

RESOLUTION 2013-29

AUTHORIZING THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY TO ENTER INTO A LEASE AGREEMENT WITH THE CITY OF EUCLID, OHIO TO LEASE LAND ADJACENT TO THE EUCLID TRANSIT CENTER, WHICH IS LOCATED AT 23900 ST. CLAIR AVENUE IN EUCLID, OHIO FOR A TERM OF FIVE (5) YEARS WITH AN OPTION FOR ANNUAL RENEWALS THEREAFTER

WHEREAS, the Greater Cleveland Regional Transit Authority ("GCRTA") is the owner of undeveloped land adjacent to the Euclid Transit Center in Euclid, Ohio ("Property"); and

WHEREAS, the City of Euclid ("City") wishes to lease a portion of the Property for use as a public park; and

WHEREAS, GCRTA and the City have agreed to annual rent based on fair market value of the Property; and

WHEREAS, the City shall be responsible for maintenance of the leased premises and all costs associated with its use of the leased premises; and

WHEREAS, said use by the City is a temporary use and GCRTA reserves the right to cancel the lease at anytime; and

WHEREAS, the Federal Transit Administration has reviewed the lease agreement and concurrence has been received.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority, Cuyahoga County, Ohio:

Section 1. That the General Manager/Secretary-Treasurer is hereby authorized to enter into the attached lease agreement with the City of Euclid.

Section 2. That the lease term shall be five (5) years, with annual renewals thereafter.

Section 3. That the annual rent shall be three thousand one hundred twenty-five & 00/100 dollars (\$3,125.00).

Section 4. That the City of Euclid shall be responsible for maintaining the leased premises.

Section 5. That this resolution shall become effective immediately upon its adoption.

Adopted: April 16, 2013



Vice President

Attest: 

CEO, General Manager/Secretary-Treasurer



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

TITLE/DESCRIPTION: CONTRACT: LEASE OF LAND AT EUCLID TRANSIT CENTER VENDOR: THE CITY OF EUCLID, OHIO AMOUNT: \$3,125.00 / YEAR	Resolution No.: 2013-29
	Date: April 11, 2013
	Initiator: Programming and Planning
ACTION REQUEST: <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____	

- 1.0 **PURPOSE/SCOPE:** GCRTA wishes to lease unimproved land adjacent to the Euclid Transit Center to the City of Euclid, Ohio.
- 2.0 **DESCRIPTION/JUSTIFICATION:** The City of Euclid wishes to lease land for use as a public park. This same land was leased to the City of Euclid in the past for recreation purposes. The lease area consists of approximately 0.66 acres of unimproved land and park visitors will be permitted to use up to ten parking spaces. The lease agreement is for a term of five years with optional annual renewals thereafter. GCRTA has the right to cancel the lease at any time. The City of Euclid shall be responsible for maintenance of the leased premises and all costs associated with its use of the property.
- 3.0 **PROCUREMENT BACKGROUND:** Does Not Apply.
- 4.0 **DBE/AFFIRMATIVE ACTION BACKGROUND:** Does Not Apply.
- 5.0 **POLICY IMPACT:** This action is compliant with the Board of Trustees Real Estate Procedures that require Board of Trustees approval of all leases with a term greater than 3 years. It also complies with FTA requirements. The approval of this resolution will allow GCRTA to enter into the lease agreement with the City of Euclid, Ohio.
- 6.0 **ECONOMIC IMPACT:** Entering into this lease allows GCRTA to gain revenue from its real estate. The annual rent of \$3,125.00 per year is the fair market rental value of the property.
- 7.0 **ALTERNATIVES:** Not approve the lease.
- 8.0 **RECOMMENDATION:** Staff recommends that the Board of Trustees approve the resolution to authorize the lease agreement with the City of Euclid, Ohio.
- 9.0 **ATTACHMENTS:** Lease Agreement

Recommended and certified as appropriate to the availability of funds, legal form and conformance with the Procurement requirements.

CEO, General Manager/Secretary-Treasurer

LEASE

This Lease made and entered into as of this _____ day of _____, 2013, by and between the City of Euclid, Cuyahoga County, Ohio ("Lessee") and the Greater Cleveland Regional Transit Authority ("Lessor").

WHEREAS, the Greater Cleveland Regional Transit Authority is the owner of the land located in the City of Euclid, Cuyahoga County, Ohio, and specified in this Lease;

WHEREAS, the City of Euclid, Cuyahoga County, Ohio, a political subdivision of the State of Ohio, wishes to lease the land specified herein.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, Lessor and Lessee agree as follows:

1. Lessor does hereby lease to Lessee and Lessee hereby leases from Lessor the land located at the Euclid Park and Ride Facility, located at 23900 St. Clair Avenue, in the City of Euclid, Cuyahoga County, Ohio, and identified on the document attached hereto and marked as Exhibit "A".

2. The term of the Lease shall be for a period of five (5) years, beginning on _____, 2013 and terminating on _____, 2018. The parties may agree to renew this Lease on an annual basis thereafter. Notwithstanding anything contained herein, Lessor reserves the right to cancel the Lease at any time and for any reason. Lessee shall have the right to cancel the Lease by providing written notice by April 1st of each year.

3. In consideration of said demise, Lessee shall pay to Lessor annual rent of three thousand one hundred twenty five and 00 /100 (\$3,125.00) per year by April 1st of each year.

4. Lessee may use and occupy the land described in Exhibit "A" solely for the purpose of operating a dog park ("Dog Park") on a non-profit basis, which must be accessible to the general public. Lessor and Lessee agree this use does not create parkland but that the Dog Park is a temporary use of the land until such time as Lessor has another use for the land.

5. The Dog Park will be fenced, with an interior fence to separate large from small dogs and a second fence that would provide a seating area for individuals using the park. Prior to commencing construction of the Dog Park, Lessee shall submit design and specifications ("Detailed Proposal") to Maribeth Feke, Director – Programming and Planning or her designee for review, modification, and approval. Lessee shall only undertake construction after receiving Lessor's written approval of the Detailed Proposal and written notice to proceed. Lessee shall perform all work associated with the granting of this Lease at its sole cost and expense. Lessor shall permit the use of its parking facilities located closest to the land described in Exhibit "A" for parking by the users of the dog park. **The land described in Exhibit "A" and the parking facilities shall not be used for any purpose other than permitted herein without the express written consent of the Lessor.**

6. Lessee further agrees that it shall be responsible for the maintenance of the Dog Park constructed on the leased premises and will maintain said premises in a clean, safe, and attractive condition.

7. Lessee agrees that neither the land described in Exhibit "A" and the subject of this Lease nor any part thereof shall be sublet nor shall this Lease be assigned without the express consent, in writing, of the Lessor.

8. The relationship between the parties hereto is wholly that of Lessor and Lessee, and is not and never shall be deemed a partnership or joint venture.

9. The Lessee agrees to be liable for any and all claims, actions, judgments, costs, penalties, liabilities, damages, losses and expenses, including but not limited to attorney's fees and worker's compensation benefits that may arise out of its activities under this lease. The Lessee shall, at its sole cost and expense defend and hold harmless the Lessor and its Board of Trustees, agents, representatives, and employees from and against all claims, actions, judgments, costs, penalties, liabilities, damages, losses and expenses, including but not limited to attorney's fees and worker's compensation benefits that may arise out of or result from its use of the Lessor's property, and means of ingress and egress therefor, provided that any such claims, action, judgment, cost, penalty, liability, damage, loss or expense is caused in whole or in part by a negligent act or omission of the Lessee, anyone directly or indirectly employed by Lessee, or anyone for whose acts Lessee may be liable, regardless of whether or not it is caused in part by a party held harmless or defended hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation which would otherwise exist as to any party or person described in this paragraph.

10. Lessee accepts the land described in Exhibit "A" in an "AS IS," condition without warranty by Lessor of any kind or nature, express or implied.

11. Lessee must have minimum insurance coverage, as identified below. Lessee shall provide a letter of self-insurance demonstrating the following coverage:

- a. Commercial General Liability Insurance in the amount of \$1,000,000 combined single limit each occurrence for bodily injury and/or property damage with a \$1,000,000 annual aggregate. Lessor will accept any combination of primary CGL and Excess or Umbrella policies to meet the minimum coverage requirements above. Said policy shall also include:
 - Premises / Operations coverage
 - Personal Injury coverage
 - Liability for independent Contractors
 - Contractual liability coverage insuring the "hold harmless" provision set forth in this Lease.
 - Said policy shall be written on an "occurrence" basis.

- b. Automobile Liability Insurance in the amount of \$1,000,000 combined single limit each accident for bodily injury and /or property damage. Said policy shall apply to all owned, leased, hired and non-owned vehicles used in connection with the work.
- c. Statutory Workers' Compensation coverage in compliance with all applicable state workers' compensation laws to cover all employees furnishing labor under the terms of this Contract and under the control of the Seller. Employers' Liability coverage in the amount of \$1,000,000 per accident / \$1,000,000 per employee for disease will also be included, either under the Workers' Compensation policy or under the Commercial General Liability policy (Stop Gap) referenced under a. above. In Ohio: a copy of a certificate of premium payment from the Industrial commission and Bureau of WC, or a copy of the Certificate of Employer's Right to Pay Compensation Directly.
- d. General Requirements: The Lessee shall not commence work herein until it has obtained the required insurance in a form satisfactory to the GCRTA. It shall furnish evidence of such insurance in the form of a certificate (Acord or similar form). The Lessee shall provide at least fifteen (15) days prior written notice if the insurance should be changed or cancelled. Such notice shall be mailed by certified mail, return receipt requested, to the GCRTA care of the Property Manager.

The Certificate of Insurance shall:

- Name the GCRTA as an additional insured for coverages required under a. and b. above, for claims arising out of the performance of the Contract
- Contain a waiver of subrogation in favor of the GCRTA.
- Specific reference to the subject Lease
- Specific reference to all deductibles & Self Insured Retentions (SIR)
- Shall be primary and non-contributing to any insurance possessed or procured by Lessor and any self-insurance program maintained by Lessor.

An insurance company having less than a A-X rating by The A. M. Best Company will not be considered acceptable. All certificates are subject to acceptance by the GCRTA. The GCRTA shall be entitled to receive a full copy of the insurance policy(ies) upon request and reserves the right to review financial statements & approve any deductibles or self-insured retention (SIR). Any deductible or SIR is for the account of the Lessor.

- e. Approval by the Lessor: Approval of the insurance by the Lessor shall not relieve or decrease the liability of the Lessee hereunder. It is to be understood that the Lessor does not in any way represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect the Lessee's interests or liabilities.

f. In the event Lessee neglects, refuses or fails to provide the insurance required under this Lease, or if such insurance is canceled for any reason, the owner shall have the right but not the duty to procure the same, and cost thereof shall be borne by Lessee.

12. Lessee agrees that all construction and maintenance activities permitted or required hereunder will be performed by its own employees. If any such activities are to be performed by other than employees of Lessee, then Lessee's contractor(s) will have to obtain and maintain insurance in the amounts specified above. Lessor shall be an additional named insured on such policies and evidence of said coverage must be presented to the Lessor before any work is permitted to begin.

13. It is agreed that this Lease shall be governed by, construed, and enforced in accordance with the laws of the State of Ohio. Lessee shall maintain and operate the Dog Park in accordance with all laws of the State of Ohio.

14. Any notice concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified or registered mail to the respective address of each party as set forth herein.

15. Lessee agrees to remove any and all fencing, fixtures, improvements and personal property from the land described in Exhibit "A" upon receipt of notice from Lessor or cancellation of this Lease and return the leased premises to a condition similar to the condition that existed prior to commencement of this Lease.

16. This Lease constitutes the entire agreement between the parties and any prior understanding or representation of any kind before the date of this Lease shall not be binding upon either party, except to the extent it is incorporated into this Lease. Any modification of this Lease will be binding only if evidenced in writing and signed by both parties.

IN WITNESS THEREOF, each party to this Lease has caused it to be executed by an individual authorized to enter into said Lease and on the date specified herein.

WITNESSES:

Approved as to Legal Form:

Sheryl King Benford, General Counsel
Deputy General Manager for Legal Affairs

LESSOR: Greater Cleveland Regional
Transit Authority
1240 West 6th Street
Cleveland, Ohio 44113-1331

By: _____
Joseph A. Calabrese, CEO and
General Manager/Secretary-Treasurer

Address of Notice:
Lessor: 1240 West 6th Street
Cleveland, Ohio 44113
Attn.: Property Manager

WITNESSES:

Approved as to Legal Form:

City of Euclid
Director of Law

LESSEE: City of Euclid
585 East 222nd Street
Euclid, Ohio 44123-2099

By: _____

EXHIBIT A

