

INTERLOCAL AGREEMENT
SERVICE AGREEMENT FOR PROVISION OF TRANSPORTATION SERVICES

This Interlocal Agreement (“Agreement”) is made in accordance with 74 O.S. § 1008 and entered into this **1st day of July, 2024 (“Effective Date”)**, by and between the Central Oklahoma Transportation and Parking Authority (“**COTPA**”) d/b/a **EMBARK**, a public trust (“**EMBARK**”), and the City of Norman, a municipal corporation (“**Norman**”), each a Party and collectively “Parties,” for the provision of Transit Services.

WITNESSETH:

WHEREAS, Norman has been approved by the Federal Transit Administration (“FTA”) to serve as an active grantee/direct recipient to receive federal funds and operate public transit in the City of Norman and surrounding areas; and

WHEREAS, Norman desires **EMBARK** to perform the public Transit Services as an independent contractor; and

WHEREAS, EMBARK desires to provide the public Transit Services as an independent contractor; and

WHEREAS, the Parties entered the initial Interlocal Agreement on August 2, 2019, and both Parties desire to continue this mutually beneficial Agreement by entering into this updated annual Agreement for Transit Services.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions herein set forth, the Parties hereto agree as follows:

1. **PURPOSE.** The Parties agree and acknowledge that the purpose of this Agreement is to provide for the administration and operation of “Transit Services.” Transit Services is defined as Public Transportation Services and Vehicle Cleaning, Washing, and Fueling Services.
 - A. “Public Transportation Services” means the administrative, management, and operation of fixed-route and paratransit public transportation services identified in **Exhibit B**, using public transit vehicles provided and maintained by **Norman**.
 - B. “Vehicle Cleaning, Washing, and Fueling Services” means the services identified in **Exhibit E**.

2. **ENTIRE AGREEMENT/AMENDMENTS.** This Agreement, with attached Exhibits, as identified below and herein incorporated by reference, contains all the terms and conditions agreed upon by the parties hereto and supersedes all prior and/or contemporaneous discussions, representations, or agreements of the Parties relating to the work to be performed, whether written or oral. This Agreement may only be modified by prior mutual written approval of the Parties. Both Parties acknowledge and agree that only the Norman City Council and COTPA Board can agree to any such amendment of this Agreement.

Exhibit A – Scope of Services
Exhibit B – FY 2025 Norman Transit Service Profile
Exhibit C – FY 2025 Norman Transit Routes
Exhibit D – FY 2025 EMBARK Responsibilities
Exhibit E – FY 2025 Scope of Vehicle Cleaning, Washing, and Fueling Services
Exhibit F – FY 2025 Norman Responsibilities
Exhibit G – Compensation
Exhibit H – FTA Terms and Conditions
Exhibit I – Norman Transit Fleet Description and Inventory
Exhibit J – EMBARK PLUS Norman ADA Guide
Exhibit K – EMBARK Rider Conduct & Exclusion Policy
Exhibit L – EMBARK Advertising Policy
Exhibit M – Sample Invoice
Exhibit N – Sample EMBARK Norman Monthly Performance Summary Report

3. **TERM.** This Agreement shall take effect on July 1, 2024, and shall expire on June 30, 2025, subject to the Parties' mutual agreement and to appropriation of sufficient funding by the Norman City Council; however, this Agreement may be terminated as provided in Section 11 – Termination. The Parties shall meet by April 1, 2025, to discuss renewal of the agreement.
4. **SCOPE OF SERVICES. EMBARK** will provide Transit Services within the City of Norman service area as specified in **Exhibits A through E.**
5. **COMPENSATION, INVOICING, AND PAYMENT.** For the services provided by **EMBARK** pursuant to this Agreement, **Norman** agrees to pay to **EMBARK** the compensation as specified in **Exhibit G.**
6. **LIABILITY.**
 - A. Each Party shall be severally liable for and severally bear the costs of the defense of any claims or suits from the negligent acts and omissions of their own employees, officers, and agents which might occur during the performance of this Agreement, to the extent provided by Oklahoma law, and without waiving any defenses, exemptions, or sovereignty. Nothing in this section shall be interpreted or construed to waive any legal defense which may be available to a Party or any exemption, immunity, limitation, or exception which may be provided by the Governmental Tort Claims Act or Oklahoma law.
 - B. The **Parties** acknowledge and agree that in the normal course of business in operating a public transit service, the vehicles providing the service will be subjected to normal wear and tear. Norman will be responsible for any repairs resulting from normal wear and tear, which is defined as deterioration in condition that occurs naturally as a result of proper and regular use without negligence on the part of EMBARK. **Norman** and **EMBARK** agree to develop and implement maintenance reporting procedures and a tracking system.
 - C. The Parties agree to meet on a monthly basis, or as otherwise agreed between the Parties, to assess any new damages, claims, and liability. The Parties further agree to meet to discuss the creation, amendment, and/or implementation of an incident

prevention plan upon the following conditions:

1. Normal wear and tear expenses exceed \$15,000.00 in a single fiscal year period;
or
 2. A single incident occurs that results in personal or property damage(s) that exceed \$15,000.00.
- D. **Norman** agrees to maintain and record all applicable vehicle and equipment warranties.
- E. The Parties agree that each will provide Worker's Compensation insurance for its respective employees.
- F. The Parties Agree that **Norman** shall be responsible for any de minimis damage to vehicles or equipment owned by Norman. "De minimis damage" means any damage resulting from the negligent acts and omissions of EMBARK's employees, officers, or agents that occur during the performance of this Agreement that costs less than \$1,500.00 in total to repair. "De minimis damage" does not include any damage to a third-party, regardless of cost.
- G. The Parties agree that these provisions are solely for the benefit of the Parties and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- H. Norman acknowledges that COTPA d/b/a EMBARK is a separate and distinct legal entity from the City of Oklahoma City and recognizes that the City of Oklahoma City is not responsible for the public Transit Services provided to Norman by EMBARK.
7. **FORCE MAJEURE. EMBARK** will not be held in default of this Agreement if Transit Services are prevented from being performed hereunder by conditions beyond its control, such as, but not limited to, Acts of God, pandemic, strikes, war, terrorism, or other emergencies making performance impossible or illegal. EMBARK reserves the right to limit or modify Transit Services in keeping with this Force Majeure provision.
8. **COMPLIANCE WITH FEDERAL AND STATE LAWS AND REGULATIONS.** The Parties agree that specific FTA Terms and Conditions apply to this Agreement. These FTA Terms and Conditions are attached hereto as **Exhibit H** and incorporated herein by reference. These Certifications and Assurances for Federal Transit Administration Assistance Programs are certified annually by **Norman** and will be included in this Agreement upon execution by **Norman**. Certain provisions of these FTA Terms and Conditions are applicable severally or jointly to the Parties to this Agreement.
- A. **Norman** agrees to comply with the requirements, and execute all corresponding Assurances, in **Exhibit H** as applicable. **Norman** shall comply with all Federal and State laws and regulations, Executive Orders, FTA Circulars, FTA Terms and Conditions, and other applicable State and Federal requirements when carrying out Federally-funded projects, including, but not limited to, civil rights, environmental impact analyses, procurement, real property acquisition, planning, and the inclusion of Federally-funded projects in the metropolitan Transportation Improvement Program (TIP) and Statewide Transportation Improvement Program (STIP).
 - B. **EMBARK**, as an independent contractor, will comply with all applicable Federal and State laws and regulations, Executive Orders, FTA Circulars, FTA Terms and Conditions, and other applicable State and Federal requirements pertaining to **Norman's** Federally funded projects.
 - C. The Parties agree that any State or Federal term, condition, or requirement which

conflicts with any provision of this Agreement and or local directive or requirement shall take precedence over any such stipulation or provision of this Agreement. **EMBARK** understands and acknowledges that **Norman** is relying on **EMBARK's** consultation based upon its particular expertise in public transit and corresponding State and Federal laws and regulations and is to provide consultation services accordingly. **Norman** agrees that it will implement the FTA's drug and alcohol rules and testing procedures, Management Information System, appropriation systems, and reporting for a small urban system to capture the financial and non-financial information required by the FTA's National Transit Database.

D. In the event of either Party's non-compliance with the applicable Federal and/or State Laws and Regulations or the FTA Grant contract, the other Party may, at its sole discretion, suspend, restrict, and/or terminate, any or all services provided pursuant to this Agreement.

9. **REPORTING.** **EMBARK** agrees to provide monthly performance reports as shown in **Exhibit N.** **EMBARK** shall provide certain operational and financial data, including mileage, in relation to this Agreement to **Norman** as requested by advance written notice from **Norman** to complete any required FTA and National Transit Database ("NTD") reports.
10. **FARE.** **Norman** Public Transportation Services are currently fare-free. **EMBARK** will not collect fare revenue for **Norman** during the term of this Agreement. It is understood by both Parties that fare collection will require a written modification of this Agreement.
11. **TERMINATION.** Either Party may terminate this Agreement by providing a 120-day written notice to the other Party. The notification must be written and sent postage paid to the other Party's business address by certified or registered mail and via e-mail in accordance with the Notification provision in Section 16 (A). Termination by **EMBARK** shall be subject to **EMBARK's** obligation to complete work in progress unless exigent circumstances beyond its control warrant otherwise. It is of utmost importance to **Norman** to maintain consistent continuity of services for the residents of the City of Norman and to ensure compliance with Federal and State requirements, and all reasonable efforts shall be made to ensure that no break in services occurs.
12. **FINANCING AND BUDGET ADMINISTRATION.** Financing of the public transportation system shall be through the use of Federal funding assistance received in accordance with certain grant contracts between **Norman** and the FTA, U.S. Department of Transportation, and other Agreements with other public and private agencies. Financing shall include such other funds from **Norman** as approved by the **Norman** City Council. Budget preparation and administration shall be accomplished by each entity and approved by each entity's separate and respective governing bodies. Both Parties agree to have a midyear budget review, coordinated by the Program Managers, by the end of January during the contract year to ensure expenses are on track as expected.
13. **PROPERTY OWNERSHIP/LEASE OF VEHICLES.** The full title, legal and equitable, to the existing vehicles, equipment, and properties of **Norman** and any vehicles, equipment, and property, real or personal, to be acquired in the future or any existing or future grant shall be vested in and remain with **Norman.** **Norman** shall retain the exclusive management and control of such vehicles, equipment, and properties and may dispose of such properties only in accordance with the provisions of the **Norman** procedures, Bond Indentures, or Federal grant contracts as applicable. Title to any **Norman** vehicle, equipment, and or properties incorporated and used in any way

whatsoever in connection with the purposes of this Agreement shall be vested in **Norman** or as determined by **Norman**. Upon termination of this Agreement, any property used in the operation of this Agreement provided herein shall revert solely to **Norman**, or such Party holding title. During this Agreement, it is expressly understood that **EMBARK** will have no right, claim, or title to any real or personal property used in this Agreement, other than property which **EMBARK** was granted the title, or property which is held by **EMBARK** as a matter of law. **Norman** hereby leases to **EMBARK** the vehicles identified in **Exhibit I**, which is attached and hereby incorporated by reference, and any additional vehicles added to the public transit fleet during the term of this agreement, to utilize the vehicles and associated accessories. The lease is for the term of the Agreement and any renewal terms. The lease is provided in consideration for the Transit Services to be provided in accordance with this Agreement. In accordance with this Agreement, **Norman** will continue to inspect, repair, maintain, secure, and store the leased vehicles at **Norman's** sole cost.

14. BRANDING AND TRADEMARKS. Any **EMBARK**-provided public Transit Services will be branded and identified as “**EMBARK**,” “**EMBARK Plus**,” or “**EMBARK Norman**.” This identification includes any public service announcements, press releases, signage, websites, uniforms and apparel, and vehicle wraps. Any use of the terms “**EMBARK**,” “**EMBARK Plus**,” or “**EMBARK Norman**,” or any other **EMBARK** branding or trademarks must receive the prior written approval of the **COTPA** Administrator, who is authorized by **COTPA** to provide said approval in his sole discretion. Further, any use of any of **EMBARK's** other trademarks requires the prior written consent of the **COTPA** Administrator, who is authorized by **COTPA** to provide said approval in his sole discretion.

15. [RESERVED]

16. MISCELLANEOUS.

A. **Notice.** Any and all notices or other communications required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given when received by electronic mail and also either personally delivered or when received if mailed by private courier or first-class certified mail, return receipt requested, addressed to the parties at the addresses set forth below (or at such other address as any party may specify by notice to all other Parties given as aforesaid):

Central Oklahoma Transportation and Parking Authority

Attn: Administrator
2000 S. May
Oklahoma City, OK 73108
jason.ferbrache@okc.gov

Courtesy e-mail copies shall be simultaneously sent to **EMBARK's** Assistant Directors suzanne.wickenkamp@okc.gov and jesse.rush@okc.gov, and counsel christopher.hall@okc.gov

City of Norman

Attn: City Manager
201 West Gray, P.O. Box 370
Norman, OK 73070

Darrel.pyle@normanok.gov

Courtesy e-mail copies shall be simultaneously sent to **Norman's** Interim Public Works Director at scott.sturtz@normanok.gov; Transit and Parking Program Manager at taylor.johnson@normanok.gov, and counsel anthony.purinton@normanok.gov.

- B. **Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the State of Oklahoma, without giving force and effect to its choice of law provisions, and the United States of America. Any legal action in connection with this Agreement shall be filed in the District Court of Cleveland County, State of Oklahoma, or the United States District Court for the Western District of Oklahoma.
- C. **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. If either Party commences an action in law or equity to enforce any provision of this Agreement, the Parties shall be responsible for their own respective attorneys' fees.
- D. **No Waiver.** No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the authorized Party giving such waiver. No such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
- E. **Nondiscrimination.** In connection with the public Transit Services under this Agreement, **EMBARK** shall not discriminate against any employees or applicants for employment on the basis of race, religion, color, sex, sexual orientation, gender identity, creed, ancestry, age, familial status, national origin, or disability as defined by the Americans with Disabilities Act of 1990. **EMBARK** agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this Agreement. In the event of **EMBARK's** non-compliance with the nondiscrimination provisions of this Agreement, **Norman** may cancel, terminate, or suspend the Agreement in whole or in part.
- F. **Equal Employment Opportunity.** **Norman** and **EMBARK** agree to comply with the requirements of the FTA Equal Employment Opportunity (EEO) program in the operation of the Transit Service.
- G. **Disadvantaged Business Enterprise.** Disadvantaged businesses, as defined in 49 CFR, Part 23, shall have the opportunity to participate in the performance of contracts financed with Federal funds under this Agreement. **EMBARK** shall notify contractors and bidders of this information, and any failure to carry out these requirements shall constitute a breach of contract and may result in termination of the Agreement.

Norman agrees to comply with the requirements of the FTA Disadvantaged Business Enterprise ("DBE") program in the operation of its transportation system.

- H. **Conflicts of Interest.** No members, employees, or agents of **EMBARK** or **Norman** who exercise any function of responsibility in the approval of this Agreement shall have any personal interest, direct or indirect, in any corporation, firm, or association, which has an interest in this Agreement.
- I. **Assignability, Third-Party Beneficiary, and Use.** This Agreement may not be assigned by either Party in whole or in part without the prior written permission of the non-assigning Party. If such an assignment is authorized by the non-assigning Party, then this Agreement will be binding upon and inure to the benefit of the Parties and their legal representatives and permitted assigns.

There are no third-party beneficiaries to this Agreement. **Norman** agrees not to permit the use of this Agreement by any other party besides **Norman**, without the prior written approval of **EMBARK**. **EMBARK** shall not use any operational subcontractors to fulfill any of its obligations under this Agreement unless it has received prior written approval from **Norman**'s City Manager or designee for the use of the subcontractors. **EMBARK** may utilize administrative subcontractors with written notice to **Norman**.

- J. **Severability.** If any provision(s) of this Agreement, or the application thereof, is determined for any reason and to any extent to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The remainder of this **Agreement** and the application of such Provision (s) will be interpreted to reasonably effect the intent of the Parties hereto.
- K. **Counterparts.** This **Agreement** may be executed in several counterparts, each of which shall be deemed the original, but all of which shall constitute the same instrument.
- L. **Effective Date.** The Effective Date of this Agreement is July 1, 2024.
- M. **Anti-collusion.** **EMBARK** warrants that it has not employed or retained any company or person other than a bona fide employee working solely for **EMBARK** to solicit or secure this Agreement. **EMBARK** further warrants that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for **EMBARK**, any fee, commission, percentage, gift, or any other consideration, contingent or resulting from the award of this Agreement.
- N. **Captions.** The captions, titles, and headings contained herein are for convenience of reference only and do not control the interpretation of any provision herein.
- O. **Separate Entities/Independent Contractor.** **Norman** and **EMBARK** shall remain separate legal entities, and no other or different legal or administrative entity is created by any cooperation and coordination of authority or responsibility of **Norman** or **EMBARK** by this Agreement. The employees of **EMBARK** are not considered employees of either **Norman** or The City of Oklahoma City, for any purpose. All employees and agents acting for **EMBARK** or **Norman** under this Agreement will, at the time of such action, be an employee or agent of their respective public agency.

- P. **Administrator.** Both Parties agree that the Administrator of **COTPA** is authorized to administer this Agreement on behalf of **EMBARK**. **Norman's** City Manager or designee is hereby authorized to administer this Agreement on behalf of **Norman**.
- Q. **Labor protection.** The Parties recognize that **EMBARK** public transportation system employees enjoy certain protective arrangements as stipulated in 49 U.S.C. 5301 et. seq., and other public laws, such protective arrangements being included in a collective bargaining agreement and agreements pursuant to 49 U.S.C. 5333(b) as amended, (formerly Section 13(c)) and implementation regulations. The **Parties** agree that such protective arrangements shall remain in full force and effect, as they may exist or as they may be modified in future Federal grant contracts, Agreements pursuant to 49 U.S.C. 5333(b), as amended, or collective bargaining Agreements, all of which are subject to the laws of the State of Oklahoma. The **Parties** acknowledge and agree that **Norman** is not a party to such collective bargaining agreements and shall have no obligations or rights under them whatsoever.
- R. **Record Retention and Reporting.** **EMBARK** and **Norman** are required to retain and maintain any and all records which are created as a result of this Agreement and/or public transportation.
- S. **Audit and Access to Records.** **Norman** and **EMBARK** have the right to access, inspect, and examine any books, papers, policies, procedures, programs, grant fund expenditure programming and TIP, and records of the other Party relative to this Agreement. Failure to provide the requested information may result in termination of the Agreement. This right to audit and access to records only applies to records pertaining to the Agreement and compliance with such Agreement and does not apply to vendor records beyond the scope of this Agreement. The right to audit and access records includes any and all records regarding **Norman's** public transportation services, including, but not limited to, operations, procurement, storage, safety, maintenance, FTA compliance, and funding.

17. SERVICE CHANGES

- A. **General.** Changes to Transit Services provided under this Agreement and its Exhibits may only be made in accordance with this Section, except in cases of a declared emergency. Verbally requested service change orders are not permitted. All service changes will comply with FTA regulations and requirements for public notice and comments, as applicable.
- B. **Process:**
1. Any service change proposed shall be communicated to the other Party in writing. The service change proposal shall identify the requested change, explain the reason for the requested change, include proposed amendments to this Agreement and/or its Exhibits necessary to effectuate the change, and specify a proposed effective date. The proposed effective date shall be no less than four (4) weeks from the date the proposal was communicated unless circumstances call for a shorter timeframe.
 2. After receipt of a written service change proposal, the other party shall be given ten (10) business days to provide the requesting Party a response identifying the impact

of such change on operations and any potential feasibility problems that may be created by the proposed change.

3. After receipt of the response to the proposed service change, the Parties shall meet within ten (10) business days to discuss the proposed service change.
 4. All service changes are subject to the Parties' mutual agreement and approval by the Parties' respective bodies or authorized representative. Any service change that increases the amount of compensation is subject to the appropriation of sufficient funding by the Norman City Council.
- C. **Special Services.** **Norman**, in its discretion, may request **EMBARK** to provide one-time or periodic Transit Services that are outside the normal service hours outlined in **Exhibit A** and/or that are in addition to the routes outlined in **Exhibit B and Exhibit C** ("Special Services"). Any Special Services request shall be made in writing and shall be made not less than five (5) days in advance of the date the Special Services will be needed. Under this Agreement, **Norman** may request Special Services upon shorter than five (5) day notice and **EMBARK** agrees it will make a good faith effort to provide such services within the timeframe requested, but not to the detriment of **Norman** Transit Services. **EMBARK** shall provide, if requested, up to twelve (12) hours of driver staff time quarterly to accommodate **Norman's** Special Service requests at no additional cost to **Norman**.
- D. **Authorizations.**
1. **EMBARK** authorizes its Administrator to effectuate **Norman's** service changes communicated to **EMBARK** in writing by amending the scope of services and compensation, which are identified in this Agreement and its Exhibits. The COTPA Administrator is also authorized to implement any changes to this Agreement based on the anticipated establishment of **Norman's** Vehicle Wash Facility.
 2. **Norman** authorizes the City Manager or designee to amend this Agreement and its Exhibits, unless such amendment would change the amount of compensation or would decrease the level of Transit Services provided. Such amendments shall be subject to approval by Norman City Council.

The remainder of this page is intentionally blank.

WITNESS THEREOF, this **Agreement** is entered into this ____ day of June 2024.

CITY OF NORMAN, OKLAHOMA

Mayor Larry Heikkila

Attest: _____
Brenda Hall, City Clerk

APPROVED as to form and legality this _____ day of June 2024.

Assistant City Attorney

APPROVED by the Trustees of the Central Oklahoma Transportation and Parking Authority and **SIGNED** by the Chairman this 7th day of June 2024.

Attest:

CENTRAL OKLAHOMA TRANSPORTATION
AND PARKING AUTHORITY

Secretary

Chairman

REVIEWED for form and legality.

Assistant Municipal Counselor