



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: K-1920-137

File ID: K-1920-137

Type: Contract

Status: ATS Review

Version: 1

Reference: Item 24B

In Control: City Council

Department: Public Works
Department

Cost:

File Created: 06/09/2020

File Name: FYE 21 EMBARK Interlocal Agreement

Final Action:

Title: CONTRACT K-1920-137: AN INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND THE CENTRAL OKLAHOMA TRANSPORTATION AND PARKING AUTHORITY (COTPA) D/B/A EMBARK TO PROVIDE TRANSIT SERVICES FOR THE CITY OF NORMAN FROM JULY 1, 2020, THROUGH JUNE 30, 2021, IN AN ANNUAL AMOUNT NOT-TO-EXCEED THREE MILLION ONE HUNDRED TWENTY-FOUR THOUSAND SEVENTY-FOUR DOLLARS (\$3,124,074.00) FOR THE PROVISION OF TRANSIT SERVICES AND ASSOCIATED COSTS.

Notes: ACTION NEEDED: Motion to approve or reject Contract K-1920-137 with Central Oklahoma Transportation and Parking Authority d/b/a EMBARK through June 30, 2021; and, if approved, authorize the execution thereof.

ACTION TAKEN: _____

Agenda Date: 06/23/2020

Agenda Number: 24B

Attachments: K-1920-137

Project Manager: Taylor Johnson, Public Transit Coordinator

Entered by: taylor.johnson@normanok.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File K-1920-137

Body

BACKGROUND: On August 28, 2018, University of Oklahoma (“OU” or “University”) officials advised City staff of their desire to transfer non-campus bus services in Norman to another operator by the end of fiscal year 2018-2019 (FYE 2019).

On May 22, 2019, Governor Stitt designated the City to be the direct recipient of federal transit funds effective upon the date the Federal Transportation Administration (FTA) formally approves the City eligible to receive federal transit funds. On June 20, 2019, the FTA designated the City to be the direct recipient of federal transit funds.

While the City was able to become the designated recipient of federal transit funds, the complete transition of operations and maintenance of the transit services was not able to be accomplished by July 1, 2019. Thus, on June 25, 2019, the City approved Contract K-1819-150 with the University to continue operating and maintaining the transit services from July 1 through August 2, 2019, as the City's contractor.

Throughout the transition, the City and the Central Oklahoma Transportation and Parking Authority (COTPA) d/b/a EMBARK were collaborating on an agreement to provide the City's transit services as an independent contractor. This came to fruition with contract K-1920-30, an Interlocal Agreement between the City and EMBARK for EMBARK to provide transit services for the City, which was approved by City Council on July 20, 2019. The Interlocal Agreement included the operation of the fixed routes, operation of paratransit services, collaborative assistance with federal and state grant administration and compliance with federal and state laws and regulations, collaborative assistance with marketing and advertising, and additional start-up costs anticipated with the transition of services. The term of the agreement is from August 3, 2019, through June 30, 2020.

EMBARK began operating the fixed route services on August 3, 2019; however, the City and EMBARK were not able to hire the staff and assemble the necessary resources to maintain the public transit fleet and to operate the paratransit service at that time. On July 30, 2019, City Council approved Amendment 1 to Contract K-1819-150, which extended the University's agreement to operate the paratransit services and to maintain the public transit fleet for an additional 60 days. On October 1, 2019, the City took over the maintenance of the public transit fleet and EMBARK began operating the paratransit service.

DISCUSSION: Contract K-1920-137 governs EMBARK's provision of transit services for the City, including the operation of the fixed routes, operation of paratransit services, collaborative assistance with federal and state grant administration and compliance with federal and state laws and regulations, and collaborative assistance with marketing and advertising, for the FYE 2021.

Key operational changes include:

- Operation of Saturday service beginning August 15, 2020. This will include University football game days, with operations out of a temporary hub due to street closures and traffic conditions around the current transfer station on Brooks Street.
- Combination of Norman Route 124 and EMBARK OKC Route 024 effective August 10, 2020.
 - For many years, the operations of the commuter route between Norman and Oklahoma City was split between the two transit service providers. This caused

confusion for passengers due to the need to contact one entity or the other for route information and bus location. There have been discussions in the past regarding one entity operating the entire commuter route. With EMBARK OKC operating the full route, there will be a decrease in customer confusion and an increase in operation efficiencies.

- Official adoption of key EMBARK policies: Rider Conduct and Exclusion Policy, EMBARK Norman Plus ADA Guide, and EMBARK Advertising Policy.

The term of the agreement is from July 1, 2020, through June 30, 2021, subject to annual appropriation of sufficient funding by Council, and is auto-renewable with a 90 days notice termination provision. This Agreement is integral to the consistent provision of public transit services in the City of Norman. The total estimated annual cost of the EMBARK monthly transit services is estimated to be \$2,836,074 or approximately \$236,340 per month. In comparison, the total estimated operating costs for FYE 2020 with EMBARK (Contract K-1920-30) and the University (Contract K-1819-150) was \$2,673,293 or \$222,774 per month. The Agreement also includes additional costs not to exceed \$80,000 for demand response automatic vehicle location (AVL) equipment and licensing as well as software development and office set up expenses.

In addition to the estimated monthly operational transit services cost and the additional costs for new equipment and software, this Agreement also includes a payment of \$42,000.00 from the City to EMBARK for the full premium cost for public liability insurance for the term of the agreement and a provision requiring EMBARK to return to the City any received premium refunds. The Agreement also includes an amount not to exceed \$166,000.00 for the City to reimburse EMBARK's out-of-pocket deductibles or other actual costs pertaining to liability claims. It also provides that damages caused to the City's vehicles, equipment, or real or other property determined not to be caused by the negligence of the City or a third-party shall be tracked and deducted from this maximum \$166,000.00 amount, unless and until it is exhausted, except for minor damages in the amount of \$1,500.00 or less in any single occurrence. Minor damages to City's property up to \$1,500.00 in any single occurrence shall be treated as routine maintenance born by the City and shall not be deducted from the \$166,000.00 amount. Minor damages to City's property during the last year were less than \$2,000.00 total, so it is not anticipated that this amount will be high during the term of the agreement. If damage costs to the City's vehicles exceed \$15,000.00, the parties will meet to discuss an incident prevention plan. The Agreement provides that any remaining amount of the \$166,000.00 not expended during the term of the Agreement will be set aside and held in reserve by Norman until June 30, 2022, which is the deadline under the GTCA for liability claims to be made for incidents occurring during the term of the Agreement, July 1, 2020, through June 30, 2021.

The requirement for the City to reimburse or credit EMBARK for its out-of-pocket deductibles or other actual costs pertaining to liability claims arising from its employees' or agents' negligence is a departure from the typical risk and liability allocation contemplated under Oklahoma's Governmental Tort Claims Act (GTCA), 51 O.S. § 155 *et seq.* Under the GTCA, both EMBARK, a public trust, and the City, a municipality, would be liable for their own negligent acts and omissions up to the tort claims limits of \$25,000.00 for property damage and \$125,000.00

for personal injury per claimant for any loss arising out of a single act, accident, or occurrence, with a maximum amount of \$1,000,000.00 for any number of claims arising out of a single occurrence or accident. 51 O.S. § 154. Furthermore, under the GTCA, the City is exempt from liability for any damage caused by an act or omission of an independent contractor retained by the City. 51 O.S. § 155(18). In this agreement, EMBARK is requiring the City to reimburse EMBARK for the amount of damages it may have to pay out resulting from the acts or omissions of its own agents or employees, who are acting on behalf of EMBARK as City's independent contractor. Under the GTCA, the City would normally be exempt from this liability, but EMBARK is requiring the City contractually to bear the costs of damages it otherwise would not be required to pay in tort. It should be noted that the risk undertaken here contractually is not unlike the risk the City would face if operating this service itself.

The public liability insurance policy EMBARK has been able to secure from NAICO, a commercial insurance provider, has a \$42,000.00 premium and a high deductible of \$175,000.00. Effectively, this means that it will only pay out in the event of a catastrophic event wherein more than one claimant may file a personal injury or property damage claim arising from the same accident or occurrence. (One claimant with both personal injuries and property damages would be capped at \$125,000.00 for the personal injuries and \$25,000.00 for the property damages. Only in a situation where there is more than one claimant for the same accident or occurrence would it make economic sense to file on the public liability insurance since the \$175,000.00 would be applied first.) In the event of a catastrophic occurrence where a maximum \$1,000,000.00 cap would apply, the public liability insurance would be required to pay the remaining \$825,000.00 in damages. EMBARK is asking the City to reimburse or credit it for any claims that arise out of incidents occurring during the term of the agreement up to a maximum not-to-exceed amount of \$166,000.00. This is less than the amount of one deductible and could theoretically be exhausted in one claim if property damages and personal injury were significant enough to activate the liability caps. Under the agreement, damage to the City's property throughout the term of the agreement would also be applied to this maximum \$166,000.00 amount except for minor damages of \$1,500.00 or less in any single occurrence, which will be born by the City as routine maintenance costs. EMBARK would still face potential exposure for claims for damages beyond the \$166,000.00 amount, up to a maximum \$1,000,000.00 cap per occurrence. On the converse side, should damages not rise to the \$166,000.00 level during the next fiscal year, the City would not pay this additional amount, which could significantly reduce the overall amount of money spent during the fiscal year under this Agreement. Based on the past year of EMBARK operations and EMBARK's professional reputation and years of experience in the industry, it is not anticipated that substantial damages will occur, but this explanation breaks down the allocation of risk in the unlikely event the worst should occur. At this time, like with other City vehicles, the City remains self-insured for vehicle coverage pertaining to property damage to the public transit fleet not arising from negligence (such as a total loss occurring from a tornado or hail storm) and/or other damage not otherwise covered by public liability insurance or in excess of maximum coverage amounts, but Staff is researching other available insurance options to see if this remains the best viable option.

Fiscal Year 2021 budgeted funds include \$2,975,000 in Miscellaneous Services - Transit Operating Contract (account number 27550277-44766). Transfers will be made from other accounts to cover this difference between this contract amount and the amount budgeted.

RECOMMENDATION: Staff recommends approval of Contract K-1920-137, providing for an Interlocal Agreement between the City of Norman and the Central Oklahoma Parking and Transportation Authority (COTPA) d/b/a EMBARK for the provision of public transportation services from July 1, 2020, through June 30, 2021, to ensure continuity of the City's public transit operations without any gap in services.