

LEASE

CONTRACT PARTIES

LESSOR

Contact Person: Director of Parking and Transit
LESSOR NAME: The University of Kansas

Address:

City:

State:

Telephone:

Zip Code:

FAX:

Type of Firm: ☐ Individual; ☐ Partnership; ☐ Corporation; ☐ Government

Firm's Taxpayer Identification No. _____

LESSEE

Contact Person:
LESSEE NAME: City of Lawrence

Address:

City:

State:

Telephone:

Zip Code:

FAX:

Property Description: Transit Maintenance and Operations Facility

Street Address: 1260 Timberedge Road

City: Lawrence

County: Douglas State: Kansas Zip Code: 66049-8904

WITNESSETH, that Lessor, in consideration of the rents, covenants and agreements of Lessee, hereinafter set forth, does let, lease and rent to Lessee the above property as described below.

1. PRIOR MEMORANDUM OF UNDERSTANDING

It is the intent of the parties that this Lease be subject to and interpreted consistently with the Memorandum of Understanding Concerning Transit Facility and Bus Acquisition, executed by

the parties on February 23, 2010 (the "MOU"), a copy of which is attached hereto. In the event of a conflict between this Lease and the MOU, the terms of the MOU shall prevail.

2. TERM

To have and hold the same for the term of:

- a. Lease term begin date: December __, 2010 (1/1/2011)
- b. Lease term end date: December 31, 2020 (12/31/2020)
- c. Length: 10 years, 0 month(s)

Lessee shall be provided with preliminary access to the premises beginning on December __, 2010, for purposes of preparing for, and conducting, the move of Lessee's transit operations to the Transit Facility by January 1, 2011. Lessee's obligation to pay Rent shall begin January 1, 2011.

3. RENTAL PAYMENTS

Base Rent. During the first five (5) years of the Lease term, the Lessee shall pay to the Lessor annual rent ("Base Rent") of \$125,495 in equal monthly installments of (\$10,457.92). If any payment of Base Rent is for a period shorter than one full calendar month, Base Rent for that fractional calendar month shall accrue on a daily basis at a rate equal to 1/365th of the annual Base Rent. Rental payment for the first month shall be prorated as described above, if the Transit Facility is not available for occupancy by the commencement date of the Lease.

After the fifth year of the Lease term, Base Rent shall increase 4% per year to the following:

Year 6: \$130,515
Year 7: \$135,736
Year 8: \$141,165
Year 9: \$146,812
Year 10: \$152,684

The Parties acknowledge that the Base Rent amount is based upon Lessee's procurement of Buses and other contributions as outlined herein. In the event that Lessee is unable to procure and provide the Buses for Lessor's use as contemplated herein, the Base Rent amount shall be revised upward by an additional \$250,000 per year for ten (10) years, to the following amount:

Year 1: \$375,495
Year 2: \$375,495
Year 3: \$375,495
Year 4: \$375,495
Year 5: \$375,495
Year 6: \$380,515
Year 7: \$385,786
Year 8: \$391,165
Year 9: \$396,812

Year 10: \$402,684

Base Rent shall not include Lessee's data and telephone expenses. Lessee's data and telephone services shall be obtained directly by Lessee (or Lessee's transit operator) through a reputable commercial provider using existing lines that have been installed by Lessor in a manner consistent with Lessor's own information services standards, and Lessor shall have no responsibility for such services. Lessor will not assess any charges to Lessee for the use of data or telephone lines existing at the Lease start date (as outlined in Exhibit A). Additional lines required by Lessee will be installed at Lessee's own expense by a properly qualified technician selected by Lessee and approved by Lessor.

Lessor shall send to Lessee a monthly invoice for rental payment and payment shall be within 15 days of receipt of the invoice. If Lessee fails to pay any amount payable to Lessor under this Lease within thirty (30) days after the due date, Lessee shall pay to Lessor a "late charge" equal to 2% of such amount overdue. The failure to charge or collect late charges shall not constitute a waiver of Lessor's right to charge and collect such sums in connection with any other late payments.

4. USE OF PREMISES

Lessee shall be permitted use of the property described above, as designated on Exhibit A, for the maintenance and operation of the City of Lawrence transit system, subject to the terms and conditions of this Lease. Lessor retains the right to use the property (including the areas designated in Exhibit A) for the maintenance and operation of University of Kansas transit system. The parties shall cooperate in their efforts to utilize the Transit Facility in an efficient and mutually beneficial manner.

5. UTILITIES

Lessor shall furnish water, electricity, and gas, to the Transit Facility. Lessor shall also furnish the following additional services: grounds maintenance and landscaping, lawn care including mowing, snow removal, and pest control. The Costs associated with the services outlined in this paragraph are referred to herein as "Transit Facility Costs." In addition to the Base Rent, the Lessee shall pay to Lessor an allocated share of the Transit Facility Costs (the "City's Allocated Costs"). The Lessor shall invoice the Lessee for the City's Allocated Costs on a monthly basis.

The City's Allocated Costs shall be determined by multiplying the actual Transit Facility Cost by a ratio derived as follows: The parties shall work together to determine each party's "Administrative Hours" and "Mechanics Hours." Each party's Administrative Hours shall be determined by the average monthly revenue hours as provided by the parties' transit operator(s). Each party's "Mechanics Hours" shall be determined by monthly mechanics time as provided by the parties' transit operator(s) and supported by work orders. Each party's Administrative Hours and Mechanics Hours shall be added together, and that number shall be divided by the total number of Administrative Hours and Mechanics Hours for the Lessee and Lessor combined. For purposes of clarity, an example of this calculation follows:

	Mechanics Hrs	Avg Admin Hrs	Total	% Allocated Transit Facility Cost
City of Lawrence	1,380	6,550	7,930	48.38%
KU	2,190	6,270	8,460	51.62%
			16,390	

Each party's records, books, documents, data, and accounting and operating procedures related to the calculation of the Transit Facility Costs and City's Allocated costs shall be available to the other party and its representatives for examination and inspection upon request and reasonable notice by the requesting party.

Lessor shall apply for an exemption for the Transit Facility from ad valorem property taxes. In the event that such exemption is unavailable as a result of Lessee's or transit operator's use of the Transit Facility, then the applicable ad valorem property taxes shall be handled as a Transit Facility Cost and allocated between the parties in accordance with this section.

6. USE BY TRANSIT OPERATOR

Lessee's transit operator shall be allowed by the Lessor to utilize the Transit Facility on behalf of the Lessee, and to carry out the Lessee's transit service operations, provided that the Lessee has obtained the Agreement of its transit operator that it will comply with all of the terms and conditions of this Lease Agreement

7. REPAIR OF PREMISES

Lessor will maintain the property in good repair, and shall be responsible for meeting all applicable local and state building codes, ordinances, standards and regulations, provided however, that repairs of damage caused by Lessee's employees or officials or Lessee's transit system operator/contractor for the maintenance and operation of Lessee's system shall be paid for by Lessee.

Lessee will submit written requests for decoration and other remodeling items to Lessor for approval. Approved decoration or remodeling will be provided by Lessor and Lessee will reimburse Lessor for said decoration or remodeling costs upon receipt of invoice.

8. UNTENANTABLE PREMISES

If these premises shall be damaged by fire, tornado, water damage, casualty, natural disaster or other cause outside the control of Lessee, so as to be untenable for Lessee's purposes as determined by Lessee, the rental payments shall abate from the date of such damage and shall not resume until premises are restored to tenantable condition. If the damage so caused shall render restoration by Lessor impossible within sixty (60) days of the time of such damage, Lessee may elect to void this Lease and the obligation to occupy and to pay any unpaid balance

of rental payments shall cease from the date of said damage. Any prepaid rent shall be returned to Lessee for the period the premises are untenable.

9. RIGHT OF FIRST REFUSAL

Lessee shall have the right of first refusal in the event that Lessor determines to sell the Transit Facility during the term of this Lease. Under this right of first refusal, Lessee shall have the right to meet the terms and conditions of any offer made to the Lessor within a reasonable time agreed to by the Lessor and Lessee.

10. TERMINATION FOR FISCAL NECESSITY

Both parties acknowledge that it may not be feasible for both parties to use the Transit Facility as contemplated in this Lease, unless both parties utilize the same transit operator to operate their respective transit systems. While it is the intent of the parties to continue their efforts to coordinate their respective transit systems, and utilize the same transit contractor, to the extent that such arrangements continue to be in each party's best interest, in the event that either party no longer utilizes the same transit contractor as the other party, this Lease Agreement shall terminate at the option of either party and the parties shall dispose of the buses in accordance with the MOU.

The parties further agree that, unless other funding sources are identified by the Lessee, the Lessee shall have no further obligations to the University under this Lease Agreement if, during the term of the Lease Agreement, the City's Governing Body takes action to discontinue the Department of Public Transit or the City's Special Sales Taxes for Transit authorized by Ordinance No. 8347 expire or are repealed.

The parties mutually understand and agree that it is their intent that the terms of this Lease, and any renewals thereof, are lawful under the provisions of the Kansas Cash Basis Law, including K.S.A. 10-1101, *et seq.*, Specifically, the parties understand and agree that the Lessee is obligated only to pay periodic payments or monthly installments under any lease Agreement as may lawfully be made from (a) funds budgeted and appropriated for that purpose during the Lessee's current budget year or (b) funds made available from any lawfully operated revenue producing source.

11. AUTOMATIC HOLD OVER

Upon mutual agreement of the parties, the Lease may be extended by the parties for any length up to an additional fifteen (15) years. The terms and conditions for any extension or renewal of the initial ten-year term shall be substantially similar to the terms of this initial Lease, provided however, that Base Rent shall increase by the percentage equal to the average annual percentage increases of the Consumer Price Index-All Urban Consumers, All Items, ("CPI-U") for the Kansas City Metropolitan Statistical Area, as published by the United States Department of Labor's Bureau of Labor Statistics.

Lessee shall be allowed to hold over after the end of the term and Lessee shall be tenant from month to month at the same terms and conditions as contained herein. This hold over tenancy shall expire after a maximum of six (6) months unless written approval of the Lessor is secured.

12. REMOVAL OF PERSONAL PROPERTY

All personal property placed, installed or constructed upon the premises by or on behalf of Lessee during occupancy, which may be removed at any time by Lessee at the end of the term without damage to the real estate, shall be and remains the sole property of Lessee and may be removed. If damage would occur, Lessee may elect to remove the property and restore the premises.

13. AGREEMENT WITH KANSAS LAW

This Lease Agreement shall be subject to, governed by, and construed according to the laws of the State of Kansas.

14. ANTI-DISCRIMINATION CLAUSE

The parties agree:

(a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. §12101 *et seq.*) (“ADA”) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in its programs or activities;

(b) to include in all solicitations or advertisements for employees, the phrase “equal opportunity employer”;

(c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116;

(d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor;

(e) that a failure to comply with the reporting requirements (c) above or if First Party is found guilty of any violation of such acts by the Kansas Human Rights Commission such violation shall constitute a breach of the contract;

(f) if Second Party determines that First Party has violated applicable provisions of the ADA, that violation shall constitute a breach of contract;

(g) if (e) or (f) occurs, the contract may be canceled, terminated or suspended in whole or in part by the State. The obligation to occupy and to pay any unpaid balance of rental payments shall cease from the date of cancellation, termination or suspension. Any prepaid rent shall be returned to Lessee from that date.

15. BINDING EFFECT

The terms and conditions of this Lease shall be binding upon the parties, their heirs, agents, administrators, executors or legal successors.

16. RESPONSIBILITY FOR TAXES

The State of Kansas shall not be responsible for, nor indemnify, Lessee for any federal, state or local taxes, fees or assessments which may be imposed or levied upon the subject matter of the lease.

17. LIABILITY FOR DAMAGES

Notwithstanding any language to the contrary, the State shall not be responsible for any damages caused by the public or its employees except as provided in the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*, as amended.

18. AMENDMENT

Any amendments or additions hereto shall be only in writing executed by the parties. The parties agree to cooperate and take such action as is necessary to amend this Agreement to address issues pertaining to the Transit Facility that are not otherwise covered by this Lease or the MOU.

CITY OF LAWRENCE

UNIVERSITY OF KANSAS

By:

Don Steeples, Senior Vice Provost

Date

Date