



**Minnesota State Colleges and Universities
System Procedures
Chapter 6 – Facilities Management
Procedure 6.7.2 - Use of College and University
Facilities (College or University as Lessor)**

Checklist 6.7.2.1 Leasing and Use of MnSCU Facilities

This checklist is provided to supplement System Procedure 6.7.2. This checklist offers major deal points to consider when negotiating a Facilities Agreement. It is not meant to be exhaustive, but merely a tool to ensure compliance with Board of Trustee policy, system procedure and state statute.

Use: When allowing a third party (either an individual, private entity or other public entity or agency) to use land or a facility on campus.

APPROVAL THRESHOLDS FOR LEASES OR USE AGREEMENTS

Approvals Required

Thresholds:

**Vice Chancellor -
Chief Financial Officer**

**Lease > \$100,000 or
Lease > 5 years**

Board of Trustees

Lease > \$2 million

**Department of Management and
Budget**

**Lease or use on property financed
by state general obligation bonds
Check with Office of the Chancellor**

LEASING CHECKLIST: ON CAMPUS USE

Property

1. Campus _____
2. Address/Location _____
3. Gross Sq. Ft. _____
4. Usable Sq. Ft. _____

Term

Start Date: _____ **End Date:** _____

1. Is there an option to renew? ___ yes ___ no
2. What are the option terms? _____
3. What is the rent for each renewal period? _____
4. How must the option to renew be exercised? _____
5. Does the rent amount exceed \$100,000, including all extensions?
6. Does the term exceed 5 years, including all extensions?

Lessee/Tenant

1. Name _____
2. Address: _____

3. Legal Entity _____
4. Business _____
5. Authorized to Sign: _____

Use

1. What is the current use of the space? _____

2. What is the academic program or project that benefits from the location of the party on campus? _____
3. Will this space be affected by any pending or planned capital improvement to campus?

4. What is the proposed use of the space? _____

5. How does the proposed use of space meet the strategic goals of the system? _____

6. Is the proposed use consistent with the Facilities Master Plan for the campus? If not, what has changed? _____

Rent

1. Frequency of payment (monthly, quarterly, annually, other) _____
2. Amount of rent per payment period _____
3. Is there an inflation factor for rent? Y/N. What is it? _____
(Typically ranges from 2 – 5% or at a flat step up)
4. Calculation of Rent: (on a per square foot basis for Base Year of lease)
 - a. Overall Campus Square Footage: _____
 - b. Operating Expenses :
 - i. Utilities _____
 - ii. Janitorial _____
 - iii. Maintenance/Repairs _____
 - iv. Staffing _____
 - v. Security _____
 - vi. Other Costs _____
 - vii. Subtotal: _____
Subtotal of Operating expenses divided by Facilities Square Footage:
\$ _____ psf
 - viii. Debt Service: _____
Subtotal of Debt Service expense divided by Facilities Square Footage:
\$ _____ psf
 - ix. **Add** - Operating Expense psf + Debt Service psf = Lease Rate psf
 - x. **Multiply** - Lease rate psf x Square footage of lease = Year 1 lease rate
5. In addition to the basic space rental charge, are operating expenses and debt service covered in the rent amount? (Gas, electricity, trash, water, sewer, maintenance, other). If not, please explain. _____

6. When is rent due? _____
7. How it is payable? (check, EFT, wire, other) _____

Building

1. Was the Leased Property purchased or bettered (built or renovated) with General Obligation bond proceeds? If yes, please contact the Office of the Chancellor immediately, as this lease will likely be subject to the requirements found in the "G.O. Compliance Checklist for Use Contracts" on the Minnesota Management and Budget website.
 - a. Bonding authority citation (session law). _____

 - b. Bonding Amount. _____
 - c. Was a Bonding Declaration filed at the County Recorder? Y/N
2. What type of entity is leasing from the campus? (i.e. non-profit, other governmental entity, private entity or individual). _____

3. What are the current per sq. ft. operating expenses for the building? _____

4. Does the building have adequate parking to support this use? _____

5. How much parking is required? _____ Stalls
6. Are loading docks or trucking facilities required? _____
7. Does the Lessee require telecommunications? _____
 - a. Who supplies the network address space. _____
 - b. Who is responsible for security, intrusions, help desk-style questions. _____

 - c. How will usage be reimbursed? _____

 - d. Who pays for bandwidth? _____
 - e. Has system ITS been consulted? _____ Y/N
 - f. Has system ITS approved the arrangement. _____.

Space

1. Gross Sq. ft. _____
2. Usable Sq. Ft. _____
(Computed by measuring the inside finished surface of exterior walls to the inside finished surface of building corridor and other permanent walls or to the center of walls separating the space from other tenant space.)
3. Storage Required? If so, how much. _____
4. Telecommunication needs _____

5. Other _____

Real Estate Taxes and Operating Expenses

1. A lease to a private tenant may jeopardize the campus's real estate tax exemption. Has responsibility for real estate taxes been addressed in the negotiations? _____

2. Who pays for general maintenance and services? _____
3. Who is responsible for extraordinary or structural repairs or alterations? _____

4. Who pays utilities? _____
5. Any other specialized costs? _____

Approvals

1. Is the lease valued at more than \$100,000 or longer than 5 years? Y/N
 - If yes, has the Office of the Chancellor approved the lease? _____
 - Date? _____
2. Is the lease valued greater than \$2 million? Y / N
 - If yes, note the date the Board of Trustees approved _____
3. Were general obligation bond funds used in the facility? Y / N
 - Department of Management and Budget approval. _____

Liability and insurance. Liability and insurance are often key provisions negotiated between parties. As we are a state entity, our liability and ability to offer indemnification language is limited by statute. Issues to consider:

- **Statutory Liability.** The Tort Claims Act, Minn. Stat. §3.736, as amended, applies to MnSCU and governs liability under all leases and uses of our space. The Tort Claims Act limits MnSCU's liability in the case of an act or omission for injury to or loss of property or personal injury or death caused by a state employee acting within his/her employment. Current coverage is \$400,000 when the claim is one for death by wrongful act or omission and \$400,000 to any claimant in any other case, for claims arising on or after August 1, 2007, and before July 1, 2009. The limit will be increased to \$500,000 when the claim is one for death by wrongful act or omission and \$500,000 to any claimant in any other case, for claims arising on or after July 1, 2009. The statute provides for a \$1,200,000 limit for any number of claims arising out of a single occurrence, for claims arising on or after January 1, 2008, and before July 1, 2009. The limit is increased to \$1,500,000 for any number of claims arising out of a single occurrence, for claims arising on or after July 1, 2009.
- The standard language in the lease is: "Each party shall be responsible for its own acts and behavior and the results thereof. The Minnesota Tort Claims Act, Minn. Stat. §3.736 and other applicable laws govern the state's liability."
- Defense and Indemnification. MnSCU cannot agree to defend and indemnify any Lessee or User of space.

Insurance Coverage Minimums

- Lessees should have the following coverage minimums in any agreement:
 - **General Liability Insurance**
 - Minimum Limits of Liability:
 - \$1,200,000 per occurrence (increasing to \$1,500,000 after July 1, 2009)
 - \$3,000,000 annual aggregate
 - \$3,000,000 annual aggregate applying to products/completed operations
 - Coverages
 - Premises and Operations Bodily Injury and Property damage
 - Personal and advertising injury
 - Blanket contractual
 - Products and completed operations
 - State of Minnesota as named insured
 - **Professional Liability / Miscellaneous Liability Insurance**
 - Coverage for negligent acts, errors or omissions arising out of the performance of professional services included in the contract, and include an extended reporting period of 5 years, if commercially available, otherwise three years, following completion of work.
 - Minimum limits:
 - \$1,200,000 per claim or event/\$1,200,000 annual aggregate
 - Deductibles shall be the responsibility of the tenant, and shall not exceed \$10,000 without the prior approval of MnSCU
 - **Worker's Compensation Insurance.**
 - Statutory Compensation coverage
 - Coverage B – Employers liability with limits of not less than:
 - \$100,000 Bodily Injury by Disease per Employee
 - \$500,000 Bodily Injury by Disease Aggregate
 - \$100,000 Bodily Injury by Accident
 - **Automobile Liability Insurance**
 - Minimum Limits of Liability: \$1,200,000 Bodily Injury and Property Damage Combined, Single Limit
 - Coverages included: Owned automobile, Non-owned automobile, and Hired automobile
 - **Insurance Companies.** Insurance must be provided from a company that holds an “AM Best” rating of A-, Financial Size Category of VII or better and be authorized to do business in the State of Minnesota.
 - **Approvals.** MnSCU holds final approval over all insurance coverage or possible deviations from coverage.

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Date and Subject of Revision: