

RESOLUTION 2015-121

AUTHORIZING THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY TO ENTER INTO A LICENSE AGREEMENT WITH CUYAHOGA COUNTY, OHIO FOR A PORTION OF HARVARD GARAGE, LOCATED AT 2501 HARVARD AVENUE, NEWBURGH HEIGHTS, OHIO

WHEREAS, the Greater Cleveland Regional Transit Authority ("GCRTA") is the owner of record of 2501 Harvard Avenue, Newburgh Heights, Ohio known as Harvard Garage (the "Property"); and

WHEREAS, the Property was used as a bus garage until it ceased operations in 2010; and

WHEREAS, GCRTA has listed the property for commercial lease, posted a "for sale" sign on the Property, and has publicly advertised and marketed the Property since 2011; and

WHEREAS, in January 2013, the GCRTA entered into a short-term License with Cuyahoga County, Ohio ("County") authorizing the County to use a small portion of the Property for office furniture and document storage; and

WHEREAS, the Board of Trustees, in Resolution No. 2013-84, authorized a two-year License with the County for a larger portion of the Property, and said License expires December 31, 2015; and

WHEREAS, the County wishes to enter into a new two (2) year License through December 31, 2017 with potential month-to-month extensions through December 31, 2019; and

WHEREAS, in addition to the County's storage, the Property is also currently used for vehicle storage and transit police activities, and this extended License Agreement will not disrupt those activities; and

WHEREAS, the County has agreed to a four percent (4%) increase in their monthly License payment of \$17,555.50 to a monthly payment of \$18,257.72 per month, which is based on a fair market value of the licensed space as well as a portion of the utility costs commensurate with the licensed percentage of the Property; and

WHEREAS, the GCRTA will offset some of its annual asset maintenance expenses, including utility costs, associated with the Property through the rental income.

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 execute a two (2) year License Agreement with Cuyahoga County, Ohio and all other documents required to enter into this transaction, including any extensions.

Section 2. That the monthly rental will be \$18,257.72 per month which is based on a fair market value of the licensed space and a portion of the utility costs commensurate with the licensed percentage of the Property.

Section 3. That the rental income received will be used to offset maintenance costs at the Property.

Section 4. That the initial term of the agreement shall extend through December 31, 2017 but may be extended, by mutual agreement of the parties, on a month-to-month basis through December 31, 2019.

Section 5. That execution of this License Agreement is contingent upon receiving Federal Transit Authority (FTA) concurrence on the use of the Property.

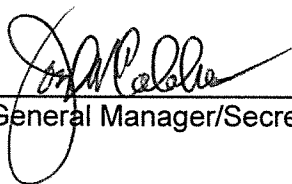
Section 6. That this resolution shall become effective immediately upon its adoption.

Adopted: December 15, 2015



President

Attest:



CEO, General Manager/Secretary-Treasurer



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

TITLE/DESCRIPTION: CONTRACT: LICENSE AGREEMENT FOR 2501 HARVARD AVENUE VENDOR: CUYAHOGA COUNTY, OHIO AMOUNT: \$18,257.72 per month	Resolution No.: 2015-121
	Date: December 15, 2015
	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:** The purpose of entering into a License Agreement with Cuyahoga County is to assist the county in meeting its short-term need for storage space necessitated by its re-organization of current building assets. The License will allow GCRTA to more fully utilize the Harvard Garage facility, located at 2501 Harvard Road in Newburgh Hts, Ohio.

2.0 **DESCRIPTION/JUSTIFICATION:** The Property, which is owned by the GCRTA was purchased with federal funds. Built in 1995, it consists of a 193,175 sq. ft. building on 18.46 acres in Newburgh Hts, OH. The facility has not been used as an active operating district since 2010 and has been publicly advertised and marketed for sale or lease since 2011. The Authority presently uses the facility for training and storage.

Currently, the County has a License at Harvard Garage for approximately 63,750. sq. ft. of storage space for office materials. The County has requested a License Agreement for a new two (2) year term through December 31, 2017, with the potential of month-to-month options through December 31, 2019. The County currently pays \$17,555.50 per month for the License expiring December 31, 2015. They have agreed to a four percent (4%) increase, for a new License amount of \$18,257.72 per month. Execution of this License Agreement is contingent upon FTA approval.

3.0 **PROCUREMENT BACKGROUND:** Does Not Apply.

4.0 **DBE/AFFIRMATIVE ACTION BACKGROUND:** Does Not Apply.

5.0 **POLICY IMPACT:** Does Not Apply.

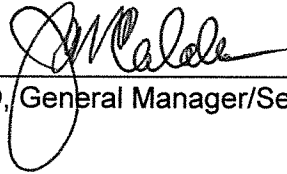
6.0 **ECONOMIC IMPACT:** The GCRTA will obtain rental income that will assist in defraying some of the operational expenses, including utility costs, associated with maintaining the Facility. The funds will be deposited into the Operating budget.

7.0 **ALTERNATIVES:** Not to enter into this agreement. GCRTA would have to continue maintaining this vacant property until another interested party is found.

8.0 **RECOMMENDATION:** This action was presented to the Planning and Development Committee on November 17, 2015. Staff recommends that the Board of Trustees approve the resolution to authorize a License Agreement covering a portion of the Harvard Garage to Cuyahoga County, Ohio.

9.0 ATTACHMENT: Draft License Agreement.

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



CEO, General Manager/Secretary-Treasurer

**LICENSE TO ENTER UPON LANDS
OF THE
GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY**

In consideration of the permission granted by the Greater Cleveland Regional Transit Authority, a political subdivision of the State of Ohio, whose mailing address is 1240 West 6th Street, Cleveland, Ohio 44113-1331 ("Licensor"), to the County of Cuyahoga, Ohio, whose mailing address is 2079 E. Ninth Street, Cleveland, OH 44115 Cleveland, Ohio 44113 ("Licensee"), collectively "the Parties," to enter upon the lands of Licensor located at 2501 Harvard Ave., Newburgh Hts., Ohio 44105 and known as the Harvard Garage ("Facility"), Licensee, its agents, employees, customers, and invitees agree to perform, provide, and abide by the following:

1. Licensee shall limit its use of the Facility to the following: On a non-exclusive basis and subject to the terms and conditions of this Agreement, Licensee is permitted to use a portion of the interior of the Harvard Garage, for the purpose of office furniture and document storage. Such use is also pursuant to the terms set forth on **Attachment A**, which is attached hereto and incorporated herein by reference. The area of the Facility subject to this Agreement (the "Premises") contains approximately 63,750 square feet and is identified on **Attachment B**, which is attached hereto and incorporated herein by reference. Additional space may be granted, if Licensor agrees, to Licensee at a rate to be determined mutually between the parties. Licensee shall not access or use other portions of the Facility and understands that entering other areas of the Facility may interfere with another entity's use of such portions of the Facility which may cause injury to Licensee and damages to Licensor. This License is for the same space in the Facility and purpose as a License between the Parties which expires December 31, 2015.

2. Licensee shall pay to Licensor as and for consideration for this grant of license the sum of Eighteen Thousand Two Hundred Fifty-Seven & 72/100 dollars (\$18,257.72) per month, for an annual amount of Two Hundred Nineteen Thousand Ninety-Two & 64/100 dollars (\$219,092.64). Said calculation is based on a fair market value of the licensed property as well as a pro-rata share of the cost of utilities. Each payment is due on the first day of each month. Licensor reserves the right to terminate this Agreement and cause Licensee to vacate the Premises in accordance with Sections 3 and 4 below if payment is not received within thirty (30) days of the due date.

3. Licensee is granted the right to occupy the Premises under the terms of this License from January 1, 2016 through December 31, 2017, with month-to-month extensions allowable through December 31, 2019 if the parties mutually agree in writing. Upon expiration of this right, the Licensee will remove itself and all property associated with its occupation of the premises within twenty-four (24) hours of term expiration. Failure to do so will result in removal by Licensor at the sole cost of Licensee. Notwithstanding the above, Licensor may cancel this License upon thirty (30) days written notice to the Licensee and pay Licensee a prorated amount of Licensee's monthly payment, if applicable.

4. Licensee shall remove all refuse generated in the course of its use of the Facility.

5. Licensee shall abide by all directives, if any, issued by Licensor.

6. The Licensee agrees to be liable for, defend, and hold harmless Licensor 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 acts and/or omissions under this License. Licensor specifically disclaims any and all liability for damage and/or loss of property stored at the Facility.

7. Licensee shall provide to Licensor a Letter of Self-Insurance demonstrating that it maintains the insurance required in **Attachment C**.

8. Licensee covenants and agrees that it will enter upon the Facility and use the Premises solely for the purposes described in Section 1 above. Licensees acknowledges and agrees that neither it, nor its agents, employees nor affiliates nor its vehicles are or shall be permitted to enter upon and/or use any other portion of the Facility, including, but not limited to, any interior portion of structure constituting a portion of the Facility, unless such entry and use is specifically set forth herein. Certain designated employees of Licensee shall have access to the Facility, subject to the restrictions in Attachment A. Said access restrictions may be amended at the sole discretion of Licensor based on security needs for the Facility.

9. Licensees shall have no right or authority to and shall make no alterations, additions or improvements in or to the Facility without the prior written approval of Licensor.

10. Licensees shall, at its own cost and expense, promptly observe and comply with all applicable laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, county, or city governments and of all applicable governmental authorities, including, without limitation, all rules and regulations of Licensor, and/or any other agency concerning the operation and use of the Facility or affecting Licensee's entry upon and conduct of its business upon the Facility, whether the same are in force at the commencement of the term of this Agreement or may be in the future passed, enacted or directed. Licensee will not discriminate against any employee or applicant, customer or invitee of employment because of race, creed, color, sex, disability or national origin.

11. Licensee acknowledges that the Licensee shall retain absolute general management and supervisory control over the Facility. The Facility was purchased and maintained using Federal Transit Administration ("FTA") funds and, consequently, the Federal Interest must be preserved. For the purpose of this Agreement, "Federal Interest" means FTA's rights to the federally-funded asset and/or proceeds from the disposition of the federally-funded asset as provided by Federal law, regulations and FTA Grants Management Requirements outlined in FTA Circular 5010. FTA retains a Federal interest in any project property financed with Federal assistance until, and (except) to the extent that, FTA relinquishes its Federal Interest in that project property.

12. Licensor shall be solely responsible for maintenance of the Facility. Notwithstanding the foregoing, Licensee shall, at its sole expense, bear the cost of repairing any damage to the Facility caused by Licensee, its employees, agents or invitees, reasonable wear and tear excepted. Licensee shall immediately notify Licensor of any damage caused to the Facility by Licensee or its employees, agents, representative, passengers or invitees. Licensee shall not be entitled to any partial or total abatement of rent for periods during which repairs are required to be made. Licensee shall use reasonable commercial efforts to relocate Licensee during the pendency of any repairs in order to minimize the impact of such repairs on Licensee's usage pursuant to this License Agreement.

13. It is agreed that this License shall be governed by, construed, and enforced in

accordance with the laws of the State of Ohio.

14. Any Notice concerning this License must be in writing and will be deemed sufficiently given when sent by certified or registered mail if sent to the following respective addresses of each party. Notice to the Licensor shall be made to: Greater Cleveland Regional Transit Authority, 1240 W. 6th Street, Cleveland, OH 44113 Attn: Property Manager. Notice to the Licensee shall be made to: Cuyahoga County Department of Public Works, 2100 Superior Viaduct, Cleveland, Ohio 44113 Attn: Real Estate Manager.

15. This License constitutes the entire agreement between the parties and any prior understanding or representation of any kind before the execution date of this License shall not be binding upon either party, except to the extent it is incorporated into this License.

16. Any modification of this License or additional obligation assumed by either party in connection with this License will be binding only if evidenced in writing and signed by each party.

17. This License is personal in nature. Any assignment or attempted assignment shall serve to immediately terminate all rights in the assignor. Licensor may terminate this License at any time and for any reason as it sees fit. Paragraph six (6) and seven (7) of this License Agreement shall survive such termination. By entering upon the lands of the Licensor, Licensee thereby agrees to be bound to the terms and conditions herein recited.

LICENSOR: **Greater Cleveland
Regional Transit Authority**

LICENSEE: **County of Cuyahoga, Ohio**

Joseph A. Calabrese, CEO
General Manager/Secretary-Treasurer

By:

Date: _____

Date: _____

The legal form and correctness of the instrument are hereby approved.

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

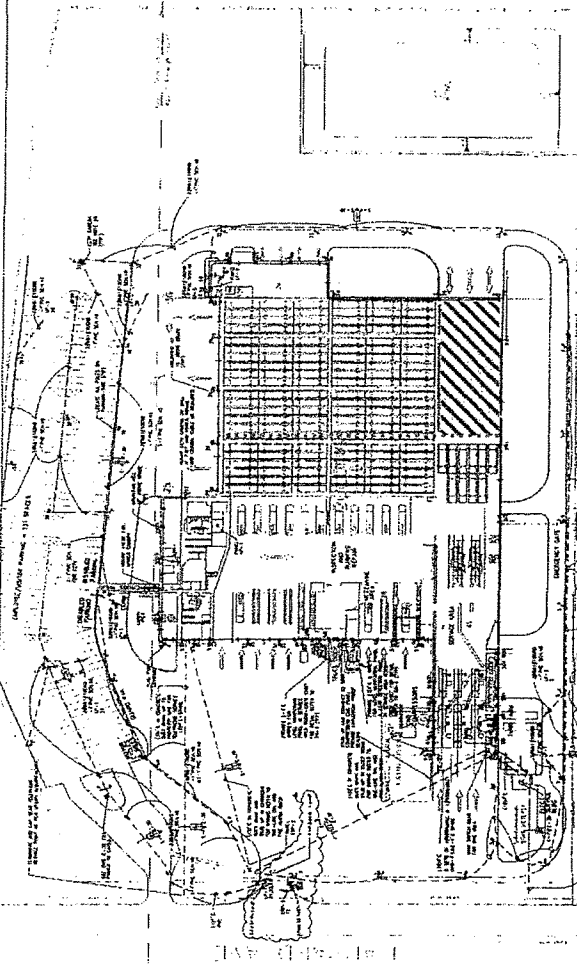
Attachment A

The following terms and conditions are applicable to this Agreement:

- 1) This License allows the use of a portion of the interior of the Harvard Garage, excluding areas that are occupied by or will be occupied by Licensor or its invitees, as depicted on Attachment B.
- 2) Licensee shall designate certain employees, up to a maximum of five (5) employees, who will be given access to the Facility from 8:00am until 5:00pm EST, via keys and/or card readers, to the Facility. Licensor reserves the right to approve or deny access to certain persons. Agents of Licensee shall only be given access to the Facility when accompanied by an employee of Licensor, an employee(s) of Licensee so designated for access to the Facility, and/or a uniformed officer of the Cuyahoga County Sheriff's Department.
- 3) Licensee is permitted or may be required by Licensor to enclose their property within the Premises with fencing that is temporary in nature, causes no permanent change to the Facility, and does not damage the Facility in any way. Chain link fencing and gates with posts on floor plates is acceptable. Licensor reserves the right to access any portion of the Facility, including any enclosed portions therein.
- 4) If fencing is erected around the Premises, Licensee shall provide Licensor with one key to access the Premises. Licensor shall access the Premises only in the event of an emergency or for maintenance unless accompanied by an employee of Licensee.
- 5) The heating, lighting, and other conditions of the Facility will remain as is, unless otherwise changed by Licensor at its sole discretion.
- 6) Licensee shall be responsible for removing snow and/or ice as necessary for its access to the Facility. Licensor specifically disclaims any guarantee that the Facility is accessible during inclement weather.
- 7) On the days that Licensee accesses the Facility, Licensee shall direct an Officer from the Cuyahoga County Sheriff's Department to conduct at least one (1) inspection of the entrance gate of the Facility between the hours of 5:00PM and 6:00PM in order to ensure that the entrance gate is closed.

Attachment B

License Area



Old Area
(~14,250 sq ft)

New Area
(~63,650 sq ft)

6' Security Fence
to be installed

Attachment C

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

- a. Commercial General Liability Insurance in the amount of \$2,000,000 combined single limit each occurrence for bodily injury and/or property damage with a \$2,000,000 annual aggregate. Licensor will accept any combination of primary CGL and Excess or Umbrella policies to meet the minimum coverage requirements above. Said program of self-insurance 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 License.
 - Said policy or program of self-insurance 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 or program of self-insurance 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 License and under the control of the Licensee. 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 Ohio BWC, or a copy of the Certificate of Employer's Right to Pay Compensation Directly.
- d. General Requirements: The Licensee 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) or letter of self-insurance addressing the requirements herein. The Licensee 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.
- e. Approval by the Licensor: Approval of the insurance by the Licensor shall not relieve or decrease the liability of the Licensee hereunder. It is to be understood that the Licensor does not in any way represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect the Licensee's interests or liabilities.
- f. In the event Licensee neglects, refuses or fails to provide the insurance required under this License, or if such insurance is canceled for any reason, the Licensor shall have the right but not the duty to procure the same, and cost thereof shall be borne by Licensee.

Licensee agrees that all 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 Licensee, then Licensee's contractor(s) will have to obtain and maintain insurance in the amounts specified above. Licensor shall be an additional named insured on such policies and evidence of said coverage must be presented to the Licensor before any work is permitted to begin.