DIRECTIVE 2019-041

September 19, 2019

RE: JOINT USE AGREEMENT BETWEEN THE OHIO STATE UNIVERSITY AND BOYS & GIRLS CLUB OF MARION COUNTY

The Ohio State University has been granted appropriations contained in House Bill 529 of 132nd General Assembly in the amount of fifty thousand dollars. The Ohio State University will use the funds to improve the facility owned by Boys & Girls Club of Marion County. As required by Ohio Administrative Code section 3333-1-03, The Ohio State University submitted a Joint Use Agreement for consideration and approval by the Chancellor.

The agreement conforms to Ohio Administrative Code as follows –

- The format of the agreement is appropriate
- The commitment extends no less than twenty years
- The value of use to Ohio higher education institutions is reasonably related to the amount of the appropriation

Agency staff reviewed 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 Joint Use Agreement between The Ohio State University and Boys & Girls Club of Marion County.

This directive will take effect immediately.

Randy Gardner
Chancellor, Department of Higher Education
JOINT USE AGREEMENT

This Joint Use Agreement (this "Agreement") is made and entered into as of the 2nd day of August, 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 Boys & Girls Club of Marion County ("BGC Marion"), 565 Oak Street, Marion, OH 43302, a non-profit 5013c organized and existing under the laws of the State of Ohio.

RECITALS

WHEREAS, in 2018, 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: Boys & Girls Club of Marion County-Teen Center Improvements
Legislation: House Bill 529
Capital Appropriation: C315GS
Total Appropriation Amount: $50,000 (the " Appropriation ").

WHEREAS, in accordance with the terms hereof, the Appropriation is to partially fund design and construction of improvements to the existing building ("Building"), and such Project shall expand the partnerships and activities between BGC Marion and the University by renovating and updating the Teen Center including capital improvements such as a new computer lab, paint, storage units, smart thermostats and air conditioning units.

WHEREAS, the University has concluded that the value of the use of the renovated Building 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.

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).

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 BGC Marion hereby agree as follows:

AGREEMENT

1. Commitment.
   A. BGC Marion hereby represents to the University that BGC Marion (i) is the owner of the Building at 565 Oak Street, Marion, OH 43302 at which the Project will be renovated (ii) will continue to be the owner of the property and the Building and (iii) that no other person, party, or entity has any rights in or to such property and Building.
B. BGC Marion agrees to perform the Project as set forth above, and in accordance with
the terms hereof, so that the Boys & Girls Club Marion County Teen Center may be
used and occupied as detailed above and dedicated to serving the needs of central
Ohio, including, without limitation, the University. BGC Marion shall design and
construct the Project 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 BGC Marion shall follow competitive bidding
procedures, as outlined generally in ORC Chapter 153, 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, BGC Marion shall provide the University with a copy
of the plans and specifications. It shall be the responsibility of BGC Marion 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, BGC Marion shall
provide the University with an update on the Project status.

D. The University through its faculty, staff and students shall be given the right to use
and occupy the Boys & Girls Club Marion County Teen Center for student
internships upon such terms and conditions as the parties reasonably agree and as
further outlined in Attachment A, hereby incorporated. Upon request, BGC Marion
shall promptly provide to the University and the Chancellor written documentation
that satisfactorily demonstrates the above requirement.

2. Term. The term ("Term") of this Agreement shall commence as of the date the University
has access to the facility 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 access to 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, BGC
Marion shall reimburse the State of Ohio in an amount (the "Reimbursement Amount")
calculated by (a) dividing the amount of the Appropriation by twenty (20) and (b)
multiplying the resulting amount by twenty (20) less the number of full years the Building
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 BGC Marion only for capital improvements that are part of the Project and not for operating costs.

4. **Insurance.**

   A. BGC Marion 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 Building, 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 BGC Marion 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, BGC Marion 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 Building. 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.** BGC Marion 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 BGC Marion, its agents, employees, contractors, licensees, invitees, representatives, or visitors, in, on or about the Building or in connection with this Agreement or the Project, including without limitation, the installation, operation or maintenance of the Building 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 $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, BGC Marion, 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 $49,250 for the Project. The University shall disburse the above amounts to BGC Marion 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 BGC Marion 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 - 2nd Floor
Columbus, Ohio 43201

To BGC Marion: Rebecca Asmo
CEO
Boys & Girls Club of Columbus
1108 City Park Ave.
Columbus, OH 43206

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/Servicemarks. BGC Marion 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.


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

THE OHIO STATE UNIVERSITY

By:
Name: [Signature]
Title: [Title]
Date: 8/17/19

BOYS AND GIRLS CLUB OF MARION COUNTY

By:
Name: Rebecca Asmo
Title: CEO, Boys & Girls Club of Columbus
Date: 8/7/19
Joint Use Agreement Worksheet – Attachment A
The Ohio Department of Higher Education
May 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: $50,000
2. Estimated annual debt service on the appropriation: $3,843.81
3. Term of the state bond, in years: 20 years

Section II: Estimated value of use of the machinery and facility.
Use(s) of the facility Annual value of use # of years

a. **student internships** $9,840 20

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

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

Boys & Girls Club of Marion County is renovating their Teen Center at the 565 Oak Street location in Marion, Ohio. At this site, a minimum of one (1) Ohio State University students, per semester, will be hired as paid interns to serve as Youth Development Professionals by the Club. (See internship job description, attached.)

Each semester for twenty years, after the planned renovation is complete, Boys & Girls Club of Marion County will hire Ohio State students to be paid interns at the Marion Club Teen Center. At least one student will be paid a minimum of $12.00/hour each semester for up to twenty hours per week for sixteen weeks in Fall and Winter Semesters and nine weeks in Summer Semester. The students will serve as Youth Development Professionals in a mentored work experience with an educational focus related to a student’s major. In many instances, students obtain college credit for their internships. Students with majors in the arts, business, justice and safety, and social and human services will work with teens, 13 – 18 years of age, assisting them in career development, budgeting, drug and chemical dependency issues, and wellness. Interns will also work with staff at the site to gain practical and meaningful work experience.

The following calculations outline the annual value to The Ohio State University:

1 student x 2 semesters x $12/hour x 20/hours week x 16 weeks = $7,680.
1 student x 1 semester (summer) x $12/hour x 20/hours week x 9 weeks = $2,160.

Total $9,840.

Annual Value to The Ohio State University at Boys & Girls Club Marion County Teen Center: $9,840.