SUBLEASE AGREEMENT

by and between

OKLAHOMA STATE UNIVERSITY MEDICAL TRUST

and

OKLAHOMA STATE DEPARTMENT OF HEALTH

COMMENCEMENT DATE: April 10, 2020
EXPIRATION DATE: June 30, 2020
**SUBLEASE**

This Sublease is made effective as of this 10th day of April 2020, by and between the Oklahoma State University Medical Trust, a Public Trust of the State of Oklahoma ("Trust" or "Lessee"), and the Oklahoma State Department of Health ("Department"), each one a "Party" and collectively the "Parties."

**WITNESSETH:**

1. **Purpose:** Following designations by the World Health Organization and the Centers for Disease Control and Prevention declaring a novel coronavirus ("COVID-19") a "public health emergency of international concern," President Donald J. Trump declared a national emergency in the United States as a result of the national spread of COVID-19 on March 14, 2020, following which Governor J. Kevin Stitt, Governor of the State of Oklahoma, declared an emergency caused by the impending threat of COVID-19 to the people of the State of Oklahoma. As the Trust has been designated by Governor Stitt as the COVID-19 Surge Hospital for the Tulsa area, the purpose of this Sublease is to permit the Department to use certain space located at 744 W. 9th Street, Tulsa, Oklahoma ("Building"), to ensure the Secretary of Health and Mental Health is able to exercise a "surge option" at the Trust's medical facilities.

2. **Premises:** The Trust hereby subleases and lets to Department, and Department hereby rents from Trust the following:
   a. 125 hospital rooms to be held open for COVID-19 "surge" patient care;

3. **Terms:** The Term of this Sublease shall commence April 15 2020 ("Commencement Date"), and shall last for thirty (30) days. The Department shall have the exclusive use and control of the Subleased Premises, except as otherwise herein provided. Further, the Department shall have the option to renew the Term of this Agreement for additional one-month periods on the same terms and conditions contained in this Agreement (each successive term a "Renewal Term"). The Trust guarantees that the leased premises shall remain available for no less than ninety (90) days from the effective date. Except as otherwise stated, either Party may, for any reason, terminate this Sublease upon not less than fifteen (15) days' prior written notice to the other Party, or upon shorter notice if the Parties agree in writing.

4. **Rental Terms:**
   a. In consideration of the demise and of the covenants and conditions herein contained, the Department promises to pay to Trust the following, which shall include all non-medical support services:
      i. $3,000 per day per room reserved
      ii. For a total payment of $375,000 per day
b. **Payment of Rent:** In consideration of the demise of the covenants and conditions herein contained, Department promises to pay Rent to Trust the amount identified above. Payment of Rent shall occur in advance, without demand, offset, or deduction, on the first day of each month. Department’s obligation to pay Rent is an independent covenant, and no act or circumstances will release Department from the obligation to pay Rent timely or give rise to a right of setoff.

c. **Fractional Months:** If the Commencement date of this Sublease is a date other than the first day of a calendar month, Rent due for such month shall be prorated through the last day of such month. If this Sublease terminates on a day other than the last day of a calendar month, Rent due for such calendar month shall be prorated through the last day of the Primary Term or Renewal Term, as the case may be.

d. **Billing of Services:** The Parties agree that nothing in this agreement shall be interpreted to inhibit OSUMC’s ability to bill government and third-party payors for services provided to patients at OSUMC, including COVID-19 surge patients.

5. **Maintenance and Repairs:** Trust shall keep the entire Building in good and clean condition and shall at its sole cost and expense, make all reasonable repairs and replacements to the heating, cooling, ventilation, lighting, and electrical installations and shall keep all plumbing units, pipes, and connections in good repair and free from obstruction throughout the Building. Trust also shall be responsible for maintaining the mechanical and electrical systems and for maintaining the interior and exterior walls and walkways, including replacement of cracked or broken glass, and landscape and grounds maintenance. Trust is to maintain all fire and protection systems and equipment in accordance with adopted NFPA Standards, such as the fire sprinkler system, fire alarm system, and fire extinguishers. Trust 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 health safety matters.

6. **Utilities and Services:** Trust shall arrange and pay for the following services.
   a. **Heating and Air Conditioning:** Trust shall furnish or cause to be furnished heat or air conditioning necessary in Trust’s reasonable judgment for comfortable occupancy of the Subleased Premises for the Permitted Use.
   b. **Electricity, Water and Gas:** Trust shall furnish or cause to be furnished electricity, water and gas to the Subleased Premises for normal usage.
   c. **Housekeeping:** Trust shall furnish or cause to be furnished housekeeping services for the Subleased Premises, such housekeeping to be provided with a level of service consistent with that provided other similar medical centers providing similar medical services.
d. **Biohazardous Waste Removal:** Trust is responsible for expenses related to biohazardous waste disposal.

e. **Liability:** The interruption or inadequacy of, or the failure of Trust to furnish, any of the services described above, in whole or in part, resulting from any failure or defect in the supply or character of any utility or service furnished to the Subleased Premises for any reason beyond the reasonable control of Trust shall not render Trust liable, shall not be construed as an eviction of Department, shall not work as an abatement of Rent, and shall not relieve Department from the obligation to fulfill all of Department's covenants and agreements contained in this Sublease, except as provided herein. Trust shall diligently and continuously attempt to remedy any such interruption, inadequacy, or failure. Notwithstanding the foregoing, if any of the services described in this Section 6: (i) fail to be provided, (ii) such condition which causes the failure is within the reasonable control of the Trust, (iii) such condition prohibits Department from using all or a portion of the Subleased Premises for the purposes permitted hereunder, and (iv) such condition exists for ten (10) consecutive business days after the Department provides written notice of such condition to the Trust, then the Department shall have the right to terminate this Sublease pursuant to Paragraph 3 of this Sublease by delivering written notice to the Trust indicating same.

7. **Access:** Trust and its representatives shall have the right, but not the duty, to enter the Subleased Premises for the purposes of examining and inspecting them, at reasonable times and upon reasonable notice.

8. **Improvements and Alterations**
   a. **Improvements and Alterations:** Department shall not expand or make or install any other additions, renovations, alterations, improvements, or changes in or to the Subleased Premises, or any part thereof without Trust's prior written consent. Department shall not permit, create, incur or impose, or cause or suffer others to permit, create, incur, or impose any lien or other obligation against the Subleased Premises or any interest therein by reason of any work upon the Subleased Premises.
   
   b. **Ownership of Improvements:** Trust's improvements to the Subleased Premises, including affixed lighting fixtures, window coverings, and attached floor coverings, shall be deemed a part of the Subleased Premises upon installation and shall not be removed by Department upon termination of this Sublease.

9. **Insurance:** Both Parties shall maintain such insurance or self-insurance covering their own property and liability as is required or recommended by the Risk Management Administrator for the Division of Capital Assets Management of the Office of Management and Enterprise Services.
10. **Liability:** Each party shall be responsible for its own negligent and intentional acts and omissions. Neither Party waives any defenses or rights available pursuant to the Govermental Tort Claims Act at 51 O.S. § 151 et. seq., common law, statutes, or constitutions of the United States or the State of Oklahoma by entering into this agreement.

11. **Condition upon Termination:** Department shall surrender the Subleased Premises to Trust at the expiration of the term herein or upon the Early Termination as herein provided, in as good a condition as on the Commencement Date subject to normal and reasonable wear and tear.

12. **Compliance with Laws:** Department agrees not to violate any law, ordinance, rule, or regulation of any governmental authority pertaining to Department’s use of the Subleased Premises. Further, if any license or authorization is required for the lawful use of the Subleased Premises, Department agrees that it is its sole responsibility to seek, obtain, and keep any and all such licenses and authorizations which may be necessary and that it will seek, obtain, and keep such licenses and authorizations.

13. **Assignment or Subletting:** Department shall not assign or in any manner transfer this Sublease or any interest therein without the prior written approval of Trust, which shall not be unreasonably withheld, provided that each such sublease shall be subject and subordinate to this Sublease, and Department shall remain liable for the performance of all of its covenants and agreements under this Sublease.

14. **Base Lease**
   a. **Subordination of Sublease to Lease Agreement:** Notwithstanding any provision in this Sublease to the contrary, this Sublease is subject and subordinate to the Lease Agreement by and between the Oklahoma State University Medical Authority and Trust, (the "Base Lease"), and to the matters to which the Base Lease are or shall be subject or subordinate.
   b. **Termination of Base Lease and Cross-Termination:** Notwithstanding anything contained herein to the contrary, the existence of this Sublease is dependent and conditioned upon the existence of the Base Lease, and in the event of the cancellation or termination of the Base Lease, this Sublease will automatically terminate.

15. **Amendments:** This Sublease contains the entire agreement between the parties, and no agreement to change or modify this Sublease in whole or in part shall be effective unless such agreement is in writing and signed by the Parties.
16. **Right of Recovery:** To the extent allowed by law, Trust shall not hold Department responsible for Building reconstruction costs due to fire, flood, and natural catastrophes. To the extent allowed by law, Department shall not hold Trust responsible for any damage or loss of property or for any liability associated with doing business in the Building. Otherwise, each Party shall be responsible for its negligent and intentional acts and omissions in accordance with the Oklahoma Governmental Tort Claims Act.

17. **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 Sublease, and must be included in any subcontracts awarded involving this Sublease. The Parties represent that all services are provided without discrimination on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, age, 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.A. § 4212.

18. **Trust Not a Referral Source:** The Trust represents and warrants to Department that the Trust is not a “Referral Source” (as hereinafter defined) and that no ownership or beneficial interest in the Trust is owned or held by any Referral Source. “Referral Source” means (i) a physician, an immediate family member or member of a physician’s immediate family, an entity owned in whole or in part by a physician or by an immediate family member or member of a physician’s immediate family or by any other “Person” (as hereinafter defined) who (a) makes, is in a position to make, or could influence the making of referrals of patients to any health care facility; (b) has a provider number issued by Medicare, Medicaid, or any other government health care program; or (c) provides services to patients who have conditions that might need to be referred for clinical or medical care, and participates in any way in directing, recommending, arranging for, or steering patients to any health care provider or facility; and (ii) any Person or entity that is an “Affiliate” (as hereinafter defined) of any Person or other entity described in clause (i) above. “Immediate family member or member of a physician’s immediate family” means husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild. “Affiliate” means any Person that directly or indirectly controls or is controlled by or is under common control with a Referral Source. For purposes of this definition, “control” (including the correlative meanings of the terms ‘controlled by’ and ‘under common control with’), as used
herein, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, partnership interests, or other equity interests. "Person" means any one or more natural persons, corporations, partnerships, limited liability companies, firms, trusts, trustees, governments, governmental authorities, or other entities.

19. **Assignment by Trust**: The Trust shall have the right to transfer and assign, in whole or in part, right, title, and interest in the Subleased Premises and its rights and obligations in and under this Sublease. The Trust shall be released from all obligations from the date of transfer, except for obligations as related to the period of time from the commencement date to the date of transfer.

20. **Availability of Records.** If this Sublease is deemed to be subject to the requirements of 42 U.S.C. § 1395(x)(v)(1)(i), until the expiration of four (4) years after the furnishing of space under this Sublease, upon the written request of the Department, the Trust shall make available to the Secretary of the U.S. Department of Health and Human Services, or to the U.S. Comptroller General, or any of their duly authorized representatives, this Sublease and books, documents, and records of the Trust that are necessary to certify the nature and extent of any costs incurred by the Department or Trust in providing space under this Sublease. If the Trust is requested to disclose books, documents, or records pursuant to this Section 20 for any purpose, the Trust shall notify the Department of the nature and scope of such request, with a copy of such notice to the Department, and the Trust shall make available, upon written request of the Department, all such books, documents or records. If the Trust carries out any of the duties of this Agreement through a subcontract with a value of $10,000.00 or more over a twelve (12) month period, such subcontract shall contain this requirement.

21. **Regulatory Requirements.** Nothing in this Sublease shall be construed to require the Trust to admit patients to the Department or any affiliate of the Department or to utilize the Department or any affiliate of the Department to provide inpatient, outpatient, or other services to patients or otherwise generate business for the Department or any affiliate of the Department. Notwithstanding the unanticipated effect of any of the provisions herein, the Trust and Department (each a "Party" and collectively the "Parties") intend to comply with 42 U.S.C. § 1320a-7b(b) (commonly known as the Anti-Kickback Statute), 42 U.S.C. § 1395nn (commonly known as the Stark law), and any other applicable Federal or state law provision governing fraud and abuse or self-referrals under the Medicare or Medicaid programs, as such provisions may be amended from time to time. The Parties further intend that this Sublease comply with as many as reasonably practicable of the conditions for meeting the space rental safe harbor to the Anti-Kickback
Statute which is set forth in 42 C.F.R. § 1001.952(b), as such regulation may be amended. This Sublease shall be construed in a manner consistent with compliance with such statutes and regulations, and the Parties agree to take such actions necessary to construe and administer this Sublease therewith. The Parties solely intend the fees paid to the Trust to compensate the Trust for the Sublease Premises, and not to influence the Trust with regard to any referrals of patients to the Department or any affiliate of the Department. As such, the Parties acknowledge that the compensation paid to the Trust hereunder would be the same whether or not any such referrals are made. The Parties further intend that the compensation paid hereunder shall be fair market value for the space based on arm's length bargaining and the value of similar services in the community. In the event any court or administrative agency of competent jurisdiction determines that this Sublease violates any of such statutes or that the compensation hereunder exceeds reasonable compensation, then the Parties agree to take such actions as necessary to amend this Sublease to comply with the applicable statutes or regulations, as provided herein.

22. Exclusion from Federal Health Care Programs. Each Party hereby represents and warrants to the other Party that neither it nor any of its owners, directors, officers, employees, or representatives is: (i) currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 USC § 1320a-7(b) (the “Federal health care programs”); (ii) convicted of a criminal offense related to the provision of health care items or services but not yet excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (iii) under investigation or otherwise aware of any circumstances that may result in being excluded from participation in the Federal health care programs. This shall be an ongoing representation and warranty during the term of this Sublease and each Party shall notify the others within one (1) business day of learning of any change in the status of the representation and warranty set forth in this Subsection. Any breach of this Subsection shall give the other Party the right to terminate this Sublease immediately for cause.

23. Reactivation of Sublease. If the parties shall need to reactivate this Sublease in the future due to additional need for surge capacity should there be multiple waves of the COVID-19 virus, the parties shall have the option to do so without renegotiation thereof and without additional renovations required to the leased premises. The Department shall give Trust fifteen (15) days written notice of its wish to reactivate this Sublease. The parties shall enter into a separate agreement formalizing this option to reactivate, attached hereto.

24. Miscellaneous
   a. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other
person under this Sublease, excluding service of process, shall be in writing and shall be deemed to be properly served if (i) sent by certified mail with return receipt requested, (ii) sent by receipted overnight delivery service, (iii) via electronic communication (email), or (iv) personally delivered to the address set forth below. The effective date of any such notice shall be the date which is stamped by the United States Post Office on the envelope enclosing same, the date of the receipt for the overnight delivery, the date noted on the electronic communication, or the date on which personal delivery is made, whichever is applicable. Any notice sent by a subtenant to Department shall also be sent concurrently to Trust. Until changed by written notice from the appropriate party to the other, the addresses of the parties are as follows:

Trust: 1111 W. 17th St.
Tulsa, OK 74107
Attn: Eric Polak

Department:

b. Accord and Satisfaction: No payment by Department or receipt by Trust of a lesser amount than the full amount of any payment to be made by Department hereunder shall be deemed to be other than on account of the earliest stipulated unpaid installment thereof, and no endorsement or statement on any check or letter accompanying any check or payment shall be deemed to be an accord and satisfaction, and Trust may accept such check or payment without prejudice to Trust's right to recover the full amount due hereunder or pursue any other remedy available to Trust.

c. Severability: The invalidity or unenforceability of any provision of this Sublease will not affect the validity or enforceability of any other provision.

d. Entire Agreement: This Sublease constitutes the entire agreement and understanding of the parties with respect to the matters contained in this Sublease and supersedes all other agreements between and representations by the parties with respect to such matters. No changes, amendments, or modifications of this Sublease shall be effective or enforceable unless executed in accordance with Paragraph 15 herein.

e. Non-Waiver: Any assent, expressed or implied, by Trust or Department to any breach of any covenant or condition herein contained shall not be construed as an assent or waiver of any such covenant or condition generally or of any subsequent breach thereof.

f. Relationship of Parties: This Sublease shall not create a joint venture or partnership relationship between Trust and Department.
g. **Section Headings:** The section headings in this Sublease are for convenient reference only and shall not in any way affect the meaning or interpretation of this Sublease.

h. **Binding Effect:** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

(signatures on following page)
IN WITNESS WHEREOF, the parties have executed this Sublease effective the day and year first above written.

OKLAHOMA STATE UNIVERSITY MEDICAL TRUST

By: [Signature]

Its: Chief Executive Officer, OSUMA GT

Date: April 16, 2020

OKLAHOMA STATE DEPARTMENT OF HEALTH

By: [Signature]

Its: Commissioner of Health

Date: 4.20.2020