

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), MADE AND ENTERED INTO THIS ____ day of _____, 2019, by and between the City of Norman, Oklahoma ("Lessee"), and the Board of Regents of the University of Oklahoma ("Lessor").

RECITALS

Whereas, Lessor owns and operates an office or building space that may from time to time be properly made available to outside parties as consistent with the laws of the United States and the State of Oklahoma; and

Whereas, Lessor finds it necessary, convenient and desirable to make space available on a rental basis to tenants who will use it for purposes which support or contribute to Lessor's purposes or are incidental thereto; and

Whereas, Lessee finds it necessary, convenient, and desirable to acquire Lessor's available space on a rental basis for the purpose of providing public transportation services to the City of Norman and surrounding areas.

Now, therefore, in consideration of the mutual promises and conditions contained in this Agreement, and for good and valuable consideration, Lessor and Lessee agree as follows:

1. Description of Leased Property.

1.1. Lessor leases to Lessee, and Lessee rents and takes from Lessor 381 feet of office space (marked as Room 117 on Appendix A) at 510 Chesapeake Street, as more particularly described in the floor plan of the premises in Appendix A, attached hereto and incorporated herein ("Premises") (known as the OU Transportation Operations Center). In addition, Lessee shall have the option to lease 194 feet of office space (marked as Room 148 in Appendix A) as well as two work bays, including the use of affixed and large equipment, of warehouse/garage space. Lessee acknowledges warehouse/garage space leased will be dedicated to Lessee but non-exclusive, it being the intention of the parties that Lessee and Lessor will both occupy the space in furtherance of their respective interests. Finally, after October 1, 2019, or on a subsequent date no later than October 15, 2019, if agreed upon by Lessor and Lessee, Lessee shall have the option to lease an additional 545 feet of office space (marked as Rooms 127 and 127A in Appendix A) on the Premises.

1.2. In addition, Lessee shall have the non-exclusive use of public, common and parking areas, to be shared with Lessor, including, but not limited to, areas marked as Rooms 116, 141, 143, 150, 151, and 152A in Appendix A.

1.3 It being the intention of the parties to work independently but alongside each other at the Transportation Operations Center, they agree to the terms set forth more specifically in the Facility Sharing Agreement attached hereto as Appendix B and incorporated herein.

2. Term and Termination.

2.1 The term of the Lease shall begin August 5, 2019, and end December 31, 2019, unless the Lease is otherwise terminated as allowed herein.

2.2 Either party may terminate this Lease upon thirty (30) days written notice. The written notice shall be sent to the following persons:

Lessor: Board of Regents of the University of Oklahoma
600 Parrington Oval, Room 119
Norman, OK 73019

Lessee: City of Norman, OK
201 West Gray
Norman, OK 73070

2.3 Either party may terminate this Lease immediately upon material breach by the other party of this Lease.

2.4 This agreement may be terminated immediately should any of the following occur:

- a) an act of god or event causing catastrophic damage to the property and/or facility which make the continuation of the activity at the basis of this agreement unduly burdensome or impossible;
- b) the Premises ceases to be used exclusively for the purposes represented herein;
- c) the loss of Federal or State funding which makes the continuation of its operation impossible or unduly burdensome for either party;
- d) insolvency by either of the parties to this agreement; or
- e) a change in the laws or regulations (either Federal or State) which make the continuation of this agreement illegal or impossible.

3. Rent.

Lessee agrees to pay Lessor as rent for the office space portion of the Premises (Office Rent) the amount of five hundred fourteen dollars and thirty-five cents (\$514.35) per month.

Lessee further agrees to pay Lessor, only if exercising the option to use warehouse/garage space as set forth in Item 1, for use of the warehouse/garage portion of the Premises (Warehouse Rent) the amount of five thousand four hundred dollars (\$5,400.00) per month. Additional office space is available at the rate of one dollar and thirty-five cents (\$1.35) per square foot per month. Lessee further agrees to pay Lessor one hundred dollars (\$100.00) for each Fleet vehicle parking space to be reserved for Lessee's use. The number of parking spaces to be reserved shall be mutually agreed by the parties in writing, and may be modified as needed. University will provide dedicated employee and guest parking for City's employees, agents, contractors, and guests at no additional costs to City. City acknowledges that other parking is unauthorized and shall be subject to University parking enforcement protocol.

Office Rent and Warehouse Rent (cumulatively, "Rent") for any partial months shall be prorated at a daily rate. Rent shall be due within forty-five (45) days of receipt of an invoice from the Lessor.

4. Provided Services

Lessor will provide to the Lessee the following personnel services as part of the fair market rent with no compensation:

- (a) Custodial/Janitorial Services
- (b) Reception Services (during business hours)
- (c) Maintenance for affixed equipment
- (d) Security Services

5. Use and Access of Premises

- 5.1 Lessee will use and occupy the Premises for the purpose of providing public transportation services to Norman and surrounding areas, and for no other purpose without first obtaining the written consent of Lessor therefore.
- 5.2 Lessee will conform to and comply with all of Lessor's applicable rules and regulations and comply with applicable municipal, county, state, and federal ordinances, laws, rules and regulations in using the Premises.
- 5.3 Lessee will have the following right of use in the Premises
 - 5.3.1 Use of affixed equipment and large equipment in bays (if option exercised)
 - 5.3.2 General office furniture for Office Premises will be provided at no additional charge.
 - 5.3.3 Designated employee and visitor parking
 - 5.3.4 Access to covered fueling station on a mutually determined schedule
 - 5.3.5 Use of exterior washer bay on a mutually determined schedule
- 5.4 Lessee has the right of ingress and egress in accordance with Lessor's rules and regulations.
- 5.5 Lessee may not, at any time, improve or physically alter the Premises.

6. Quiet Enjoyment.

On payment of the rents and performance of the covenants and agreements on the part of Lessee to be paid and performed hereunder, and subject to the limitations set forth herein and in the attached Facility Sharing Agreement, Lessee shall peaceably have and enjoy the Premises and all of the rights, privileges and appurtenances granted.

7. Maintenance and Repairs.

Lessor shall be responsible for maintaining the building and the associated landscaping and making all reasonable repairs and replacements to the heating, cooling, ventilation, lighting, and electrical installations and shall keep and maintain all plumbing units, pipes, and connections in good repair and free from obstruction. Lessor shall also be responsible for maintaining the parking lots, including during and subsequent to inclement weather, on the same basis as other University facilities. Lessor shall have the responsibility for properly maintaining all building fire protection systems and equipment, such as the fire sprinkler system, fire alarm system, and fire extinguishers. Lessor shall conform to and comply with all applicable laws and regulations, including laws pertaining to water quality, waste disposal, hazardous waste disposal, air quality and air emissions, and other environmental and health safety matters.

Lessee shall give written notice to Lessor of any repairs required pursuant to the provisions of this Lease, and Lessor agrees to promptly to commence such repairs and to prosecute the same to completion diligently, subject, however, to the delays occasioned by events beyond its control.

8. Utilities.

Utilities provided by the Lessor include electricity, water, and trash.

9. Liability and Insurance.

9.1 The parties agree that each will be responsible for their own acts and omissions subject to the provisions and limitations of the Oklahoma Governmental Tort Claims Act, 51 O.S. §§ 151, *et seq.* Lessor shall not hold Lessee responsible for reconstruction costs due to fire (unless caused by Lessee), flood, or natural catastrophes. Lessee may terminate the lease upon catastrophic damage but may not hold the Lessor responsible for any loss of income due to the loss of space. Lessee shall be responsible for damages caused by Lessee's employees, agents, contractors, and invitees. In the event of damages caused by any third-party operator of Lessee, Lessor shall notify Lessee of such claim in writing, and Lessee will forward to said third-party operator. If requested by Lessee, Lessor shall submit a formal claim to such third-party operator. Lessor shall be responsible for damages caused by any third-party operator only if Lessor has exhausted other direct claims for damages or other remedies and such damages have not otherwise been satisfied.

9.2 Lessee recognizes that Lessor is self-insured through the State of Oklahoma Department of Risk Management in accordance with the Oklahoma Governmental Tort Claims Act. Lessor shall not be responsible for any equipment of Lessee located in the Premises or used in connection with the operations conducted therein.

10. Condition upon Termination.

Lessee shall, at its sole cost and expense, maintain the Premises in as good condition as on the commencement date of the Lease, and shall surrender the Premises to Lessor at the expiration of the

term hereof or upon the earlier termination as provided herein, in as good condition as on the commencement date, subject to normal and reasonable wear and tear.

11. Assignment or Sublet.

Lessee shall not assign or in any manner transfer this Lease or any interest therein without the prior written approval of Lessor. Lessor may, in its own discretion, refuse to allow any assignment or subletting of the space. Notwithstanding the foregoing, the parties acknowledge it is Lessee's intention to contract with a third party (Embark) to provide certain services essential to public transit operations and agree that Embark staff are permitted to use the facility subject to the terms of this Lease and the Facility Sharing Agreement.

12. Governing Law.

This Agreement shall be governed by the laws of the State of Oklahoma, without giving force and effect to its choice of law provisions. The validity, construction, and enforcement of this Lease shall also be governed by the laws of the State of Oklahoma. Any legal action in connection with this Lease shall be filed in a court of competent jurisdiction in the State of Oklahoma, to which jurisdiction and venue the parties expressly agree.

13. Legal Recourse and Attorneys' Fees.

Should the parties to this Agreement be unable to resolve between themselves any dispute arising from any of the provisions within this Agreement, each party shall have recourse under applicable law. In the event that either party commences an action in law or equity to enforce any provision of this Agreement, the losing party shall pay to the prevailing party, reasonable attorneys' fees as fixed by a court of competent jurisdiction.

14. Non-discrimination.

As applicable, the provisions of Executive Order 11246, as amended and as supplemented in Department of Labor regulations (41 CFR Part 60-1.4(a), 60-300.5(a) and 60-741.5(a) et. seq.), are incorporated into this Agreement and must be included in any subcontracts awarded involving this Agreement. The parties represent that all services are provided without discrimination on the basis of race, color, religion, age, national origin, sex, sexual orientation, gender identity, disability, political beliefs, or veteran's status; they do not maintain nor provide for their employees any segregated facilities, nor will the parties permit their employees to perform their services at any location where segregated facilities are maintained. In addition, the parties agree to comply with the applicable provisions of Section 504 of the Rehabilitation Act and the Vietnam Era Veteran's Readjustment Assistance Act of 1974, 38 U.S.C. §4212.

15. Title IX.

Lessee acknowledges and understands that Lessor may have federal obligations to investigate and remedy potential harassment or discriminatory actions taken against its students or employees

while on the Premises. Lessee agrees to cooperate with Lessor in any such investigation and agrees to take remedial actions to ensure such harassment or discrimination ceases. If, however, Lessor determines that the remedial action is insufficient, the Lessor may terminate this Lease immediately.

16. Stark/Anti-Kickback.

The parties represent that the amounts paid under this Lease are fair market value for the space provided. Neither this Lease nor the amounts paid hereunder are provided directly or indirectly to induce or require Lessor or its employees to utilize Lessee to provide any services to patients or generate business for Lessee. The parties understand that the lessee may see patients that are not patients of the Lessor on the premises and that all services provided will be entirely separate from services provided by the Lessor. The parties intend to conduct their relationship in full compliance with all applicable law, including but not limited to the federal Anti-Kickback statute.

17. Safety and Procedures

Lessee acknowledges that it is leasing space and is responsible for providing all necessary training to its staff regarding safety and security. The Lessee also acknowledges that any staff, agents, or contractors of the Lessee shall follow all required safety protocols including evacuations and emergency response protocols of the Lessor while they are on site. Lessee shall require that the staff, agents, or contractors of the Lessee will not share any access items (including access cards or keys) with any other persons that may grant access to the facility.

Lessee agrees that with regard to the leased Premises,

- 1) Entrances and exits to the Premises must remain secured at all times. Doors must not be propped open, unless required by applicable fire code.
- 2) Lessee's staff, agents, or contractors will not allow unauthorized individuals access to the Premises without the Lessor's prior approval.

18. Entire Agreement.

This Lease, including its referenced attachments, contains the entire agreement between the parties, and no agreement shall be effective to change or modify this Lease in whole or in part unless such agreement is in writing and duly signed by both parties.

19. Severability.

If any provision(s) of this Agreement shall be held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

20. Amendment.

This agreement may be amended by the parties with a writing signed by both parties.

21. Counterparts

This Lease may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall be deemed to constitute one and the same instrument. Delivery of an executed Lease by facsimile or other electronic transmission shall be as effective as delivery of an original executed counterpart of this Lease.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Lease on this _____ day of _____, 2019.

LESSOR:

Board of Regents of the University of
Oklahoma

By: _____
Eric Conrad
Vice President for Operations

LESSEE:

City of Norman, Oklahoma

By: _____
Mayor Breea Clark

Attest: _____
Brenda Hall, City Clerk

APPROVED as to form and legality this ____ day of July, 2019.

Kristina L. Bell, Assistant City Attorney

Office Space

Shared/non-exclusive Space

Optional Office Space



FACILITY SHARING AGREEMENT

This Facility Sharing Agreement ("Agreement") is made as of the ____ day of _____, 2019, by the Board of Regents of the University of Oklahoma ("University"), a constitutionally created entity of the State of Oklahoma, and the City of Norman, Oklahoma ("City"), an Oklahoma municipality.

RECITALS

Whereas, University and City are parties to a lease agreement ("Lease") executed contemporaneously with this Agreement;

Whereas, pursuant to the Lease, City rents and takes certain office space for its exclusive use, and has the option to take certain warehouse/garage space for its dedicated but nonexclusive use, and also has non-exclusive use of public, common, and parking areas which are shared with University; and

Whereas, subject to and in accordance with the terms and conditions of this Agreement, City and University desire to share and co-occupy those non-exclusive portions of the Premises in a manner that furthers the City's purpose of providing public transportation services to the City of Norman and surrounding areas, and the University's purpose of providing campus transportation and fleet services;

Now, therefore, in consideration of the mutual promises, covenants, and agreements set forth herein, the sufficiency of which is acknowledged, the parties hereby agree as follows:

1. Term. This Agreement shall automatically terminate upon the expiration or termination of the Lease.
2. Premises. The OU Transportation Operations Center and its immediately surrounding areas shall constitute the Premises.
3. Third Party Operator. The parties acknowledge that the City of Norman may choose to engage a third party to operate all or a portion of its public transportation services. Such third party shall be permitted to use the facility in accordance with the terms of this Agreement on the same basis as City; provided, City shall be responsible for requiring such third party's compliance with the terms of this Agreement relating to the use and sharing of the Premises and shall only be responsible for damages caused by the Third Party Operator in accordance with the provisions of Section 9.1 of the parties' Facility Lease Agreement.
4. Taxes. City agrees not to take any tax position that is inconsistent with being a service provider with respect to the property (e.g., agrees not to take depreciation or amortization, tax credit or deduction for rent); and further, will prohibit any third-party operator from the same.

APPENDIX B

5. Access and Identification. City's employees, agents, and contractors shall have Sooner Card Credentials when on the Premises that also provide access to Premises. In addition, staff shall display clearly visible photo identification (such as an employer-issued nametag or lanyard) while on Premises. City is responsible for securing all exits when leaving Premises unoccupied.
6. No Co-employment. City's employees, agents, and contractors may not direct the work of University employees, and University may not direct the work conducted on City's behalf.
7. Office Premises. Office lights should be turned off when the office is not in use. City shall not exceed the weight of the live load square foot of the floor area with equipment, furniture or any other item.
8. Employee/Guest Parking. University agrees to provide dedicated parking for City's employees, agents, contractors, and guests. Other parking is unauthorized and shall be subject to University parking enforcement protocol.
9. Breakroom. A break room is available and will be shared by City and University. The breakroom should be used only by employees on duty.
10. Meeting room. A meeting room is available for use, upon request. University's liaison maintains a calendar to manage reservations of the meeting room.
11. Lockers. A shared locker room is available for use. University issues locks only for University employees.
12. Warehouse/Garage. Access to Warehouse/Garage will be available to City's employees, agents, and contractors during University business hours.
13. Tools. City is responsible for providing its own tools for mechanics. Tools shall be secured safely when not in use.
14. Warehouse/Garage Conditions. City shall be responsible for maintaining a tidy and clean work area for its dedicated space. University does not provide custodial service for garage bays. Music is not permitted in the warehouse/garage
15. Warehouse/Garage Solo Rule. It is prohibited for any person to work in the warehouse/garage alone.
16. Ordering parts. Parts must be ordered at the appropriate service window. No person should enter the parts room without the express invitation of the manager.
17. Cameras. Tampering of cameras on the Premises is forbidden.
18. Equipment. City shall notify the University's designated liaison immediately if affixed equipment or large equipment needs to be serviced. City's employees,

APPENDIX B

agents, and contractors shall follow rules for use of affixed equipment and large equipment on the Premises. City will require staff to complete all necessary training or certification prior to using affixed or large equipment. All equipment is to be used in a manner according to and/or consistent with manufacturer recommendations.

19. Exterior Premises. City fleet vehicles shall be parked in the northern portion of the designated bus parking zone. City shall have access to fueling via the covered fueling station located on the Premises. City's employees, agents, and contractors shall use their designated fuel-key when fueling vehicles. City will not have access to slow fuel stations. City will have access to the exterior bus wash on a mutually agreed-upon basis.
20. Disputes. Each party shall designate a liaison to receive complaints or concerns about facilities use. The liaisons shall work together to resolve complaints.
21. Worker's compensation. Responsibility for injuries incurred by employees during the scope of their employment shall be borne by each respective employer in accordance with the Worker's Compensation laws of the state of Oklahoma.
22. Policies. All applicable University of Oklahoma policies should be adhered to. An example which is not meant to be all inclusive is, no smoking allowed on state property. University reserves the right to rescind any of the foregoing regulations or policies and to make such other regulations as are needed from time to time in University's reasonable judgment to promote safety, protection, care, and cleanliness of the Premises.