DIRECTIVE 2018-033 AMENDED

August 8, 2019

RE: AMEND JOINT USE AGREEMENT BETWEEN THE OHIO STATE UNIVERSITY AND TECH TOWN NEW MARKET, INC. TO REPLACE IT WITH JOINT USE AGREEMENT BETWEEN THE OHIO STATE UNIVERSITY AND DAYTON TECH TOWN, INC

On June 13, 2018, the Chancellor approved a Joint Use Agreement between The Ohio State University and Tech Town New Market, Inc. in the amount of two hundred fifty thousand dollars to improve the facility owned by Tech Town New Market, Inc.

The parties have entered into an amendment to the previously approved Joint Use Agreement, attached hereto, and seek the Chancellor's approval of the amendment.

Agency staff reviewed the amendment to the agreement and posted its recommendations to the Department's website for the purpose of providing a period of public comment before final approval by the Chancellor. The materials posted for comment and the joint use agreement are attached to this document.

Based on my review of staff recommendations, I hereby approve the amendment to the Joint Use Agreement between The Ohio State University and Tech Town New Market, Inc. to amend and replace it with the Joint Use Agreement between The Ohio State University and Dayton Tech Town, Inc.

This directive will take effect immediately.

Randy Gardner
Chancellor, Department of Higher Education
JOINT USE AGREEMENT
AMENDMENT NO. 1

Please Note

1. All changes to the original Joint Use Agreement, approved in February 2018, are shown as follows:
   • Deleted language is indicated with Strikethrough
   • New language is indicated with Italic
2. The original February 2018 Joint Use Agreement is now null and void.
3. This new Joint Use Agreement Amendment No. 1, once signed, is the agreement in force.

This Joint Use Agreement Amendment No. 1 (this “Agreement”) is made and entered into as of the 13th day of February, 2018 and the 15th day of April, 2019 by and between The Ohio State University (the “University”), 281 W. Lane Ave., Columbus, Ohio 43210, an instrumentality of the State of Ohio, and Dayton Tech Town New Market, Inc. (“Tech Town”), 711 E. Monument Avenue 8 North Main Street, Dayton, Ohio 45402, a non-profit Research and Development Center organized and existing under the laws of the State of Ohio.

RECITALS

WHEREAS, in 2016, the Ohio General Assembly appropriated state capital funds to the University, through the Chancellor of the Ohio Department of Higher Education (the “Chancellor”), for the following project (the “Project”), as more fully described herein:

Project Name: Tech Town Technology Transfer and Commercialization
Legislation: Senate Bill 310
Capital Appropriation: C315EM
Total Appropriation Amount: $250,000 (the “Appropriation”).

WHEREAS, in accordance with the terms hereof, the Appropriation is to fund design and build-out space in the Tech Town Technology Park (the “Technology Park”) located at 241 Taylor Street 711 E. Monument Avenue, Dayton, Ohio, by Tech Town, and such Project shall include without limitation, technology-oriented space, designed to support the application, commercialization, and convergence of cutting-edge technologies and collaborations between the Air Force Research Laboratory and non-defense organizations including the University.

WHEREAS, the University has an opportunity to expand its partnerships and activities in the Dayton area.
WHEREAS, the University would benefit from having a space locally to support a variety of engagements.

WHEREAS, in order for the Chancellor to release the Appropriation to the University, Ohio Administrative Code 3333-1-03(E) specifically requires execution of a joint use agreement containing specific requirements as set forth in (E) (1)-(11).

WHEREAS, the University has concluded that the value of the use of the renovated space in the Technology Park by the University as provided in this Agreement is reasonably related to the amount of the Appropriation through the worksheet included in this Agreement as Attachment A.

NOW, THEREFORE, in furtherance of the above, and in consideration of the mutual covenants, promises, conditions and terms to be performed by each, the University and Tech Town hereby agree as follows:

AGREEMENT

1. Commitment.
   A. Tech Town hereby represents to the University that Tech Town (i) is the owner of the property, and building at 241 Taylor Street 711 E. Monument Avenue, Dayton, Ohio, at which the Project will be constructed, (ii) will continue to be the owner of the property and building and (iii) that no other person, party, or entity has any rights in or to such property and building.

   B. Tech Town agrees to perform the Project as set forth above, and in accordance with the terms hereof, so that the Technology Park may be used and occupied as detailed above and dedicated to serving the needs of the Dayton community and the State of Ohio, including, without limitation, the University. Tech Town shall design and construct the Project, and operate the renovated Technology Park, in a safe manner consistent with generally accepted standards, and in accordance with all applicable legal requirements, including without limitation, all pertinent federal, state and local laws as well as state administrative regulations, and the provisions of Ohio Revised Code Chapter 4115 regarding prevailing wages. It is hereby expressly agreed that Tech Town shall follow competitive bidding procedures, which shall include, at a minimum, publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidders, and such selection procedures as directed by laws applicable to the University.

   C. Prior to performing the Project, Tech Town shall provide the University with a copy of the plans and specification. It shall be the responsibility of Tech Town to ensure that the same comply with the applicable laws and requirements of public authorities, and the delivery of the plans and specifications to the University shall not be deemed a representation or warranty of any kind that the same satisfy the requirements or standards of any governmental authority having jurisdiction thereof or otherwise suitable for the purposes for which they were designed. From time to time during the
performance of the Project, but in no event less than once a month, Tech Town shall provide the University with an update on the Project status.

D. The University shall be given the right to use and occupy the Technology Park for educational and other programs and activities upon such terms and conditions as the parties reasonably agree. It is hereby agreed that such terms and conditions shall be more favorable than the terms and conditions of use by any other entity to a degree that reasonably reflects the magnitude of the University’s investment in the renovated Building. Upon request, Tech Town shall promptly provide to the University and the Chancellor written documentation that satisfactorily demonstrates the above requirement. (Attachment A hereby incorporated)

2. **Term.** The term ("Term") of this Agreement shall commence as of the date the space is available for use by the university and shall expire on the day which is the last day of the month in which the twentieth (20th) anniversary of the date the University has usage of the facility, unless sooner terminated pursuant to the terms hereof or at law. In the event that the University’s use is terminated prior to its expiration in accordance with the term hereof, Tech Town shall reimburse the State of Ohio in an amount (the “Reimbursement Amount”) calculated by (a) dividing the amount of the Appropriation actually paid to Tech Town by twenty (20) and (b) multiplying the resulting amount by twenty (20) less the number of full years the renovated Technology Park has been utilized by the University in accordance with this Agreement. The Reimbursement Amount shall be paid in cash, by wire or by certified check.

3. **Funds used for Capital Improvements.** Except for the funds used to cover the University’s administrative costs, the full amount of the Appropriation shall be used by Tech Town only for capital improvements that are part of the Project and not for operating costs.

4. **Insurance.**

   A. Tech Town agrees that it shall, at its sole cost and expense, procure and continue in force during the Term of this Agreement (i) a policy of comprehensive general personal injury and property damage liability insurance against claims for bodily injury, death and property damage (including completed operations and contractual liability), on an occurrence basis in an amount not less than $1,000,000 combined single limits and (ii) all-risk property insurance, including fire and casualty insurance for the Technology Park, in an amount equal to their full replacement cost but in no event less than the Appropriation.

   B. Prior to any contractor being permitted to perform work on the Project, and throughout the entire period any Project alterations or improvements are being performed, it shall be the obligation of Tech Town to require each of the contractors to carry and maintain in full force and effect commercially reasonable insurance coverages consistent with standard insurance requirements for contractors performing similar work in a similar location.
C. The insurance policies described in Paragraphs 4A and 4B above shall be carried with companies licensed to do business in the State of Ohio, and, upon request from the University, Tech Town shall provide a Certificate of Insurance evidencing the above coverages. All such policies shall name the University, and its directors, employees, faculty and agents and such other persons or entities as the University may reasonably request from time to time, each as an "Additional Insured" and shall contain a waiver of the insurer's right of subrogation against the University and its carrier. The University shall not at any time be liable for damage or injury to persons or property in or around the Technology Park. Any coverage limit required herein shall not be construed as a limitation or satisfaction of any hold harmless or indemnification agreement contained herein.

5. Indemnity and Hold Harmless. Tech Town shall indemnify, defend and save harmless the University, its affiliates, shareholders, directors, officers, agents, employees and contractors from and against any and all loss, cost (including attorneys' fees, and all construction, operation, and maintenance costs), damage, expense and liability (including statutory liability and liability under workers' compensation laws) in connection with claims, judgments, damages, penalties, fines, liabilities, losses, suits, administrative proceedings, arising out of any act or neglect by Tech Town, its agents, employees, contractors, licensees, invitees, representatives, or visitors, in, on or about the Technology Park or in connection with this Agreement or the Project, including without limitation, the installation, operation or maintenance of the Technology Park and the use of the Appropriation. This provision shall survive the expiration or sooner termination of this Agreement.

6. Distribution of Funds and Administrative Costs. After the full execution and delivery of this Agreement, the University shall submit to the Controlling Board a formal written request for the release of the Appropriation. The University shall be paid for administrative costs incurred as a result of the Project. Such administrative costs shall be $3,750, which is equal to 1.5% of the Appropriation, and shall be paid to the University upon receipt of the Appropriation. At any time the full execution and delivery of this Agreement but in no event after eleven (11) months after such date, Tech Town, on behalf of itself, shall submit a written draw request detailing expenditures to the University for the permitted use of the remaining Appropriation in the amount of $246,250 for the Project. The University shall disburse the above amounts to Tech Town after the University's receipt of the Appropriation, approved invoices or other appropriate documentation of such expenses and any other necessary approvals.

7. Validity. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be illegal, invalid or unenforceable because of judicial construction, then the remaining terms, covenants and conditions of this Agreement or their application to persons or circumstances other than those held invalid or unenforceable shall not be affected thereby; and each term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

8. Assignment. This Agreement may not be assigned by Tech Town in any form or to any extent, without the prior written consent of the University, together with the written consent
and approval of the Chancellor, which such consent may be granted or withheld in the University’s (or the Chancellor’s) sole discretion. Any assignment without such written consent shall be null and void.

9. Notices. Any notice required or permitted to be given under this Agreement shall be given either by: (i) first-class certified mail, return receipt requested, addressed to the party at the address shown below, or (ii) personal delivery at the then-current address of such party; in either event, with a copy given by either manner to the person designated below to receive a copy. Such notice shall be effective when delivered to both persons. The current addresses of the parties and the persons to receive copies are, respectively, as follows:

To the University:       Christopher M. Culley
                         General Counsel
                         Office of Legal Affairs
                         The Ohio State University
                         1590 North High Street, Suite 500
                         Columbus, Ohio 43210-2178

                       with a copy to:
                         Planning and Real Estate
                         The Ohio State University
                         Gateway D
                         1534 N. High Street
                         Columbus, Ohio 43201
                         200 McCracken
                         2003 Millikin Road
                         Columbus, Ohio 43210

To Tech Town:            Brian Heitkamp
                         Tech Town New Market Inc.
                         8 N. Main Street
                         Dayton, Ohio 45402

10. Governing Law. This Agreement shall be subject to and interpreted in accordance with the laws of the State of Ohio, and any action brought pursuant to this Agreement shall be brought in a court of competent jurisdiction within the State of Ohio.

11. Amendments. Any amendment to this Agreement will not be effective unless and until approved in writing by the parties hereto and by the Chancellor.

12. Headings. The headings used in this Agreement are inserted only as a matter of convenience and for reference and should not be given effect in the interpretation of this Agreement.

13. Trademarks/Service marks. Tech Town shall not make use of the University’s name or other identifying marks or property of the University, nor make any representation, either express or implied as to University’s promotion or endorsement of the Project unless it has received the prior written permission from the University to do so.
14. **Recitals.** The Recitals above are incorporated herein by reference.

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

**THE OHIO STATE UNIVERSITY**

By: [Signature]

Name: Jan Kasel
Title: Senior Vice President
Date: 5/16/19

**DAYTON TECH TOWN NEW MARKET, INC.**

By: [Signature]

Name: Steve Nutt
Title: Asset Secy
Date: May 15, 2019
Joint Use Agreement Worksheet – Attachment A
The Ohio Department of Higher Education
April 2019

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 Ohio Department of Higher Education. 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: $ 250,000.00
2. Estimated annual debt service on the appropriation: $ 19,219.04
3. Term of the state bond, in years: 20

Section II: Estimated value of use of the machinery and facility.

<table>
<thead>
<tr>
<th>Use(s) of the machinery</th>
<th>Annual value of use of mach.</th>
<th># of years</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Dedicated office space</td>
<td>$ 2100</td>
<td>20</td>
</tr>
<tr>
<td>b. Shared Conference room</td>
<td>$ 1575</td>
<td>20</td>
</tr>
<tr>
<td>c. Common Area for Networking Events</td>
<td>$ 3588</td>
<td>20</td>
</tr>
<tr>
<td>d. Collaborative group work space</td>
<td>$ 15,750</td>
<td>20</td>
</tr>
<tr>
<td>f. Total</td>
<td>$ 23,013</td>
<td>20</td>
</tr>
</tbody>
</table>

(*) List additional uses on separate page as needed.

Section III:
On a separate page, explain how each use listed in Section II was valued for this analysis.
Section III: Value Analysis

Overview of Project
Tech Town offers a unique technology support system that encourages collaboration as well as commercialization of technology that was formerly limited to either academic or military use. The campus is a technology-oriented campus located on the eastern edge of downtown Dayton and just seven minutes from Wright Patterson Air Force Base. Designed as a setting where business, academia and government work together to support and grow the region’s core technology competencies, the major emphasis is focused on technology commercialization. To date, Tech Town is home to approximately 50 small technology businesses with emphasis in areas such as remote sensing, ISR, artificial intelligence, additive manufacturing, cyber security, software development, UAS, RFID, medical technology, and immersive simulation.

As Ohio State increases the breadth and depth of its activity in the Dayton area, it would benefit from having a space locally that would support a wide range of potential engagements. The university is currently in the process of negotiating partnership agreements with a number of directorates at the Air Force Research Labs (AFRL), have been in discussions with AFRL’s small business and technology transfer office regarding the potential to leverage collective intellectual property portfolios for collaboration, and has engaged with Dayton’s small business community to explore partnerships centered around design and manufacturing. Tech Town offers the ideal setting and support systems for Ohio State to access and engage with the technology community in the Dayton area.

Annual Value to The Ohio State University for Use of Commercialization Space at the Tech Town facilities.

Dedicated Office Space – 100 SF x $21/SF (published lease rate) = $2100
Space to support OSU faculty and post-docs to support research collaborations.

Shared Conference Room – Provides OSU with access to 500 SF conference room for up to 6 hours per week = .15($21/SF lease rate) = $3.15/SF
500 x 3.15 = $1575
Space will support OSU’s ability to host local partners for brainstorming, project design, and project execution meetings.

Common Area for Networking Events – Provides OSU with space for up to 12 events per year at $299/event = 12x $299 = $3588
Provides OSU with access to 1500 SF rooftop deck overlooking the City, large 3 story atrium etc. to host networking, collider events, meetups and collaboration events with potential local partners.

Collaborative group workspace – 5000 SF – assumes that OSU will utilize the space on average 6 hours per week = .15($21/SF lease rate) = $3.15/SF x 5000 = $15,750. Grants OSU access to a collaborative environment of intellectual know-how and equipment that may lead to the sharing and leveraging of collective intellectual property for purposes of commercialization.

The annual value to OSU documented in this agreement is in addition to the values received on the previous Joint Use Agreement, dated August 2, 2015.