

## **EXCHANGE AGREEMENT**

This Exchange Agreement (the “Agreement”) is made as of this \_\_\_ day of \_\_\_\_\_, 2017 (the “Effective Date”), by THE BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA (the “University”) and THE CITY OF NORMAN, OKLAHOMA, a municipal corporation (the “City”). University and the City may be referred to in this Agreement separately as a “Party” or collectively as the “Parties”. In consideration of the mutual promises contained herein, the parties agree as follows:

**1. Real Property.** University is the owner of the real property described on Exhibit A attached (“University Property”), which is located at the northeast corner of Flood Street and Robinson Avenue in Norman, Oklahoma. City is the owner of the real property described on Exhibit B attached (“City Property”), which is among certain land that is presently dedicated for use as runway area for Max Westheimer Airport in Norman, Oklahoma. Subject to the terms and conditions of this Agreement, University agrees to convey the University Property to City, and City agrees to convey the City Property to University in exchange for the respective consideration described herein.

**2. Consideration.** The consideration to be received by University in exchange for the conveyance of the University Property to City is (i) the conveyance by City of the City Property to University, and (ii) the Parties’ mutual execution and delivery of that certain proposed Ground Lease between University, as lessor, and City, as lessee, covering the real property located within the Max Westheimer Research Park and described in Exhibit C attached hereto (the “Ground Lease”). The consideration to be received by City in exchange for the conveyance of the City Property to University is (i) the conveyance by University of the University Property to City, and (ii) the Parties’ mutual execution and delivery of the Ground Lease.

**3. Closing.** The closing of the transactions contemplated by this Agreement (the “Closing”), shall be at 10:00 a.m. on \_\_\_\_\_, 201\_ (“Closing Date”), at the office of \_\_\_\_\_, Attn: \_\_\_\_\_ (the “Title Company”), unless another time and place are mutually agreed upon in writing by the Parties.

**4. Closing Costs.** The closing costs of this transaction shall be allocated as follows:

<b>COST</b>	<b>RESPONSIBLE PARTY</b>
Title Commitment and Base Premium of University Title Policy (defined in Section 6.3)	<i>University</i>
Title Commitment and Base Premium of City Title Policy (defined in Section 7.3)	<i>City</i>
Premium for any endorsements to the University Title Policy	<i>City</i>
Premium for any endorsements to the City Title Policy	<i>University</i>
Recording fees for the University Property	<i>City</i>
Recording fees for the City Property	<i>University</i>
Documentary stamps on the University Deed	<i>N/A</i>
Documentary stamps on the City Deed	<i>N/A</i>
All other closing costs, expenses, charges and fees	<i>Party incurring same</i>

**5. Title and Survey Matters; Inspections.**

5.1 Surveys. Within forty-five (45) days after the Effective Date each Party, at its sole expense, shall deliver to the other Party a survey of the property that the Party intends to convey to the other Party as part of the transaction contemplated by this Agreement (“Survey”).

5.2 Title Commitments. Within forty-five (45) days after the Effective Date, each Party shall furnish to the other party a current commitment (“Title Commitment”) for the issuance of an Owner’s Policy of Title Insurance to other Party from the Title Company, together with copies of all documents constituting exceptions to conveying Party’s title (“Exception Documents”) as reflected in the Title Commitment.

5.3 Title Review. Each Party shall have ten (10) days after receipt of an initial Title Commitment, Exception Documents and Survey to review the items and to deliver to the other Party notice of any objections the reviewing Party may have to any matter set forth in such items. Any matters shown in a title commitment or Survey not objected to within such period shall be deemed to be permitted exceptions (“Permitted Exceptions”); provided, however, the reviewing Party shall be deemed to have objected to all matters set forth in the Title Commitment that are applicable to conveying Party. If the reviewing Party timely objects to any matter contained in the Title Commitment, Exception Documents and/or the Survey as hereinabove provided, the conveying Party shall have a reasonable period of time (not to exceed ten (10) days) after receipt of the objections within which to attempt to cure such objections; provided, however, the conveying Party shall be under no obligation to attempt such cure or to incur any costs in connection with such attempted cure (except that the conveying Party shall be in all events be required to remove or discharge any fee mortgages, deeds of trust or other monetary liens encumbering the property). If the conveying Party has been unable or unwilling to cure all the objections, then, and in such event, the reviewing Party may, at its option, either terminate this Agreement at any time before the earlier to occur of (i) the date that is ten (10) days after the date on which the reviewing Party receives notice in writing the objections that conveying Party cannot or will not cure, or (ii) the Closing, or the reviewing Party may waive any such uncured objections, which shall thereupon become Permitted Exceptions, and the transaction contemplated hereby shall be consummated as provided herein.

5.4 Inspections by City. During the pendency of this Agreement, City and its consultants may enter the University Property to conduct such inspections of the University Property as Buyer may desire and otherwise determine whether the Property is suitable for Buyer’s intended purposes. City shall repair any damage caused by any inspection and investigation activities by or for City. (It is acknowledged that University presently has possession of the City Property through its presently existing leasehold estate therein.) To the extent allowed by law, City agrees to and will require its consultants, agents, and invitees to indemnify and hold University harmless from and against any loss, damage, injury, claim or cause of action asserted against University as a direct result of the presence on the University Property of City, City’s agents or independent contractors, including, without limitation, (a) any and all reasonable attorneys’ fees incurred by University as a result of a claim relating to such matters, or (b) any mechanic’s or materialmen’s liens imposed against all or any portion of the University Property by a party claiming to be performing an inspection or audit on City’s behalf during the term of this Agreement. The foregoing indemnity shall survive the Closing and any termination of this Agreement.

**6. University's Deliveries at the Closing.** At the Closing, University shall deliver to City the following:

6.1 Deed and Ground Lease. The following: (i) a Special Warranty Deed (“University Deed”), duly executed and acknowledged by University, in substantially the form attached hereto as Exhibit D and incorporated herein by reference conveying good and indefeasible title in the University Property to City, subject only to any matters of public record and those matters appearing on a current Survey of the property, and (ii) duplicate counterparts of the Ground Lease, duly executed by University.

6.2 Title Policy. University shall cause to be delivered to City an ALTA Form Owner’s Policy of Title Insurance (“University Title Policy”) for the University Property, in the amount of \$ [REDACTED] issued by the Title Company, subject only to the Permitted Exceptions.

**7. City's Deliveries at the Closing.** At Closing, City shall deliver to University the following:

7.1 Deed and Ground Lease. The following: (i) a Special Warranty Deed (“City Deed”), duly executed and acknowledged by City, in substantially the form attached hereto as Exhibit and incorporated herein by reference conveying good and indefeasible title in the City Property to University, subject only to any matters of public record and those matters appearing on a current Survey of the property, and (ii) duplicate counterparts of the Ground Lease, duly executed by University.

7.2 Title Policy. City shall cause to be delivered to University an ALTA Form Owner’s Policy of Title Insurance (“City Title Policy”) for the City Property, in the amount of \$ [REDACTED] issued by the Title Company, subject only to the Permitted Exceptions.

**8. Closing Conditions.**

8.1 The University’s Obligations. The University’s closing obligations are conditioned upon the University’s receipt of (i) the Federal Aviation Administration’s written approval of the conveyance of the City Property to University as contemplated herein (the “FAA Consent”), and (ii) the City’s delivery of the items required by Section 7 herein.

8.2 The City’s Obligations. The City’s closing obligations are conditioned upon the City’s receipt of (i) the FAA Consent, and (ii) the University’s delivery of the items required by Section 6 herein.

8.3 Ground Lease as Condition. The parties hereby agree and understand that although mutual execution and delivery of the Ground Lease constitutes a closing condition under this Section 8, any future termination of the Ground Lease pursuant to the terms therein will have no effect on the validity or finality of this exchange between the Parties related to the City Property and University Property.

**9. Possession.** Possession of the University Property shall be given to City at the Closing. Possession of fee title to the City Property shall be given to University at the

Closing.

**10. Prorations and Adjustments.** University warrants to City that no ad valorem taxes are presently assessed against the University Property. City warrants to University that no ad valorem taxes are presently assessed against the City Property. Accordingly, no prorations shall be made between the parties at Closing

**11. Brokerage.** University and City, respectively, warrant to each other that no brokerage or sales commission will accrue as a result of the actions of University and City, respectively, contemplated by this Agreement.

**12. University's Representations Warranties.** University represents and warrants to City the following as of the date of this Agreement and as of the Closing Date, which representations and warranties shall survive the Closing:

12.1 No Violations of Law. There are now, and shall be at the Closing, no uncured violations of any law, ordinance, order, regulation, rule or requirement of any governmental authority materially and adversely affecting the University Property.

12.2 University's Authority. University is the absolute owner of the University Property and has full power, authority and legal right to execute this Agreement and to carry out all of University's obligations under this Agreement. This Agreement constitutes the valid and binding obligation of University in accordance with its terms.

12.3 No Governmental Notices. No notices or requests have been received by University from any governmental agency or other utility with respect to the University Property with which University has failed or refused to comply. University shall comply with any such notices or requests received prior to the Closing.

12.4 No Condemnation Proceedings. University knows of no condemnation or eminent domain proceedings pending or threatened against the University Property or any part thereof.

12.5 No Agreements Affecting Use. There are and shall be no contracts, whether written or oral, affecting the use and operation of the University Property, which shall survive the Closing.

12.6 Confirmation. The execution and delivery by University of the University Deed conveying the University Property pursuant to this Agreement shall constitute confirmation by University that the foregoing representations and warranties are true and correct on and as of the Closing Date as though made on and as of such time. All such representations and warranties shall survive the delivery of the University Deed..

**13. City's Representations Warranties.** City represents and warrants to University the following as of Closing Date, which representations and warranties shall survive the Closing:

13.1 No Violations of Law. There shall be at the Closing no uncured violations of any law, ordinance, order, regulation, rule or requirement of any

governmental authority materially and adversely affecting the City Property.

13.2 City's Authority. City shall be at the Closing the absolute owner of the City Property and shall have full power, authority and legal right to execute this Agreement and to carry out all of City's obligations under this Agreement. This Agreement constitutes the valid and binding obligation of City in accordance with its terms.

13.3 No Governmental Notices. No notices or requests shall have been received by City from any governmental agency or other utility with respect to the City Property with which City has failed or refused to comply. City shall comply with any such notices or requests received prior to the Closing.

13.4 No Condemnation Proceedings . City knows of no condemnation or eminent domain proceedings pending or threatened against the City Property or any part thereof.

13.5 No Agreements Affecting Use. There are and shall be no contracts, whether written or oral, affecting the use and operation of the City Property, which shall survive the Closing.

13.6 Confirmation. The execution and delivery by City of the City Deed conveying the City Property pursuant to this Agreement shall constitute confirmation by City that the foregoing representations and warranties are true and correct on and as of the Closing Date as though made on and as of such time. All such representations and warranties shall survive the delivery of the City Deed.

**14. Default and Remedies.** In the event of default in the performance or observance of any of the covenants of this Agreement:

14.1 City's Default - University's Remedy. If City shall fail to perform City's obligations hereunder, except as excused by University's default or if any of City's representations and warranties herein contained shall prove to be false in any material respect, University shall make written demand on City for such performance and, if City fails to comply with such written demand within ten (10) days after receipt thereof, University shall have the option: (a) to seek specific performance; (b) to waive such default; (c) to terminate this Agreement by written notice to City and on such termination, the parties shall be discharged from any further obligations and liabilities hereunder; or (d) to exercise any and all other remedies available under state or federal law as a result of such default.

14.2 University's Default - City's Remedy. If University shall fail to perform University' obligations hereunder, except as excused by PLC's default or if any of City's representations or warranties herein contained shall prove to be false in any material respect, City shall make written demand upon University for performance and if University fails to comply with such written demand within ten (10) days after receipt thereof, City shall have the option: (a) to seek specific performance; (b) to waive such default; (c) to terminate this Agreement and upon such termination, the parties shall be discharged from any further obligations and liabilities hereunder; or (d) to exercise any and all other remedies available under state or federal law as a result of such default.

**15. University's Obligations to Maintain Road Improvements.** After the Closing, City may construct certain Road Improvements (herein so called) within certain Roads (herein so called) that are owned by University and which serve the premises to be leased to City under the Ground Lease in accordance with the specifications and provisions set forth in Exhibit E attached hereto. To the extent City constructs the Road Improvements in accordance herewith, University shall maintain the Roads in accordance with the standards set forth in Exhibit E so long as the Ground Lease remains in effect and the City recreational facilities located on the tract of land described in the Ground Lease remain open and operational. The provisions of this Section 15 shall survive Closing.

**16. General.**

16.1 Notices. Any notices or other communication required or permitted hereunder shall be (i) given in writing, and (ii) be personally delivered or mailed by certified mail or overnight courier, or by electronic transmission delivered or transmitted to the Party to whom such notice or communication is directed, to the address of such Party as follows:

University: The Board of Regents of the University of Oklahoma  
Attn: Chad Cochell  
217 W. Boyd, Suite A  
Norman, OK 73019

With Copy to:

Office of Legal Counsel  
660 Parrington Oval Rm. 213  
Norman Oklahoma 73019

City: The City of Norman  
Attn: City Manager's Office  
201 West Gray Street  
Norman, OK 73069

16.2 Time. Time is of the essence in this Agreement.

16.3 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto, and there are no agreements, understandings, restrictions, warranties or other representations between the parties hereto other than those set forth herein. All exhibits attached hereto are hereby incorporated herein and made a part of this Agreement. This instrument is not intended to have any legal effect whatsoever, or to be a legally binding agreement, or any evidence thereof, until it has been signed by the parties hereto.

16.4 Amendment and Waiver. This Agreement may be amended at any time, but only by an instrument in writing executed by City and University. Either party hereto may waive any requirement to be performed by the other, provided that such waiver shall be in writing and executed by the party waiving the requirement.

16.5 Choice of Law. It is the intention of City and University that the

laws of the State of Oklahoma shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties.

16.6 Section Headings. Headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

16.7 Assignment. The rights of either party under this Agreement may not be assigned in whole or in part without the other party's written consent.

16.8 Partial Invalidity. If any provision of this Agreement shall held to be void or unenforceable for any reason, such provision shall be deemed modified so as to constitute a provision conforming as nearly as possible to such void or unenforceable provision while still remaining valid and enforceable, and the remaining terms or provisions hereof shall not be affected thereby.

16.9 Litigation Expense. If either party hereto commences litigation against the other to enforce its rights hereunder, the prevailing party in such litigation shall be entitled to recover from the other its reasonable attorney's fees and expenses incidental to such litigation.

16.10 Binding Effect. This Agreement shall be binding upon, inure to the benefit of and be enforced by the undersigned and their respective heirs, personal representatives, successors and permitted assigns.

16.11 Counterpart Execution. The Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

THE BOARD OF REGENTS OF THE  
UNIVERSITY OF OKLAHOMA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE CITY OF NORMAN, OKLAHOMA,  
a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

- Exhibit A - Legal Description - University Property
- Exhibit B - Legal Description - City Property
- Exhibit C - Ground Lease
- Exhibit D - Form of Special Warranty Deed - University
- Exhibit E – Form of Special Warranty Deed – City
- Exhibit F – Description of Road Improvements & Maintenance Standards
- Exhibit F-1 – Road Improvements Site Plan



**Exhibit A**

Legal Description – University Property

**Exhibit B**

Legal Description – City Property

**Exhibit C**  
Ground Lease

**Exhibit D**

Form of Special Warranty Deed – University

**AFTER RECORDING RETURN TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SPECIAL WARRANTY DEED**

STATE OF OKLAHOMA                    )  
  )  
COUNTY OF CLEVELAND            )        **KNOW ALL BY THESE PRESENTS THAT:**

That **THE BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA**, a constitutionally created entity of the State of Oklahoma ("Grantor"), in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell and convey unto **THE CITY OF NORMAN, OKLAHOMA**, an Oklahoma municipal corporation ("Grantee"), whose mailing and notice address is 201 West Gray Street, Norman, Oklahoma 73069, all of the real property and premises situated in Cleveland County, Oklahoma, and more particularly described on Exhibit "A" attached hereto and made a part hereof, together with all the improvements thereon and the appurtenances thereunto belonging, and warrants the title to the same to be free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature made or suffered to be made by the Grantor, but not otherwise, **LESS AND EXCEPT** Grantor's right, title and interest, if any, in and to all of the oil, gas, coal, metallic ores and other minerals in, under and that may be produced from the real property described on Exhibit "A" and all rights, privileges and immunities relating thereto (it being Grantor's intent to retain and reserve all of Grantor's right, title and interest, if any, in and to all of the oil, gas, coal, metallic ores and other minerals in, under and that may be produced from the real property described on Exhibit "A" and all rights, privileges and immunities relating thereto); provided that, in connection with such reservation, Grantor expressly waives in favor of Grantee and its successors and assigns any and all rights to utilize the surface estate of the Property for any and all uses whatsoever including, but not limited to, drilling, extraction, production or other exploration or mining for oil, gas or other minerals or the storage or transportation thereof, **AND SUBJECT TO** the matters described on Exhibit "B" attached hereto and incorporated herein.

**TO HAVE AND TO HOLD** said described premises unto the Grantee, its successors and assigns forever, free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature made or suffered to be made by the Grantor, but not otherwise, subject to the matters described on Exhibit "B" attached hereto and incorporated herein.

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

THE BOARD OF REGENTS OF  
THE UNIVERSITY OF OKLAHOMA

By: \_\_\_\_\_  
Chris A. Purcell, Ph.D.  
Vice-President for University Governance

EXEMPTION DOCUMENTARY STAMP TAX  
O.S. TITLE 68, SECTION 3202, PAR. 11

STATE OF OKLAHOMA            )  
  )        ss.  
COUNTY OF OKLAHOMA        )

This instrument was acknowledged before me on \_\_\_\_\_, 2017, by Chris A. Purcell, Ph.D., as Vice-President for University of Governance of The Board of Regents of The University of Oklahoma.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

(SEAL)

EXHIBIT A – LEGAL DESCRIPTION OF PROPERTY  
EXHIBIT B – PERMITTED EXCEPTIONS

**Exhibit E**

Form of Special Warranty Deed – City

**SPECIAL WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS:

THAT THE CITY OF NORMAN, OKLAHOMA, an Oklahoma Municipal Corporation (“Grantor”), with an address of 201 West Gray Street, Norman, Oklahoma 73069, in consideration of the amount of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, does hereby grant, bargain, sell, and convey unto THE UNIVERSITY OF OKLAHOMA, an Oklahoma political subdivision (“Grantee”), with an address of \_\_\_\_\_, Norman, Oklahoma, \_\_\_\_\_, that certain tract of real property located in Cleveland County, Oklahoma, and more particularly described on Exhibit A attached hereto, together with all improvements located thereon and all easements, rights, privileges, titles, and interests appurtenant thereto (the “Property”), less and except any and all interests in and to oil, gas and other minerals not previously reserved or conveyed of record and all rights pertaining thereto, which Grantor hereby reserves; provided that, in connection with such reservation, Grantor expressly waives in favor of Grantee and its successors and assigns any and all rights to utilize the surface estate of the Property for any and all uses whatsoever including, but not limited to, drilling, extraction, production or other exploration or mining for oil, gas or other minerals or the storage or transportation thereof. Grantor hereby warrants title to the Property to be free, clear, and discharged of and from all former grants, charges, taxes, judgments, liens, and encumbrances of whatsoever nature granted by, through, or under Grantor, but not otherwise, and in any event excluding from this warranty the matters set forth on Exhibit B attached hereto.

TO HAVE AND TO HOLD the Property unto Grantee, its successors and assigns forever, free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature made or suffered to be made by the Grantor, but not otherwise, subject to the matters described on Exhibit B attached hereto and incorporated herein.

By acceptance of this Special Warranty Deed, Grantee covenants for itself, its successors and assigns, that for a period of 30 years after the date hereof, Grantee shall, unless otherwise approved by the Federal Aviation Administration (or its successor agency) or required for routine maintenance or safety reasons, (i) maintain the airport runways within Max Westheimer Airport as currently configured and (ii) shall not extend or expand the runway that is situated within the Property. This covenant and restriction shall run with the land and shall be binding on Grantee, its successors and assigns.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2017.

THE CITY OF NORMAN, OKLAHOMA,  
a municipal corporation

By: \_\_\_\_\_  
Lynne Miller, Mayor

Attest:

\_\_\_\_\_  
Brenda Hall, City Clerk

STATE OF OKLAHOMA            )  
  )  
COUNTY OF CLEVELAND        )        ss.

This instrument was acknowledged before me on \_\_\_\_\_, 2017, by Lynne Miller, as Mayor of The City of Norman, Oklahoma, a municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

(SEAL)

EXHIBIT A – LEGAL DESCRIPTION OF PROPERTY  
EXHIBIT B – PERMITTED EXCEPTIONS

## **Exhibit F**

### Description of Roadway Improvements

City shall construct a minimum of a two lane roadway improvement to Lexington Avenue and Berry Road, depicted in Exhibit F-1 attached hereto, built in accordance with construction standards as set out in the City's adopted engineering design criteria to provide access to City owned recreational facilities funded through the Norman Forward Sales Tax, said facilities to be located on the tract of land described in the Ground Lease.

### Maintenance Standards

University shall maintain the improved City constructed roadways in a manner consistent with prevailing City maintenance standards for comparable roadways so long as the Ground Lease remains in effect and the City recreational facilities located on the tract of land described in the Ground Lease remain open and operational. City shall promptly notify University of defects in the roadway that need repair.



**Exhibit F-1**  
**Roadway Site Plan**

(attached)