

RESOLUTION NO. 9066-19

BY:

A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing the Mayor as the Director of Public Safety or his designee to enter into a Vehicle Lease Agreement with the Lakewood Foundation to lease a 2019 Starcraft, Allstar 13-2 Shuttle Bus for \$1.00 annually to be used by the Department of Human Services.

WHEREAS, the Lakewood Foundation is the recipient of a grant from the Northeast Ohio Areawide Coordinating Agency (NOACA) for in the amount of \$43,353 to use toward the purchase price of \$54,191 of the vehicle for use by the City of Lakewood Department of Human Services; and

WHEREAS, Lakewood will contribute no funds toward the purchase of the vehicle as the Lakewood Foundation will pay the remaining balance of the purchase price; and

WHEREAS, Lakewood will be responsible for licensing, maintenance and insuring the vehicle; and

WHEREAS, the award from NOACA requires that the vehicle remains titled to the Lakewood Foundation; and

WHEREAS, a lease is necessary to facilitate this arrangement between the parties; and

WHEREAS, as set forth in Section 2.12 of the Third Amended Charter of the City of Lakewood, this Council by a vote of at least two thirds of its members determines that this resolution is an emergency measure and that it shall take effect immediately, and that it is necessary for the immediate preservation of the public property, health, and safety and to provide for the usual daily operation of municipal departments, in that the City of Lakewood should enter into this lease at the earliest date possible in order to get the Vehicle in circulation within Lakewood's fleet; now, therefore,

BE IT RESOLVED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. The Mayor as the Director of Public Safety or his designee is hereby authorized to enter into an agreement, in substantially the same form as attached as Exhibit A, with the Lakewood Foundation for a 2019 Starcraft, Allstar 13-2 Shuttle Bus for \$1.00 annually.

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were adopted in an open meeting of this Council, and that all such deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements.

Section 3. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this ordinance, and provided it receives the affirmative vote of at least two thirds of the members of Council this ordinance shall take effect and be in force immediately, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: \_\_\_\_\_

\_\_\_\_\_

President

\_\_\_\_\_

Clerk

Approved: \_\_\_\_\_

\_\_\_\_\_

Mayor

**Exhibit A**

**VEHICLE LEASE AGREEMENT  
Between The Lakewood Foundation and  
The City of Lakewood**

WHEREAS, the Northeast Ohio Areawide Coordinating Agency has awarded the Lakewood Foundation a grant in the amount of \$43,353 for the purchase of an accessible vehicle for use by the City of Lakewood Department of Human Services, pursuant to an agreement between Northeast Ohio Areawide Coordinating Agency and the Lakewood Foundation identified as Contract for Services (SEC5310-2018-LKWD) (the Grant); and

WHEREAS, under the terms of the Grant, the Lakewood Foundation wishes to lease the vehicle to the City of Lakewood, for purposes of defining obligations to meet grant requirements, insurance and maintenance. Now, therefore,

THIS AGREEMENT is made on April \_\_\_\_\_, 2019, between the Lakewood Foundation (the Lessor) located at 16024 Madison Ave, Lakewood, Ohio 44107 and the City of Lakewood (the Lessee) located at 12650 Detroit Avenue, Lakewood, Ohio 44107. In consideration of the mutual promises contained in this Agreement, the contracting parties agree as follows:

**ARTICLE 1 LEASE**

**Lease and Term**

1.01. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor a 2019 Starcraft, Allstar 13-2 Shuttle Bus, VIN \_\_\_\_\_ (the Vehicle). Lessee's execution of this Agreement shall constitute Lessee's authorization to Lessor to acquire the Vehicle. This Agreement shall become effective on the date that the Vehicle is tendered by Lessor to Lessee. This Agreement shall continue for indefinitely unless terminated earlier as provided below.

**Alterations**

1.02. Acceptance of Vehicle in service constitutes an acknowledgment that the Vehicle complies with Lessee's specifications. Lessee agrees to pay for any structural alterations, special equipment, or material alteration in painting, lettering, or art work subsequently required by Lessee. If after the execution of this agreement by Lessor any federal, state, or local law, ordinance, or regulation is enacted that requires the installation of any additional equipment, specifically including but not limited to anti-pollution or safety devices, Lessee shall be responsible for the cost of this additional equipment, including installation expenses. Lessee agrees either to install the additional equipment or to arrange for its installation.

**ARTICLE 2 SURRENDER**

2.01. The Vehicle shall be promptly returned by Lessee to Lessor specified on the attached Schedule(s) on the termination of this Lease unless Lessee purchases the Vehicle as provided below or unless the parties agree otherwise.

### **ARTICLE 3 OPERATION AND MAINTENANCE**

#### **Ordinary Use**

3.01. The Vehicle will be operated by Lessee only in the normal and ordinary course of Lessee's business. Lessor shall not be responsible for any fines, forfeitures, seizures, confiscations, and penalties arising out of any violations of any law, rule, regulation, statute or ordinance while the Vehicle is being operated.

#### **Lessee to Provide Maintenance and Fuel**

3.02. Lessee agrees to provide all necessary maintenance, repairs, and fuel at Lessee's expense.

### **ARTICLE 4 LICENSES**

#### **Vehicle Licenses**

4.01. Lessee agrees to provide or pay for the state motor vehicle license for the Vehicle. Lessor further agrees to pay any taxes related to the operation of the Vehicle.

When permitted by law, Lessor will apply for any other vehicle licenses, prorate plates, or state reciprocity plates as Lessee may periodically request at Lessee's sole cost and expense. Lessee will assist Lessor in making any such applications.

### **ARTICLE 5 RENT**

5.01. Lessee agrees to pay Lessor for the Vehicle the total rental of \$1.00 annually.

### **ARTICLE 6 INSURANCE**

#### **Liability Insurance Responsibility**

6.01.(a) Lessee shall, at its sole cost, procure and maintain a standard policy of automobile liability ("Liability Insurance") with limits equal to those under which Lessee insures its own vehicles.

(b) Lessor shall not be responsible for any claims or causes of action for death or injury to persons, or loss or damage to property that exceed the limits of Liability Insurance, whether provided by Lessor or Customer, and arise out of or are caused by the ownership, maintenance, use, or operation of the Vehicle. Lessor shall not be responsible for any claims or causes of action that exceed policy limits that Lessor is statutorily required to pay and that Lessor would not be required to pay under the terms of this agreement.

(c) Lessor shall not be responsible for death or injury to Lessee, Lessee's employees, drivers, passengers, or agents, arising out of the ownership, maintenance, use, or operation of the Vehicle.

## **Physical Damage Responsibility**

6.02. The Lessee shall pay for loss or damage to the Vehicle except that Lessee's liability shall not exceed the purchase price of the damaged Vehicle computed according to the provisions of Article 8 at the time of the loss or damage. Lessee further agrees to furnish Lessor with an insurance policy covering damage to the Vehicle, with a replacement-cost limit not less than the then-fair market value of the Vehicle. Lessor shall be named as the insured party or endorsed as a loss payee.

## **Vehicle Theft or Destruction**

6.03. If the Vehicle is lost or stolen and remains so for thirty (30) days after notification of Lessor, the lease shall terminate provided that all charges for the Vehicle have been paid to that date, including any amounts due under Paragraph 6.02. If the Vehicle is damaged beyond repair, the lease shall automatically terminate on receipt of Lessor's notice, provided that all charges for the Vehicle have been paid to that date, including any amounts due under Paragraph 6.02.

## **ARTICLE 7 TERMINATION**

### **Right to Termination**

7.01. Except as may be otherwise provided in the Grant, either party may terminate this lease of any Vehicle before the expiration of its term on any anniversary of its delivery date, other than the expiration date, by giving the other party at least thirty (30) days' prior written notice. If termination is effected by Lessor, Lessee has the right, but not the obligation, to purchase the Vehicle in accordance with Article 9. If termination is effected by Lessee, Lessee shall at Lessor's option purchase the Vehicle.

## **ARTICLE 8 BREACH OR DEFAULT**

8.01. If Lessee breaches or defaults on any of the obligations of this agreement, Lessor shall give Lessee thirty (30) days written notice of the breach and an opportunity to cure. If Lessee does not cure the breach within sixty (60) days of notice, Lessor may terminate the Agreement and take possession of the Vehicle, together with any equipment and accessories.

## **ARTICLE 9 MANDATORY PURCHASE OF VEHICLE**

9.01. Unless as may otherwise be provided in the Grant, if Lessor requires Lessee to purchase the Vehicle (pursuant to Paragraph 7.01), then Lessee shall purchase the Vehicle for \$1 within the time stated in the demand.

## **ARTICLE 10 MISCELLANEOUS**

### **Assignment**

10.01. Lessee may not assign this agreement or any of Lessee's rights under this agreement or sublease the Vehicle, or permit others to use it, without the prior written consent of Lessor. Any attempted assignment or sublease by Lessee without prior written consent shall be void and shall

neither relieve Lessee of any obligations or liabilities nor confer any rights upon the intended assignee.

### **Modification**

10.02. No modifications or amendments shall be valid unless in writing and executed by the contracting parties.

### **Parties Bound**

10.03. This agreement shall be binding on and inure to the benefit of the contracting parties and their respective heirs, successors, legal representatives, and assigns where permitted by this agreement.

### **Notices**

10.04. All notices, consents, waivers, or other communication (except invoices and requests for documents) under this agreement shall be sent by certified mail, return receipt requested, and shall be deemed to have been given when sent to the parties at their respective addresses as set forth above, unless a different address has been selected after the execution of this agreement and has been duly communicated to the party giving notice.

### **Governing Law**

10.05. This lease has been executed in the State of Ohio, and shall be governed by the laws of that state.

### **Entire Agreement**

10.06. This Agreement constitutes the entire agreement between the parties with respect to its subject matter. All previous negotiations, understandings, or written or oral agreements have been merged in this agreement. The terms and conditions of this lease shall prevail notwithstanding any variance therein from the terms and conditions of any other document relating to this transaction, whether prepared and submitted by Lessor or by Lessee, except that in the event any provision of this Agreement conflicts in any material way with the Grant, the conflicting provision in the Grant shall prevail.

### **Severability**

10.07. In case any one or more provisions of this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the remaining provisions shall nevertheless be valid, binding, and subsistent as if the invalid, illegal, or unenforceable provisions had never been contained in this agreement.

### **Headings**

10.08. The headings and subheadings of the various sections of this agreement are inserted merely for the purpose of convenience and do not express or imply any limitation, definition, or extension of the specific terms of the section so designated.

IN WITNESS WHEREOF each of the contracting parties has executed this agreement on the day and year written first above.

LESSOR

By: \_\_\_\_\_ [*signature*]

[*typed name and title*]

\_\_\_\_\_ [*witness*]

\_\_\_\_\_ [*date*]

LESSEE

By: \_\_\_\_\_ [*signature*]

Michael P. Summers, Mayor

\_\_\_\_\_ [*witness*]

\_\_\_\_\_ [*date*]