

TEMPORARY ORDINANCE NO. 13-24

PERMANENT ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO NEGOTIATE AND ENTER INTO A LEASE AGREEMENT WITH THE FAIRFIELD COUNTY BOARD OF COUNTY COMMISSIONERS FOR THE LANCASTER-FAIRFIELD PUBLIC TRANSIT FACILITIES AT 700 AND 746 LAWRENCE STREET, LANCASTER, OHIO, FOR TRANSIT SERVICES

WHEREAS, pursuant to Temporary Resolution 48-24, the City of Lancaster ("City") is working with Fairfield County to transfer the assets and operations of Lancaster-Fairfield Public Transit to the Fairfield County Board of County Commissioners to enhance the services provided to County residents and take advantage of additional grant funding opportunities; and

WHEREAS, Lancaster-Fairfield Public Transit currently operates from City buildings at 700 and 746 Lawrence Street, Lancaster, Ohio which advances operational efficiency due to the facilities' proximity to the City Department of Transportation's Fuel Depot; and

WHEREAS, the City and Fairfield County desire that Lancaster-Fairfield Public Transit continue to operate from 700 and 746 Lawrence Street, Lancaster, Ohio, after its assets and operations are transferred to the Fairfield County Board of County Commissioners on July 1, 2024; and

WHEREAS, to that end, the City obtained an appraisal for the value of those properties which concluded that their rental value was approximately Sixty Thousand Dollars (\$60,000.00) annually or Five Thousand Dollars (\$5,000.00) monthly; and

WHEREAS, the City intends to lease 700 and 746 Lawrence Street, Lancaster, Ohio to the Fairfield County Board of County Commissioners for Lancaster-Fairfield Public Transit operations for Five Thousand Dollars (\$5,000.00) per month beginning on July 1, 2024, see the Lease Agreement attached hereto as Exhibit A; and

WHEREAS, so long as Lancaster-Fairfield Public Transit continues to use the aforementioned properties exclusively for transit services that benefit Fairfield County and the City, the City is willing to waive the monthly rental amount as an in-kind contribution to Lancaster-Fairfield Public Transit in light of the fact that there is no debt to be serviced on those properties and because the in-kind contribution of rent will enable the Fairfield County Board of County Commissioners to obtain additional grant funding for Lancaster-Fairfield Public Transit; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO,

SECTION 1. That the Service Safety Director is hereby authorized to negotiate all terms and conditions as necessary and reasonable to achieve the intent of this ordinance and to enter into a Lease Agreement, attached hereto as Exhibit A, with the Fairfield County Board of County Commissioners for 700 and 746 Lawrence Street, Lancaster, Ohio exclusively for the operation of Lancaster-Fairfield Public Transit.

SECTION 2. That the Lease Agreement in the form presently attached hereto as Exhibit A is hereby approved and authorized with changes therein not inconsistent with this

ordinance and not substantially adverse to this City and which shall be approved by the Service Safety Director. This Council further authorizes the Service Safety Director, for and in the name of the City, to execute any amendments to the Lease Agreement, which amendments are not inconsistent with this Ordinance and not substantially adverse to the City.

SECTION 3. That the initial lease term will be for a period of five (5) years.

SECTION 4. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____ after _____ reading. Vote: Yeas _____ Nays _____

Approved: _____

Clerk: _____

President of Council

Offered by: _____

Mayor

Second by: _____

Requested by Public Works Committee

I, Kristina Crites, Clerk of Council do hereby certify that on _____, 2024 the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

Clerk of Council



LEASE AGREEMENT

This LEASE AGREEMENT ("Lease" or "Agreement") is made and entered into on this _____ day of _____, 2024 by and between the City of Lancaster, an Ohio municipal corporation ("City" or "Lessor") and the Board of County Commissioners for Fairfield County, Ohio ("Commissioners" or "Lessee"), pursuant to the terms and conditions set forth below.

ARTICLE I

1.01 Description

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, certain real property ("Leased Premises") situated in the City of Lancaster, County of Fairfield, State of Ohio, and being more particularly described as follows:

Auditor's Parcel Nos. 0535811500, including one office structure with a garage with 10 overhead doors and service bays and 12 parking spaces, 0535023195, including its two metal pole barn structures and a parking lot, and 0535804000, including one storage structure and a bus parking lot, having a mailing address of 746 Lawrence Street, Lancaster, Ohio 43130, together with reasonable rights of ingress and egress over properties owned by Lessor.

1.02 Lease Term

The term of this Lease shall be for a period of FIVE (5) YEARS commencing on July 1, 2024 (the "Lease Term") unless otherwise extended, modified or terminated, in writing, upon terms mutually agreed upon by the parties.

ARTICLE II

2.01 Rent

For the term year of this Lease, Lessee shall pay Lessor as rent for the Lease Premises the annual sum of _____.

Lessee may notify Lessor in writing within 30 days of June 15 during the Lease Term of Lessee's intent to discontinue this Lease. If said notification occurs, this Lease shall terminate as of June 30 of the year in which notification occurs.

All rent payments shall be due on or before July 1 of each year of the Lease Term and made payable to the "CITY OF LANCASTER" at the following address (unless otherwise designated by the Lessor in writing):

City of Lancaster
Service-Safety Director's Office
104 East Main Street
Lancaster, Ohio 43130

Lessee shall deliver to Lessor the first annual rent payment at the time this Lease is executed.

ARTICLE III

3.01 Use of Premises

The Lease Premises shall be used by Fairfield County for the exclusive purpose of its transportation services during the Lease Term. Lessee shall not use the Leased Premises for any other purpose without the prior written consent, in writing, of Lessor.

ARTICLE IV

4.01 Taxes and Assessments

Lessor shall pay and discharge all real estate taxes and assessments that are incurred or otherwise become due and payable during the Lease Term.

ARTICLE V

5.01 Lessor's Insurance Obligations

Lessor shall maintain insurance coverage during the period of the Lease Term as follows:

1. Fire and extended coverage insurance on the Leased Premises in an amount not less than 100% of the value of the Leased Premises and other improvements to the Leased Premises existing as of the date this Lease is executed. This coverage will include any improvements made by Lessee to the Leased Premises and agreed to by Lessor during the term of the Lease.
2. Flood and extended coverage insurance on the Leased Premises in an amount not less than 100% of the value of the Leased Premises and other improvements to the Leased Premises existing as of the date this Lease is executed. This coverage will include any improvements made by Lessee to the Leased Premises and agreed to by Lessor during the term of the Lease.
3. Public liability insurance in an amount not less than \$1,000,000.00 per occurrence, \$2,000,000.00 in the aggregate.

5.02 Lessee's Insurance Obligation

Lessee shall, within 30 days from the execution of this Lease, provide Lessor with evidence in the form of a Certificate of Insurance, and maintain during the entire Lease Term, insurance coverage as follows:

1. Public liability insurance in an amount not less than \$1,000,000.00 for injury to or death of any one person and not less than \$2,000,000.00 for injury to or the death of more than one person arising out of any one occurrence.
2. Personal property and/or renter's insurance in an amount not less than 100% of the value of Lessee's personal property stored on the Leased Premises.

5.03 Subrogation Waiver

Lessor and Lessee agree that, in the event of loss due to any of the perils for which they have agreed to provide insurance, each party shall look solely to its own insurance for recovery. Lessor and Lessee grant to each other, on behalf of any insurer or self-insurance providing insurance to either of them with respect to the Leased Premises, a waiver of any right of subrogation that any insurer of one party may acquire against the other by virtue of payment of any loss under such insurance.

5.04 Proof of Coverage

The original copies of any insurance policy required under this Lease may be retained by the insured, but the other party shall have the right to inspect any and all such policies, and the insured, on demand, agrees to furnish the other party proof of payment of the premium or premiums on any such policies not later than January 31 of each calendar year.

5.05 Failure to Secure

If either party at any time during the Lease Term fails to secure or maintain the foregoing insurance, the other party shall be permitted to obtain such insurance in the defaulting party's name or as the agent of the defaulting party and shall be compensated by the defaulting party for the cost of the insurance premiums.

5.06 Fire and Casualty Damage

If the building or other improvements on the Leased Premises should be destroyed by fire or other casualty, Lessee shall give notice thereof to Lessor as soon as practicable. If the Leased Premises should be damaged by fire or other casualty that renders the Leased Premises uninhabitable, this Lease shall terminate immediately and rent shall be abated for the unexpired portion of the Lease Term, effective as of the date of said occurrence of the damage. Lessor has the sole discretion in choosing whether or not to rebuild, repair or restore the Leased Premises, and upon what terms, in the event of property damage by fire or other casualty.

ARTICLE VI

6.01 Waste and Nuisance

Lessee shall not commit, or suffer to be committed, any waste upon the Leased Premises, nor shall it maintain, commit, or permit the maintenance or commission of any nuisance on the Leased Premises or use the Leased Premises for any unlawful purpose.

ARTICLE VII

7.01 Lessor's Duties

Lessor agrees to perform as follows during the Lease Term:

1. Lessor agrees to keep the Leased Premises in good order and repair, reasonable wear and tear excepted, and further agrees to keep the Leased Premises clean and free from nuisance and waste.
2. Lessor shall provide Lessee with keys or fobs necessary for access to the Leased Premises.
3. Lessor shall maintain the door locks, gates, and fencing for Lessee in their current location on the Leased Premises.
4. Lessor shall provide water, sewer, storm water, gas, and electric utilities to the Leased Premises.
5. Lessor shall maintain insurance with respect to the Leased Premises as set forth in Section 5.01 above and any costs associated with such services.
6. Lessor shall provide general facility maintenance for the Leased Premises, including but not limited to replacement of ceiling lights as needed.
7. Lessor shall provide access to Lessor's Fuel Depot for Lessee's LFPT vehicles.
8. Lessor shall provide snow plowing services for the parking lot of the Leased Premises and snow removal on front sidewalk of building and entrance, as needed.
9. Lessor shall be responsible for any salting and/or treatment for ice in the parking lot and adjoining rear entry to the Lease Premises and for the front sidewalk leading up to the public access doorway to the Leased Premises, as needed.
10. Lessor shall provide for the removal of trash and other waste from the Leased Premises (but no other janitorial or cleaning services) and the stocking of bathroom supplies including toilet paper, paper towels, and liquid soap for the currently installed bathroom dispensers only.

7.02 Lessee's Duties

Lessee agrees to perform as follows during the Lease Term:

1. Lessee agrees to keep the Leased Premises in good order and repair, reasonable wear and tear excepted, and further agrees to keep the Leased Premises clean and free from nuisance and waste.
2. Lessee shall be responsible for providing their own IT/telephone/communication services (e.g., Internet, telephone, copier, and fax) to the Leased Premises and shall bear the costs associated with such services.
3. Lessee shall be responsible for providing an alarm system, at Lessee's option, for the Leased Premises and shall bear any costs associated with such services.
4. Lessee shall be responsible for providing insurance for the Leased Premises as set forth in Section 5.02 above and any costs associated with such services.
5. Lessee shall be responsible for the cost of any alterations and improvements to the Leased Premises subject to the terms and conditions of Section 18.10 below.

ARTICLE VIII

8.01 Alterations, Improvements and Fixtures

Lessee shall be permitted to alter or improve the Leased Premises with the prior approval of Lessor as set forth in Section 18.10 below.

ARTICLE IX

9.01 Quiet Possession

Lessee shall have the right to peaceful and quiet enjoyment of the Leased Premises for the Lease Term, provided that Lessee pays rent and otherwise performs as required under this Lease.

ARTICLE X

10.01 Delivery of Possession

If Lessor is unable, for any reason whatsoever, to deliver possession of the Leased Premises on the commencement date of this Lease as set forth in Section 1.02 above, this Lease shall become null and void and of no effect. Lessor shall forthwith return to Lessee any payments or other consideration, if any, delivered by Lessee to Lessor and the parties hereto shall be under no further obligation or liability to each other arising from this Lease.

11.01 Holdover

In the event Lessee holds over beyond the expiration of the stated Lease Term, such hold-over shall be deemed a year-to-year tenancy, and the amount of annual rent due and payable to Lessor shall remain _____ per year and continue at that annual rate until the tenancy is terminated as provided in this Lease or as set forth under Ohio law.

ARTICLE XII

12.01 Condemnation

If, during the Lease Term or any extension or renewal thereof, the Leased Premises should be taken for any public or quasi-public use under any law, ordinance, or regulation, or by right of eminent domain, or should the Leased Premises be sold to the condemning authority under threat of condemnation, this Lease shall terminate and the rent shall be abated for the unexpired portion of this Lease, effective as of the date of the taking of the Leased Premises by the condemning authority. Lessor and Lessee shall each be entitled to receive and retain such separate and portions of lump sum awards as may be allocated to their respective interest in any condemnation proceedings. The termination of this Lease shall not affect the rights of the respective parties to such awards.

ARTICLE XIII

13.01 Default by Lessee

In the event Lessee is in arrears more than 30 days, is otherwise in default for a period of more than 30 days, or should any other person other than Lessee secure possession of the Leased Premises or any part thereof by reason of any receivership, bankruptcy proceedings, or other operation of law, in any manner whatsoever, Lessor shall deliver upon Lessee Notice of Default as prescribed in Section 18.13 below. Lessee shall have 10 business days to correct said default following the delivery of written notice by Lessor. If Lessee fails to cure the Default, Lessor may at its option, without notice to Lessee, terminate this Lease.

All rights and remedies of Lessor under this Lease shall be cumulative, and none shall exclude any other right or remedy at law. Such rights and remedies may be exercised and enforced concurrently and whenever and as often as occasion therefore arises.

ARTICLE XIV

14.01 Inspection by Lessor

Lessee shall permit Lessor or his agents, after having been provided with reasonable notice, to enter into and upon the Leased Premises for the purposes of inspecting the Leased Premises, for maintaining any City utility, easement, traffic control device, or IT/telephone/communication network, or for making needed repairs or otherwise performing as required under this Lease.

ARTICLE XV

15.01 Assignment by Lessee

Lessee shall not assign or transfer any right under this Lease without the prior written consent of Lessor, nor shall Lessee sublet the Leased Premises or any part or parts thereof or allow anyone to come in, through, or under it without the prior written consent of Lessor. Should Lessor agree to any assignment under this Lease, or to any sublet of the Leased Premises or part thereof, such act shall not operate to eliminate, sever, or exhaust any of Lessor's rights under this Lease.

15.02 Assignment by Lessor

Lessor shall have the right to assign all its interests or rights as set forth in this Lease, with prior written approval of Lessee. Should Lessee refuse to approve Lessor's assignment, then this Lease shall terminate effective 60 days after said refusal and occupancy shall thereafter be on a year-to-year basis until Lessee vacates the Leased Premises.

15.03 Right of First Refusal

If Lessor ever determines to sell the Leased Premises, Lessor shall provide Lessee the right of first refusal to purchase the Leased Premises from Lessor.

ARTICLE XVI

16.01 Subordination

Lessee agrees that, at Lessor's option, this Lease may be subordinated to any mortgages or trust deeds that are now or may hereafter be placed upon the Leased Premises and to all advances to be made hereunder, and to the interest thereon, and all renewals, replacements and extensions necessary or appropriate to affect such subordination.

ARTICLE XVII

17.01 Lessee's Estoppel

Lessee shall, from time to time, upon not less than 5 days prior written notice from Lessor, execute,

acknowledge and deliver to Lessor a written statement certifying that the Lease is unmodified and in full force and effect, or that the Lease is in full force and effect as modified and listing the instruments of modification; the dates to which the rents and other charges have been paid; and, whether or not to the best of Lessee's knowledge Lessor is in default hereunder and, if so, specifying the nature of the default. It is intended that any such statement delivered pursuant to this provision may be relied upon by a prospective purchaser of Lessor's interest or mortgagee of Lessor's interest or assignee of any mortgage upon Lessor's interest in the Leased Premises.

ARTICLE XVIII

18.01 Parties Bound

This Lease shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this Lease.

18.02 Governing Law

This Lease shall be construed under and in accordance with the laws of the State of Ohio, and all obligations of the parties created hereunder are performable in Fairfield County, Ohio. Further, the parties agree to submit to the jurisdiction of, and agree that the venue is proper in the courts of Fairfield County, Ohio.

18.03 Legal Construction

In case any one or more of the provisions contained in this Lease shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and the remainder of this Lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

18.04 Sole Agreement of the Parties

This Lease constitutes the entire agreement between the parties and supersedes any prior understandings or agreements, written or oral, with respect to the subject matter addressed herein.

18.05 Amendment

No amendment, modification, or alteration of the terms of this Lease shall be binding unless in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

18.06 Rights and Remedies Cumulative

The rights and remedies as provided in this Lease are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

18.07 Waiver of Default

No waiver by the parties hereto of any default or breach of any term, condition, or covenant of this Lease shall be deemed to be a waiver of any other breach of the same or any other term, condition or covenant contained herein.

18.08 Excuse

Neither Lessor nor Lessee shall be required to perform any term, condition, or covenant in this Lease so long as such performance is delayed or prevented by any acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of Lessor or Lessee, and which by the exercise of due diligence Lessor or Lessee is

unable, wholly or in part, to prevent or overcome.

18.09 Time of Essence

Time is of the essence with regard to all aspects of this Lease.

18.10 Signs and Alterations

Lessee shall not erect or install any exterior or interior window or door sign, any advertising media or window or door lettering, or any placards without the prior consent of Lessor. Lessee agrees not to use any advertising media that shall be deemed objectionable to Lessor, such as loudspeakers, phonograph or radio broadcasts in a manner to be heard outside the Leased Premises.

Lessee shall not install any exterior lighting or plumbing fixtures, shades or awnings, or any exterior decorations or painting, or build any fences, without the prior consent of Lessor.

Lessee shall make no alterations, additions or improvements to the Leased Premises without the prior consent of Lessor. Lessor rents the Leased Premises "as is" and any alterations or additions by Lessee are at the sole cost and expense of Lessee. All alterations, additions, improvements, and fixtures, other than trade fixtures, which are present or which may be installed in the future, by either party, upon the Leased Premises and which are attached to the floors, walls or ceilings, shall be the property of Lessor and at the termination of this Lease shall remain upon and be surrendered with the Leased Premises as a part thereof, without disturbance, molestation, or injury.

18.11 Rules and Regulations

Lessor may, from time to time, adopt and impose rules and regulations respecting use and occupancy of any common areas of the Leased Premises, or any real estate of which the Leased Premises constitutes a part. Upon adoption by Lessor, said rules and regulations shall be deemed a part of this Lease and incorporated as if rewritten herein, and shall be binding upon Lessee and Lessee's agents, servants, and employees, and all persons visiting the Leased Premises or claiming under Lessee.

Lessor may alter, rescind, or modify such rules and regulations, which shall take effect immediately after notice thereof in writing is served upon Lessee. Failure by Lessee to comply with any such rules and regulations shall be deemed a breach and default of this Lease.

18.12 Memorandum of Lease

Lessee agrees that Lessor, at Lessor's option, may require Lessee to execute a Memorandum of Lease for recording with the Fairfield County Recorder in lieu of recording this Lease. If Lessor, at Lessor's sole discretion, deems such action to be appropriate, Lessee shall execute said Memorandum of Lease within 10 days of being presented with the Memorandum of Lease for execution.

18.13 Notices

Any notice required or permitted to be given under this Lease shall be made in writing and shall be delivered by hand, telecopy or by certified U.S. Mail, return receipt requested, as follows:

TO LESSOR:
City of Lancaster
Service-Safety Director's Office
104 E. Main Street
Lancaster, Ohio 43130

TO LESSEE:

Fairfield County Commissioners
210 E. Main Street
Lancaster, Ohio 43130

18.14 Pronouns

Words of any gender herein shall include the other gender where appropriate.

18.15 Captions and Paragraph Headings

The captions of the several paragraphs of this Lease are not part of the context hereof, but are only guides or labels to assist in locating and reading the several provisions hereof.

18.16 Binding Effect

This Lease shall bind the parties hereto, their respective assigns, successors, receivers, and legal representatives, of any type whatsoever, and may not be modified unless done so in writing and signed by the parties hereto.

18.17 Other Agreements

This Lease shall not alter or affect any other existing lease agreements of Lessor regarding the subject property.

IN WITNESS WHEREOF, the undersigned Lessor and Lessee have executed this Lease Agreement as of the day and year first above written.

FOR LESSOR:

Paul D. Martin
Service-Safety Director
City of Lancaster

FOR LESSEE:

David L. Levacy, President
Board of County
Commissioners Fairfield
County, Ohio

Approved as to form:

Law Director and City Prosecutor's Office City
of Lancaster, Ohio

Assistant Prosecuting Attorney,
Fairfield County Prosecutor's Office

STATE OF OHIO

SS:

COUNTY OF FAIRFIELD

Before me, a Notary Public, in and for said State, personally appeared the above-named David L. Levacy, President of the Fairfield County Board of Commissioners, who signed the foregoing Lease and acknowledged the signing thereof to be his own voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this ____ day of _____ 2024

NOTARY PUBLIC

STATE OF OHIO

SS:

COUNTY OF FAIRFIELD

Before me, a Notary Public, in and for said State, personally appeared the above-named _____, who signed the foregoing Lease and acknowledged the signing thereof to be his own voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this ____ day of _____ 2024

NOTARY PUBLIC