

TEMPORARY RESOLUTION NO. 94-18

PERMANENT RESOLUTION NO. 94-18

A RESOLUTION AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO ENTER INTO A LEASE CONTRACT WITH THE FAIRFIELD COUNTY COMMISSIONERS FOR THE SECOND FLOOR OF THE CITY ANNEX BUILDING, 123 EAST CHESTNUT STREET, FOR JUVENILE COURT SERVICES

WHEREAS, the said lease renewal will be for a term of three years with a first-year rental cost of Fifty Thousand Fifty Dollars (\$50,050.00) which equates to approximately Nine Dollars and Ten Cents (\$9.10)/sq. ft. with the second and third year of the lease being increased according to the Consumer Price Index for All Urban Consumers (CPI-U) unadjusted 12-month average ending October 2019 and 2020; and

WHEREAS, leasing to the Fairfield County Commissioners for Juvenile Court Services, a governmental entity, allows the City to maintain real estate tax-exemption for the property; and

WHEREAS, there is no longer any debt service on the building so this will make the property income producing for the City which was the intent of City Council with the acquisition of the Fairfield County Municipal Court building;

BE IT RESOLVED BY COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO.

SECTION 1. That the Service-Safety Director is hereby authorized to enter into a lease contract with the Fairfield County Commissioners for the location of Juvenile Court Services on the Second Floor of the City Annex Building located at 123 East Chestnut Street and to negotiate all terms and conditions as are necessary and in reasonable compliance with the terms and conditions set forth in the attached lease proposal (Exhibit A).

SECTION 2. That the renewal lease term will be for a period of three (3) years with all proceeds of the lease going into the City of Lancaster Capital Improvement Fund (320.000.4901).

SECTION 3. That this resolution shall take effect and be in force from and after the earliest period allowed by law.

Passed: 11/26/18 after 1st reading. Vote: Yeas 9 Nays 0

Date Approved: 11/26/18

Clerk: Jeresa Lee Sandy

Todd A. Lee
President of Council
Paul H. Sheple
Mayor

Offered by: R. G. [Signature]

Second by: Cony Schommon
Requested by Law Committee

LEASE AGREEMENT

This LEASE AGREEMENT ("Lease" or "Agreement") is made and entered into on this ____ day of November, 2018 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:

The Second Floor (top floor) of the City Annex Building and the parking lot immediately adjacent to the rear entry of the Second Floor, having a mailing address of 123 East Chestnut 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 THREE (3) YEARS commencing on the 1st day of January, 2019 (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 first year of this Lease, Lessee shall pay Lessor as rent for the Lease Premises the annual sum of FIFTY THOUSAND FIFTY AND 00/100 DOLLARS (\$50,050.00) ("the Base Rent"), payable in eleven monthly installments of FOUR THOUSAND ONE HUNDRED SEVENTY AND 83/100 DOLLARS (\$4,170.83) and one monthly installment of FOUR THOUSAND ONE HUNDRED SEVENTY AND 87/100 DOLLARS (\$4,170.87).

For the second year of this Lease, Lessee shall pay to Lessor as rent an annual sum equal to the Base Rent adjusted by the Consumer Price Index for All Urban Consumers (CPI-U) unadjusted 12-month average ending October 2019 ("the First Adjusted Rent"). The annual sum of the First Adjusted Rent shall be paid in 12 equal monthly installments over the course of the second year of this lease.

For the third year of this Lease, Lessee shall pay to Lessor as rent an annual sum equal to the First Adjusted rent adjusted by the Consumer Price Index for All Urban Consumers (CPI-U) unadjusted 12-month average ending October 2020 ("the Second Adjusted Rent"). The annual sum of the Second Adjusted Rent shall be paid in 12 equal monthly installments over the course of the third year of this lease.

Lessee may notify Lessor in writing within 30 days of the release of Consumer Price Index for All Urban Consumers (CPI-U) unadjusted 12-month average ending October 2019 or 2020 of Lessee's intent to discontinue this Lease. If said notification occurs, this Lease shall terminate as of December



31st of the year in which notification occurs.

All rent payments shall be due on or before the 5th day of every month 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 monthly rent payment at the time this Lease is executed.

ARTICLE III

3.01 Use of Premises

The Lease Premises shall be used by the Fairfield County Juvenile and Probate Court for the exclusive purpose of providing court 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 any and 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 one hundred percent (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. Public liability insurance in an amount not less than one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) in the aggregate.

5.02 Lessee's Insurance Obligation

Lessee shall, within thirty (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 one million dollars (\$1,000,000.00) for injury to or death of any one person and not less than two million dollars (\$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 one hundred percent (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 31st 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 programmed key fobs for access to the Leased Premises.
 3. Lessor shall maintain the two lobby door release buttons for Lessee in their current location in 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 snow plowing services for the parking lot of the Leased Premises and snow removal on front sidewalk of building and entrance as needed.
 8. Lessor shall provide salting and/or ice treatment for the front sidewalk leading up to the public access doorway to the Leased Premises as needed (but NOT treatment of the parking lot and/or adjoining rear entry to the Leased Premises).
 9. 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.
 10. Lessor shall loan Lessee the use of cubicle/wall partitions of the Law Director's Office.

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.
6. Lessee shall be responsible for any salting and/or treatment for ice in the parking lot and adjoining rear entry to the Lease Premises.

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 month-to-month tenancy, and the amount of monthly rent due and payable to Lessor shall increase to Four Thousand Two Hundred Fifty-Five and 00/100 Dollars (\$4,255.00) and continue at that monthly 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 thirty (30) days, is otherwise in default for a period of more than thirty (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 ten (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 any or all of its interest(s) or right(s) 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 SIXTY (60) days after said refusal and occupancy shall thereafter be on a month-to-month basis until Lessee vacates the Leased Premises.

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 any and 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 five (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.

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 ten (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 Juvenile Court Judge
224 E. Main Street
Lancaster, Ohio 43130

AND
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 with regard to 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:

FOR LESSEE:

Paul D. Martin
Service-Safety Director
City of Lancaster

Fairfield County, Ohio Board of Commissioners

Approved as to form:



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

STATE OF OHIO :
 : SS
COUNTY OF FAIRFIELD :

Before me, a Notary Public, in and for said State, personally appeared the above-named PAUL D. MARTIN, 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 _____, 20____.

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 _____, 20_____.

NOTARY PUBLIC