DIRECTIVE 2019-042

September 19, 2019

RE: JOINT USE AGREEMENT BETWEEN THE OHIO STATE UNIVERSITY AND CITY OF COLUMBUS’ SMART COLUMBUS PROGRAM

The Ohio State University has been granted appropriations contained in House Bill 529 of 132nd General Assembly in the amount of five hundred thousand dollars. The Ohio State University will use the funds to improve the facility owned by City of Columbus’ Smart Columbus program. 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 City of Columbus’ Smart Columbus program.

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 5th day of July, 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 the City of Columbus' Smart Columbus program ("Smart Columbus"), 421 W. State Street, Columbus, OH 43215, a government agency 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: Smart Columbus Experience Center
- Legislation: House Bill 529
- Capital Appropriation: C315GP
- Total Appropriation Amount: $500,000 (the "Appropriation").

WHEREAS, in accordance with the terms hereof, the Appropriation is to partially fund design and construction of a new headquarters and showroom and such Project shall expand the partnerships and activities between Smart Columbus and the University.

WHEREAS, the University would benefit from access to the Smart Columbus Experience Center and access to the living laboratory, office space, and use of electric vehicles.

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 Smart Columbus hereby agree as follows:

AGREEMENT

1. Commitment.
   A. Smart Columbus hereby represents to the University that Smart Columbus (i) is the owner of the property at 170 South Civic Center Dr., Columbus OH 43215-4138 at which the Project will be constructed (ii) will continue to be the owner of the property and the building(s) and (iii) that no other person, party, or entity has any rights in or to such property and building(s).

   B. Smart Columbus agrees to perform the Project as set forth above, and in accordance with the terms hereof, so that the Smart Columbus Experience Center may be used...
and occupied as detailed above and dedicated to serving the needs of central Ohio, including, without limitation, the University. Smart Columbus 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 Smart Columbus 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, Smart Columbus shall provide the University with a copy of the plans and specifications. It shall be the responsibility of Smart Columbus 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, Smart Columbus 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 Smart Columbus Experience Center for access to the living laboratory, office, and meeting room, and use of electric vehicles; and upon such terms and conditions as the parties reasonably agree and as further outlined in Attachment A, hereby incorporated. Upon request, Smart Columbus 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 Project is complete, 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, Smart Columbus shall reimburse the State of Ohio in an amount (the "Reimbursement Amount") calculated by (a) dividing the funds contributed by the state of Ohio by twenty (20) and (b) multiplying the resulting amount by twenty (20) less the number of full years the Smart Columbus Experience Center 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 Smart Columbus only for capital improvements that are part of the Project and not for operating costs.
4. **Insurance.**

A. Smart Columbus 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 Smart Columbus Experience Center, 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 Smart Columbus 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, Smart Columbus 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 Smart Columbus Experience Center. 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.** Smart Columbus 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 Smart Columbus, its agents, employees, contractors, licensees, invitees, representatives, or visitors, in, on or about the Smart Columbus Experience Center or in connection with this Agreement or the Project, including without limitation, the installation, operation or maintenance of the Smart Columbus Experience Center 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 $7,500, 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, Smart Columbus, 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 $492,500 for the Project. The University shall disburse the above amounts to Smart Columbus 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 Smart Columbus 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 Smart Columbus:**

Mark Patton  
Vice President  
Smart Columbus  
170 South Civic Center Drive  
Columbus, OH 43215
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.** Smart Columbus 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: 

Name: 

Title: S/U, U/P 

Date: 8/1/19

SMART COLUMBUS

By: 

Name: Mark Ashton

Title: VP Smart Columbus

Date: 7.31.2019
Joint Use Agreement Worksheet – Attachment A
The Ohio Department of Higher Education
July 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: $500,000
2. Estimated annual debt service on the appropriation: $38,438.07
3. Term of the state bond, in years: 20

Section II: Estimated value of use of the facility.

<table>
<thead>
<tr>
<th>Use(s) of the facility</th>
<th>Annual value of use</th>
<th># of years</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Access to Exhibition Space</td>
<td>$ 53,047</td>
<td>20</td>
</tr>
<tr>
<td>b. Access to Co-working Space</td>
<td>$ 23,400</td>
<td>20</td>
</tr>
<tr>
<td>c. Access to Meeting Space</td>
<td>$ 2,000</td>
<td>20</td>
</tr>
<tr>
<td>Total</td>
<td>$ 78,447</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:

Smart Columbus established a headquarter location for its effort in the heart of downtown Columbus that serves as a destination for local residents and visitors alike. The Smart Columbus Experience Center aims to educate residents and students of Columbus as well as communities around the world about the future of transportation, and more specifically electric vehicles. This dynamic location includes:

- Significant emphasis on Electric Vehicles (EVs)
  - EV Charging educational displays co-designed with Columbus’ Center of Science and Industry (largest museum in Columbus)
  - DC Fast Charging ‘Electric Avenue’ on a nearby roadway
  - Electric vehicle showroom with current Plug-in models on display (brand agnostic with no direct sales activity taking place)
  - Outdoor display area of electric vehicles
  - Ride and Drive Visitor Experience - Indoor parking and storage area for the test drive vehicles attached to the location
- **Smart Mobility and Smart City Educational Exhibit** to convey what the future of transportation will look like and what Columbus is doing to test and deploy these technologies
- **Office headquarters** for the collaborative Smart Columbus Team
- **Meeting space** to host lectures, trainings, and events related to electrification and Smart Cities

Annual Value to The Ohio State University at the Smart Columbus Experience Center:

Smart Columbus continuously works with the Ohio State University (OSU) in its effort to educate, engage and empower the community about the current and future options in mobility. The collaboration in research and data analysis between Smart Columbus and OSU strengthens the ability to solve issues of global importance and local relevance. As detailed below, use of Smart Columbus Experience Center space by OSU provides a total value of $78,447 the University annually.

Exhibition Space

OSU is the primary research partner on the proposal for the Smart City grant, the key partner on 5 of 9 USDOT funded projects, and have led the work on the development of the Data Privacy Plan (DPP) and the Data Management Plan (DMP). The Experience Center Provides premier public exhibit space for the dissemination of academic research done by Ohio State to support SmartColumbus and the USDOT Smart Cities grant. The ability to provide a medium to share this material is essential to fulfill the Land Grant principles of The Ohio State University and remains at the center of OSU’s strategic plan for applied research.
The value of the exhibition space is calculated by multiplying the average market rate for commercial real estate in downtown Columbus ($21.39/sq. ft. /year) (Marketview Columbus Office Space, CBRE, April 2019) by the total amount of exhibit space (2,480 square foot). The value of the public education space is $53,047.20/year.

<table>
<thead>
<tr>
<th>Exhibition Space Cost</th>
<th>Amount of Space</th>
<th>Estimated Annual Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>$21.39/sq. ft./year</td>
<td>2,480 sq. ft.</td>
<td>$53,047</td>
</tr>
</tbody>
</table>

**Co-working Space**

OSU's faculty, staff and students are engaging in smart cities research with the goal of transforming the way people move around the campus and city. Smart Columbus currently supports internships, graduate students, faculty research and data analysis for the University. It is essential to the tasks of the cooperative projects that OSU personnel maintain access within the shared space of the Experience Center which can be quantified in the total build cost of the facility of $1,546,084. Additionally, individuals occupy co-working space within the facility to engage in projects which sums the value detailed below.

<table>
<thead>
<tr>
<th>Co-working Space Costs</th>
<th>Number of Personnel</th>
<th>Estimated Annual Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>$150/month</td>
<td>13</td>
<td>$23,400</td>
</tr>
</tbody>
</table>

**Meeting Space**

The Ohio State University committed to hosting quarterly events at the Smart Columbus Experience Center highlighting the University's Smart City research and expertise. The estimated value of renting meeting space to previously used venues, such as Idea Foundry, is detailed below.

<table>
<thead>
<tr>
<th>Meeting Space Costs</th>
<th>Duration</th>
<th>Recurrence</th>
<th>Estimated Annual Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>$250/hour</td>
<td>2 hours</td>
<td>4 events/year</td>
<td>$2,000</td>
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</table>