



Minnesota State Colleges and Universities System Procedures Chapter 6 – Facilities Management

Procedures 6.7.2 Use of College and University Facilities (College or University as Lessor).

Part 1. Purpose. This procedure provides direction when leasing or otherwise allowing use of Board-owned land and/or improvements, consistent with state law, Board of Trustees policy, system procedures, and the strategic mission of the system. A link to the “Checklist to Procedure 6.7.2 for Leasing and Use of College and University Facilities” is provided at the end of this procedure.

Part 2. Definitions.

College or University. A member institution of Minnesota State Colleges and Universities, a public higher education system.

Director of Real Estate Services. The primary contact within the Office of the Chancellor for all Facilities Agreements.

Easement. A right in real property given to individuals or entities other than the owner to use a property for a specific purpose. Easements are commonly granted for utility lines or roads. *See Procedure 6.7.1, Acquisition and Disposition of Real Estate.*

Facility or Facilities. Any land, building or other improvements on property owned or under the control of Minnesota State Colleges and Universities.

Facilities Agreement. An agreement that governs the use of college or university land or facilities. Facilities Agreements may include, but not be limited to, leases, licenses, permits, facilities use agreements, occupancy agreements, or other agreements approved by the Attorney General’s Office and the Office of the Chancellor to allow use of campus Facilities.

Joint Powers Agreement. An agreement made between two or more governmental entities pursuant to Minn. Stat. §471.59. A Joint Powers Agreement follows statutory requirements, and may involve facilities use as a component.

Lease. An agreement where a party shall have the right to exclusive use and possession of space in a facility or on land for a defined term in exchange for the payment of rent.

Leased Premises. The extent of the Facilities possessed and controlled by the Lessee under the terms of a Lease, and may include any parking for the exclusive use of the Lessee’s staff, clients, guests and invitees.

Leasehold Improvements. Improvements made to the Leased Premises prior to Lessee’s occupancy and necessary for the Lessee to use the Facilities as described in a Facilities Agreement. Leasehold Improvements permanently attach to the Facility and remain with the Facility at the end of the lease term.

Lessor or Landlord. In any Facilities Agreement, it shall mean the State of Minnesota by and through the Board of Trustees of Minnesota State Colleges and Universities, on behalf of [college or university, and campus name].

Lessee or Tenant. In any Facilities Agreement, it shall mean the legal entity or individual who uses a college or university Facility.

License. Shall mean a short-term agreement typically granted to a utility company or municipality for the installation, occupancy and ongoing maintenance of equipment or infrastructure, such as a road. A license typically is not recorded in the county recorder's office against the property.

Minnesota State Colleges and Universities. Shall be known by its acronym "MnSCU," and shall mean the legal entity as Owner, Lessor and/or Landlord in any Facilities Agreement.

Occupancy Agreement. A type of Facilities Agreement for shorter-term use.

Office of the Chancellor. The Chancellor or the appropriately delegated staff members within the office, who shall have authority to negotiate, sign, and/or approve Facilities Agreements.

State Bond Financed Property. A Facility acquired, constructed or bettered in whole or in part with a state general obligation bond appropriation, and subject to the bond-financing requirements related to real property found in Minnesota Statute §16A.695.

Usable Square Feet. The preferred method for calculating square footage for all MnSCU Facilities Agreements. Usable square feet is computed by measuring the inside finished surface of exterior walls to the inside finished surface of the building corridor and other permanent walls or to the center of walls separating Leased Premises from other tenant or campus space. If more than 50% of an exterior wall is glass, the dimension is taken from the glass line. Vertical shafts, elevators, stairwells, dock areas, mechanical rooms, and utility and janitorial rooms are excluded. Restrooms, corridors, lobbies, and receiving areas, which are accessible to the general public or used in common with other tenants are excluded. No deductions are made for columns, pilasters, or other projections to the building if each is less than four (4) square feet.

Use. The occupation, possession or utilization of land, building space or a building by a User on a Minnesota State Colleges and Universities campus, other than for College or University-sponsored academic and student programs and constitutionally-protected activities. Colleges and Universities execute Facilities Agreements to govern use of the Facilities to manage risk, ensure access and apply consistent process.

User. Shall mean an individual or group separate from a college or university that occupies, possesses, or uses land, building space or a building on a Minnesota State Colleges and Universities campus other than for a College or University-sponsored academic and student program and constitutionally protected activities. For purposes of this procedure, a User shall not include an occupant of a residence hall, which shall be governed by a housing contract and residential life procedures.

Vice Chancellor – Chief Financial Officer. The Vice-Chancellor – Chief Financial Officer of the Minnesota State Colleges and Universities system, unless otherwise noted, who has delegated authority to sign all real estate documents on behalf of the System.

Part 3. Applicability. This procedure applies generally whenever an individual or legal entity, separate from Minnesota State Colleges and Universities, uses Facilities owned or controlled by a College, University or Office of the Chancellor.

Part 4. Authority. The Board of Trustees of Minnesota State Colleges and Universities may allow the use of its Facilities under its control, and retain revenues derived from such use, subject to such limitations as may be imposed by the constitution, rules, regulations, laws or statutes. Board Policy 5.14 provides that contracts, including real property leases, shall not exceed five (5) years, including renewals, unless otherwise provided for by law or approved by the chancellor or the chancellor's designee.

Subpart A. Approval authority.

1. College and university presidents and the Director of Real Estate Services may enter into Facilities Agreements on campus that are valued at \$100,000 or less and for five (5) years or less in length (including all renewal options), using MnSCU standard forms. See Procedure 1A.2.2 Delegation of Authority, Part 1. The College or University shall maintain copies of all Facilities Agreements. Agreements expected to last one year or longer shall be provided to the Office of the Chancellor after execution. Facilities Agreements lasting less than one year may be provided at the discretion of a College or University or upon request from the Office of the Chancellor.
2. Vice Chancellor - Chief Financial Officer approval is required for all Facilities Agreements where the overall value is greater than \$100,000 or is expected to last longer than five (5) years, including all options to renew. The Vice-Chancellor - Chief Financial Officer signs all easements and licenses, or may delegate that authority as appropriate.
3. Board of Trustees approval is required for all Facilities Agreements where the overall value is greater than two million dollars (\$2,000,000), including renewal of existing agreements. (See Policy 5.14, Procurement and Contracts).

Subpart B. Legal Entity. All Facilities Agreements shall identify the "State of Minnesota, by and through the Board of Trustees of Minnesota State Colleges and Universities, on behalf of a [college or university]" as the Owner/Lessor.

Part 5. Types of Users of MnSCU Facilities, and Priority of Use. MnSCU Facilities are a state higher educational asset and shall be utilized to pursue the Board's primary statutory mission of providing programs of study that meet the needs of students for occupational, general, baccalaureate, and graduate education. Colleges and Universities shall retain broad discretion in determining allowable use of Facilities on campus, consistent with the primary mission, the Board's strategic mission and while exercising appropriate financial stewardship and management of risk. Colleges and Universities may establish additional rules and facilities use policies consistent with Board policy and procedures, state and federal law, and with expectations of public use for constitutionally protected activities.

Part 6. Types of Facilities Agreements. Users of Facilities must have a fully-executed, written agreement before occupying or using a College or University Facility. The Office of the Chancellor shall maintain Facilities Agreement templates approved by the Office of General Counsel and/or Attorney General's Office for College and University use. Facilities Agreements may be incorporated as part of an overall master agreement that includes instructional services or blended agreements that include a facilities use component. No User shall be allowed to occupy a College or University Facility without first providing evidence of acceptable levels of liability insurance during use of the Facility. The User shall maintain such levels of insurance during the use term.

The following grid provides examples of the types of Facilities Agreements to use under particular circumstances, and is not an exhaustive list for all circumstances. Because requirements for Facilities vary considerably, Colleges and Universities should consult with the Office of the Chancellor, Director of Real Estate Services, as needed.

Subpart A. Sample Facilities Agreements

<i>Type of Agreement</i>	<i>Type of User</i>	<i>Use of Facility</i>	<i>Duration: Long/Short Term</i>
Lease	All.	Any facility, including classroom, lab, garage, office, land, or any other use that includes longer-term, exclusive possession of space for activities.	Long (longer than 1 year)
Joint Powers Agreements	Local governmental entities, such as cities, counties, school districts	Usually joint-purpose, longer-term, shared use of campus classroom, office space or athletic facilities. Consult the Office of the Chancellor if a Joint Powers Board is to be established.	Long (longer than 1 year)
License	Municipalities, counties, utility companies	Utilities or infrastructure being installed on MnSCU property; offered in lieu of an easement.	Long
Telecommunications License/ Tower Agreement	Companies offering telecommunication services	To provide telecommunication (cell phone, data, other) from a stationary transmittal device. May be an existing or new tower or mast on building or stand-alone facility. Includes equipment facility.	Longer term. (1-3 years). Most companies want long-term agreements.
Facilities Use Agreement	Academic-related, non-academic, but campus-related uses, such as for student activities or short-term classroom space	Academic, events (student or otherwise), athletic type of events, community meetings	Short – Long (currently one-day occupancy agreements and longer than one day occupancy agreements)
Multi-Facility Use	Athletic Camps, other academic programs that may require multi-facility use, such as an Elderhostel program	Multiple (athletic camps that include residential, athletic facility, etc.)	Short
Inter-Agency Agreement	Other State Agencies	May involve a longer-term relationship or provision of services (construction or otherwise)	Long
Campus to Campus Agreements	Between MnSCU Campuses	Where sharing a facility between MnSCU campuses as part of an instructional arrangement.	Variable.

Subpart B. Length of Terms. Short and Long-term Use of Campus Facilities. Permission to use a Facility for any period of time requires a “Facilities Use Agreement.” The general guideline is to use Lease Agreements for continuous, exclusive use of Facilities lasting a year or longer. Licenses, Facilities Use Agreements and Multi-Facility Use Agreements are reserved for shorter-term or sporadic use of Facilities lasting less than one year. Campus to Campus Agreements are used between MnSCU campuses and the Office of the Chancellor.

Subpart C. Improvements on Campus by a Lessee/Tenant. Leasehold Improvements required to prepare a space for a Lessee’s use should be addressed in a Facilities Agreement and be funded by the User of the space. All Leasehold Improvements must comply with MnSCU Design and Construction Standards and the Facilities Master Plan. Major improvements in College or University Facilities by a Lessee requires a Construction and License Agreement, and may be subject to additional approvals up to and including Board of Trustees approval and, in some cases, Legislative approval. A Facilities Agreement may provide that the College or University will reimburse a Tenant for a portion of Leasehold Improvements that the Tenant makes to a College or University Facility if the College or University does not permit the Tenant to renew the lease at the end of a term.

An agreement that allows use of campus telecommunications systems requires consultation with Information Technology Services at the Office of the Chancellor to ensure that issues of security, bandwidth and specialized technology requirements are addressed.

Part 7. Payment for Lease of Facilities.

Subpart A. Generally. Colleges and Universities shall charge a User a reasonable amount when leasing their Facilities that covers the approximate cost of all operating costs, including parking, administrative overhead, debt service, leasehold improvements, and any specialized costs that would be attributable to the lease of the Facility. Facility fees and rent should be fair and consistent, but may vary from campus to campus depending on a campus’s actual operating expenses. Colleges and Universities shall annually publish and provide Users with their fee schedules for use of campus facilities. Income generated from use of campus facilities may be retained by the College or University or Office of the Chancellor, subject to state statute, rule and/or Board policy and practice.

Subpart B. Source of Funding Impact on Allowable Use and Rent. The source of funds used to acquire, construct, renovate, or improve College or University Facilities impacts how rent or fee revenues may be used, and may impact the ability of a College or University to lease out a campus Facility. The source of funds used to construct or purchase a Facility generally falls into one of five categories:

1. General Obligation Bond Proceeds. State bond financing issued by the Legislature to purchase Facilities or construct improvements (including pre-design money) that were provided directly for College and University Facilities or indirectly funded through school districts, joint technical college districts or intermediate districts prior to the merger.
2. State General Fund. Direct or indirect appropriations from the Legislature from the state’s general fund.
3. Proceeds from gifts, bequests, devises or endowments. Proceeds from these sources may have restrictions as part of the terms of acceptance.

4. School district funds (some technical college property). School district funding that was obtained before the merger that became obligations of the system at merger.
5. MnSCU Revenue Bond Funds. Previously limited to University auxiliary or student-supported facilities only, the Revenue Bond Fund is now available to fund College facility projects as well. Examples of Revenue Fund Facilities include residence halls, dining services, student unions and parking facilities.

If the College or University property was purchased or constructed using General Obligation Bond Proceeds or if it is not known what funding source was used, the College or University shall consult with the Office of the Chancellor prior to entering into a Facilities Agreement.

Subpart C. Unrestricted Income and Use: Rent from Facilities Not Financed with State General Obligation Bonds. Colleges and Universities may lease out their Facilities and retain rent when leasing out Facilities where the Facility was acquired, constructed or improved with any combination of funds from their own operating funds, state general fund, school district funds or proceeds from gifts, bequests, devises or endowments (to the extent allowed by the gift, devise or endowment), and such use is consistent with system procedure and Board policy.

Subpart D. Restrictions on Income and Use. Lease and fee revenue is restricted depending on funding source. Consult with the Office of the Chancellor before leasing out any campus property where any general obligation bond funds were used. Department of Management and Budget approval may be required prior to leasing out to a third party.

Subpart E. Calculating Operating Expenses. Building operating costs may be calculated to include building operations staffing costs, maintenance, utilities, security, repair and alteration, and any other direct or indirect costs associated with the building operation. In calculating the rental costs, Colleges and Universities may use a percentage of the total facilities costs of the campus or the total operating costs of the rental property. If only a portion of a building is being leased, a per square foot cost can be calculated for the leased space, plus proration of any common space. If the Use warrants, parking fees shall be charged any User in the same manner as faculty, staff or student.

Part 8. General Lease Process.

Subpart A. Lease Requirements for Office of Chancellor Approval. Upon a request to use or lease a College or University Facility, the campus shall seek approval from the Office of the Chancellor when the overall value of the lease including all expected terms and options to renew is greater than \$100,000 or is expected to last longer than five (5) years. Leases valued greater than \$100,000 or lasting longer than five (5) years require approval and signature of the Vice Chancellor – Chief Financial Officer. Colleges and Universities shall use standard Facilities Agreements maintained by the Office of the Chancellor and approved by the Attorney General's office. The campus shall provide (at a minimum) the following information:

- (1) Lessee's / User's name and address.
- (2) Lessee's / User's legal entity (LLC, corporation, etc), and whether it is a public or private entity.
- (3) Description of property to be leased (building name, area, identified rooms or floors, square footage or acreage, building/land) with a floor plan.
- (4) Rental amount, including all operating costs to be paid by Lessee/ User.

- (5) Length of lease term, including any options to renew.
- (6) Facility improvements (if any) required, their cost and who is to pay the costs.
- (7) Brief description of the Facility use.
- (8) Funding status of overall facility where the property is being used (i.e. whether General Obligation bonds were used to fund the Facility).
- (9) Relationship of the proposed Use to the Facilities Master Plan.
- (10) Programmatic tie-ins and how this use meets the Board's strategic plan.

Subpart B. Cancellation Provision. All Facility Agreements at a College or University shall include a cancellation clause, which can be invoked at the College or University's sole and absolute discretion.

Part 9. Insurance and Risk Management. Users of a College or University Facility shall provide evidence of adequate liability insurance coverage in the form of a certificate of insurance naming the State of Minnesota, by and through the Board of Trustees of Minnesota State Colleges and Universities, as an additional insured, prior to using or occupying a Facility. Coverage shall be maintained during the term of the use or lease.

Part 10. Leasehold Improvements. Plans for Leasehold Improvements must be approved by the College, University, and in cases where the Leasehold Improvement is valued greater than \$100,000, the Office of the Chancellor. All Leasehold Improvements in or on College or University Facilities shall comply with Office of the Chancellor current construction design standards for all leasehold improvements.

Part 11. Copies of Facility Agreements. Copies of all fully executed Facilities Agreements lasting 1 year or more shall be provided to the Office of the Chancellor - Real Estate Services. Copies of Facilities Agreements lasting less than 1 year shall be provided upon request.

Part 12. Contact Person. The primary contact person for this procedure and Facility Agreements is the Director of Real Estate Services in the Office of the Chancellor.

Part 13. Reporting Obligation. Leases in effect at any time during a fiscal year shall be year shall be reported to the Office of the Chancellor by June 30 of each fiscal year.

Approval Date: 07/28/96,

Effective Date: 07/28/96,

Date and Subject of Revision:

4/7/09 – revises leasing procedure for leasing of MnSCU Property to other individuals or parties.

Procedure 6.7.3 incorporates requirements for leasing off-campus Facilities.

06/21/00 - Contains language formerly in system procedure 5.0.1