

RESOLUTION NO. 2023-37

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF WILLOWICK TO ENTER INTO AN AGREEMENT WITH LAKETRAN FOR THE COMMERCIAL DRIVER'S LICENSE TRAINING OF SERVICE DEPARTMENT EMPLOYEES, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Willowick is able to have its service employees receive commercial driver's license ("CDL") training through Laketran pursuant to the terms of a training agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Willowick, County of Lake, and State of Ohio:

Section 1. That the Mayor of the City of Willowick is hereby authorized to enter a written Agreement with Laketran for the CDL training of its service department employees, in a form substantially similar to the agreement annexed as Exhibit A and incorporated herein, and to execute all documentation necessary to formalize the validity and implementation of said Agreement.

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were conducted in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such actions were conducted in meetings open to the public in compliance with all legal requirements including Chapter 123 of the Codified Ordinances of the City of Willowick.

Section 3. This Resolution constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City of Willowick and further provides for the usual and necessary daily operation of the municipal service department; wherefore, this Resolution shall be in full force and take effect immediately upon its passage by Council and approval by the Mayor.

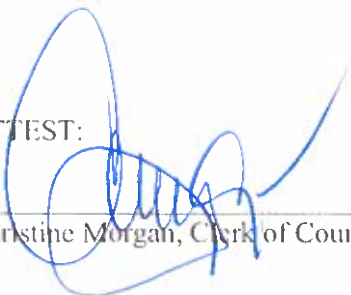
PASSED: SEP 05, 2023



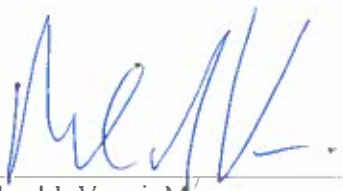
Monica Koudela, President of Council

SUBMITTED to the Mayor for his approval
on SEP 05, 2023

APPROVED by the Mayor on
SEP 05, 2023

ATTEST:


Christine Morgan, Clerk of Council



Michael J. Vanni, Mayor



COMMERCIAL DRIVER'S LICENSE TRAINING AGREEMENT

This Commercial Driver's License Training Agreement (the "Agreement") is entered into by Laketrans a public transit agency and political subdivision of the State of Ohio created pursuant to Section 306.30 through 306.71 of the Ohio Revised Code, with a principal office at 555 Lakeshore Blvd., Painesville, Lake County, Ohio, 44077 ("Agency") and the City of Willowick, Ohio (the "City") on this the ___ day of _____, 2023 (the "Effective Date"). Agency and City will be referred to individually as a "Party" within this Agreement and will be referred to collectively as "Parties".

AGREEMENT

1. **Scope of Services.** Agency shall provide City with Commercial Driver's License ("CDL") training for individuals sent by City to Agency. Specifically, Agency will provide the theory portion and the behind-the-wheel training for prospective Class A and Class B CDL operators (the "Services").

The scope of the Services is outlined in Appendix A for the duration of the Term specified in Section 2.

2. **Term.** The term of this Agreement shall commence on the Effective Date as set forth above and be for the period of one (1) year (the "initial term") unless terminated earlier under Section 12. Each Party shall have the mutual option to renew this Agreement for up to four (4) separate one-year terms following the initial term (each separate one year term constitutes a "successive term") unless terminated earlier under Section 12. The Agreement may last for a maximum of five (5) years.

Either Party shall notify the other at least thirty (30) days before the expiration of the initial term or the respective successive term as to whether either Party wants to renew the Agreement for another successive term.

3. **Payment.** The City shall pay ~~One Hundred Forty-Five~~ One Hundred Twelve Dollars and ~~3200/100~~ 3200/100 (\$12.32) per hour for each individual (a "Trainee") sent by City to Agency to complete the Services. Agency will not refund City and/or the Trainee if a Trainee is disqualified from receiving a CDL or otherwise fails to successfully complete the Services. Agency will also not refund City and/or Trainee if Trainee voluntarily or involuntarily discontinues or is removed from the Services

City agrees not to pass on any fee to the individual Trainee.

4. **Notices.** Any notices that either of the Parties may need to deliver to the other Party shall be sent as follows:

If to Agency, via Certified US Mail to:

Laketran
555 Lakeshore Blvd.
Painesville Twp., OH 44077
ATTN: Ben Capelle, CEO

With a copy to:
Brandon Dynes, Esq.
Thrasher, Dinsmore & Dolan, Co., L.P.A.
100 7th Avenue, Suite 150
Chardon, Ohio 44024

If to City, via Certified US Mail to:

City of Willowick
30435 Lakeshore Boulevard
Willowick, Ohio 44095
ATTN: Michael J. Vanni

With a copy to:
Stephanie Landgraf, Esq.
Wiles & Richards
37265 Euclid Avenue
Willoughby, Ohio 44094

5. **Trainee's Certification of Department of Transportation Regulations.** City agrees that any Trainee sent by City to receive the Services will be required to certify that he/she will comply with U.S. Department of Transportation regulations in parts 40, 382, 383, and 391, as well as State and/or local laws, related to controlled substances testing, age, medical certification, licensing, and driving record.

This may include, but is not limited to, a requirement that a Trainee pass a drug screen and possess a valid Ohio Driver's License with six (6) points or less on the Trainee's driving record and no conviction and/or guilty plea for Operating a Vehicle Under the Influence of Drugs or Alcohol at the time the Services begin.

6. **Services Are Not a Promise.** Agency does not guarantee or imply that any person sent by City to complete the Services will receive a commercial driver's license as a result of successfully completing the Services or will pass any required state examination to receive a Commercial Driver's License or any other license to operate motor vehicles in the State of Ohio.
7. **Agency Reserves Right to Remove Trainees.** The Agency reserves the right to expel any Trainee receiving the Services at its sole discretion and without refund to City and/or Trainee.

8. **Insurance.** City shall obtain, and keep in force during the entirety of the Agreement, the following:

- i. Commercial general liability insurance on an occurrence basis for bodily injury, personal injury, death, or destruction or damage to any property arising directly or indirectly out of its use of the Agency's facilities and/or premises (hereinafter "Premises"), as follows: (a) General Aggregate Limit (available under umbrella coverage) of \$2,000,000; (b) Personal Injury Limit of (\$1,000,000); and (iii) Each Occurrence Limit of \$1,000,000;
- ii. All-risk property damage insurance in an amount adequate to cover the cost of replacement of all leasehold and building improvements in, on, or serving the Premises, as well as the cost of replacement of all fixtures, equipment, decorations, contents, and personal property therein; and
- iii. Worker's Compensation insurance providing statutory benefits for accidents and occupational diseases and employer's liability with limits of liability of not less than statutory limits.

With respect to the insurance policies above, City shall deliver to Agency, within ten (10) days after the Execution Date of this Agreement, and at any time within ten (10) days of the written request of Agency, a certificate of insurance in compliance with the obligations hereunder, endorsed to name Laketran and the Ohio Transit Risk Pool ("OTRP") and its designees as additional insureds. Said insurance policies will state that all coverages are primary and noncontributory, as well as that: (a) such insurance policies may not be canceled or materially amended with respect to Laketran, OTRP, or its designees, except after thirty (30) days' written notice sent by certified mail to Laketran, OTRP, and its designees by the City; and (b) the City is solely responsible for payment of premiums for such insurance.

9. **City's Acknowledgment of Liability for Trainee Negligence.** Agency and City are responsible for their own liability. City is responsible for any Trainee who City sends to receive the Services. City understands and agrees that it is responsible for its own liability, including any intentional or negligent act done by any Trainee sent by City to receive the Services, regardless of whether that act occurred in a City or Agency owned vehicle.

Conversely, Agency understands and agrees that it is responsible for any intentional or negligent act done by an Agency employee, regardless of whether that act occurred in a City or Agency owned vehicle.

10. **City to Ensure Trainee Knowledge.** City shall ensure that each Trainee has knowledge that they will be accountable for payment of personal medical expenses as a result of illness or injury during the Services. Furthermore, City agrees that by sending a Trainee to the Agency it has relayed the requirements and expectations of the Services before the Trainee begins the Services.

11. **Independent Contractor.** It is the express intention of the Parties that the Parties are independent contractors, and Agency is not an employee, agent, joint venturer, or partner of

the City, and that City is not an employee, agent, joint venturer or partner of Agency. Neither party can bind the other to any agreement absent express written approval.

12. **Termination for Default or Breach.** If, through any cause, City fails to perform fully, timely, and in a proper manner its obligations under this Agreement, or if City breaches any of the covenants, conditions or agreements contained in this Agreement, Agency shall thereafter have the right to terminate the Agreement by giving notice in writing which shall specify the effective date thereof, to City of such termination. In such event, Agency shall be entitled to receive just and equitable compensation for any services that were performed but remained unpaid at the time of City's default or breach.

Notwithstanding the above, City shall not be relieved of any liability to Agency for damages sustained by the Agency by virtue of any breach of contract or warrants, or of both, by City for the purpose of setoff and/or recoupment until such time as the exact amount of damages due Agency from City is determined.

13. **Examination of Records.** The Agency shall have access to any books, records, and documents of City that are pertinent to this Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.
14. **Captions.** Captions contained in this Agreement are included only for convenience of reference and do not define, limit, explain or modify this Agreement or its interpretation, instruction or meanings and are in no way intended to be construed as part of this Agreement.
15. **Severability.** If any Clause of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.
16. **Changes.** Agency may at any time by written notice make changes within the general scope of this order as to the Services. Should any such change increase the cost of, or the time required for, performance of the Services; an equitable adjustment in the price will be negotiated. Any claims for adjustment by City must be made within thirty (30) days from the date the change is ordered or with such additional period as may be agreed upon. If no claim for adjustment is submitted by City within thirty (30) days from the date the change is ordered, the change order is waived.
17. **Entire Agreement; Modification.** This Agreement, including referenced attachments, constitutes the complete and exclusive understanding and agreement of the Parties and supersedes all prior promises, understandings, and agreements, whether written or oral, with respect to the subject matter hereof. Any waiver, modification, or amendment of any provision of this Agreement will be effective only if in writing and signed by the Parties hereto.
18. **Force Majeure.** If Agency's performance of obligations under this Agreement is materially hampered, interrupted, or interfered with for reasons including, but not limited to: fire, casualty, lockout, strike, labor conditions, unavoidable accident, riot, war, earthquake, landslides, public health pandemic, disease, or other acts of God, or by the enactment, issuance,

or operation of any municipal, county, State, or federal law, ordinance or executive, administrative, or judicial regulation, order or decree, or by any local or national emergency, Agency shall be excused from performance of this Agreement and will not be responsible for providing services not yet rendered.

19. **Conflicts of Interest.** Each Party represents and warrants that it has no business, professional, personal, or other interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.
20. **Applicable Law and Forum.** This Agreement shall be governed by the laws of the State of Ohio. All claims, counterclaims, disputes and other matters arising out of or correlating to this Agreement, or its breach will be decided in a court of competent jurisdiction within Lake County, State of Ohio or for federal matters, within the United States District Court for the Northern District of Ohio.
21. **Acknowledgment.** City, having been encouraged to and having had the opportunity to be advised by counsel, have freely and knowingly entered into this Agreement.
22. **Incorporation of FMCSA Terms.** Agency will comply with the requirements of 49 C.F.R. 380, subpart F and all applicable appendices. City agrees to abide by all applicable Federal Motor Carrier Safety Administration requirements. City understands that the Services provided by Agency are not publicly offered and will be listed under any FMCSA database as "private enrollment."

SIGNATURES

The Parties hereby represent and warrant to each other that each Party has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement and that signature and execution of this Agreement has been duly authorized.

City

Agency

Michael J. Vance
Printed Name

Printed Name

[Signature]
Signature

Signature

Mayor/Safety Director
Title

Title

SEP 05
Date

Date