (day, week or month, or summer months only). In such cases, the prorating of use between private and public uses can be estimated as in other space reporting procedures. One manner of calculating the amount of space to enter in column 4 in the case of multi-use space is to divide the total time used for private purposes by the total time used for all purposes.
- (5) Indicate the nature of the private business use arrangement and identify any direct or indirect payment made or to be made by the private user. Elaborate on an attachment if necessary.
- (6) State the total of the estimated costs allocable to private business use.
- (7) State the total of the square feet in private business use.
- (8) State the total square feet in the entire financed area or facility.

**REPORT OF ANY PRIVATE BUSINESS USE OF CAPITAL FACILITIES
FINANCED WITH STATE HIGHER EDUCATION BOND PROCEEDS**

This report must be submitted to the Board of Regents concurrently with the first Controlling board release request for each appropriation line item enacted in each capital act (or created via a transfer of appropriation authority).

1/

INSTITUTION:

PROJECT TITLE:

APPROPRIATION ACT:

APPROPRIATION AMOUNT:

APPROPRIATION LINE ITEM:

TOTAL PROJECT AMOUNT:

2/

Briefly describe the financed project/facility:

3/

Based upon review of the guidelines for determining private business use of facilities financed with State higher education bond funds, there

_____ WILL BE _____ WILL NOT BE
private business use in or of the project.

NOTE: If there **WILL BE** any private business use in or of the project, complete the reverse side of this form. If there **WILL NOT BE** any private business use, disregard the reverse side.

4/

Complete this report by signing off on the following certifications:

The institution does not intend to sell or otherwise dispose of the financed project or facility, or any part thereof.

None of the State appropriations for the project will be used to make principal or interest payments on, or refund, renew, roll over, retire or replace, any other obligations previously issued by the Institution.

Any expenditures by the Institution that are to be reimbursed from State capital appropriations were made in anticipation of the reimbursement from those appropriations.

To the best of my knowledge, information and belief, all statements and representations in this report (including its reverse side, if applicable) are facts or the expectations of this Institution. Those expectations are reasonable, and there are currently no other facts or circumstances that would or could materially change those statements and representations. The Institution recognizes that those statements and representations will be relied upon by the State for the purposes of its certifications relating to tax exemption of its Bonds as described in certain Treasury Regulations. ***The Institution acknowledges that any change in those facts or expectations may result in different requirements, and that the Board of Regents and OBM should be promptly advised if such changes occur or are anticipated to occur.***

Confirmed By:

_____ (Appropriate Institution VP)

_____ Title

Date of Signing:

PRIVATE BUSINESS USE REPORT
(Complete Only If Private Business Uses Are Involved)

Indicate below the use of space in the financed facility (in whole or in part) from State bond proceeds. Include space that benefits from or is served by financed improvements to the facility such as utilities, parking or equipment.

POTENTIAL PRIVATE BUSINESS USES (1)	CHECK PRIVATE USES THAT ARE PLANNED (2)	COST OF PROJECT ALLOCATED TO PRIVATE USES (3)	SQUARE FEET IN PRIVATE USE AREA (4)	NATURE OF USE ARRANGEMENT, INCLUDING PAYMENTS, IF ANY (Use separate page if necessary – be sure to describe lease or other payments) (5)
Ad Display Area				
Airport				
Banking/ATM				
Bookstore				
Classrooms				
Concession/News Stand				
Copying/Printing				
Delivery/Shipping				
Dining Room				
Dormitory				
Exercise/Recreation				
Food Court/Cafeteria				
Game Room				
Gymnasium				
Health/Exercise Club				
Hospital				
Hotel/Residences				
Job Training				
Laboratory				
Laundry/Dry-Cleaning				
Library				
Mass Transportation				
Medical Clinic or Office				
Museum				
Office Space				
Post Office				
Publications				
Retail Stores/Shops				
Storage				
Telecommunications				
Theater				
Travel Agency				
Vending				
Other (List)				

(6) TOTAL PRIVATE USE COSTS: _____

(7) TOTAL SQUARE FEET IN PRIVATE USE: _____

(8) TOTAL SQUARE FEET IN IMPROVED AREA OR FACILITY: _____

