

MEMORANDUM OF UNDERSTANDING
LAKE COUNTY REGIONAL TRANSIT AUTHORITY
AND
THE CITY OF WILLOWICK

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into as of the date of the last signature below (the “Effective Date”) by and between the CITY OF WILLOWICK, an Ohio municipal corporation, 30435 Lakeshore Blvd, Willowick, OH 44095 (hereinafter referred to as “City”), and the LAKE COUNTY REGIONAL TRANSIT AUTHORITY, also known as Laketran, an Ohio regional transit authority, 555 Lakeshore Blvd., Painesville, Ohio 44077 (hereinafter referred to as “Laketran”). The City and Laketran may each be referred to as a “Party” and collectively as the “Parties.”

WHEREAS, Laketran and the City partnered with the City of Willoughby and the City of Eastlake on a planning study to improve transportation and mobility along Vine Street between Erie Street in Willoughby and Lakeshore Boulevard in Willowick; and

WHEREAS, Laketran provides transit service throughout Lake County, including fixed-route and commuter service along Vine Street; and

WHEREAS, the Northeast Ohio Areawide Coordinating Agency (“NOACA”) awarded One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) in federal Transportation Improvement Program Transportation Alternatives Program funding and Three Hundred Forty-Four Thousand Six Hundred Seventy-One and 00/100 Dollars (\$344,671.00) in Transportation for Livable Communities Initiative funding to Laketran to implement the Vine Street Corridor Planning Study, for a total of One Million Eight Hundred Forty-Four Thousand Six Hundred Seventy-One and 00/100 Dollars (\$1,844,671.00); and

WHEREAS, the Ohio Department of Transportation (“ODOT”) awarded Seven Hundred Twenty Thousand and 00/100 Dollars (\$720,000.00) in federal funding administered through the Ohio Transportation Partnership Program to Laketran to implement bus shelters and passenger improvements along Vine Street; and

WHEREAS, the total available federal funding awarded for the Project is Two Million Five Hundred Sixty-Four Six Hundred Seventy-One and 00/100 Dollars (\$2,564,671.00) and is expected to require an aggregate local match of approximately Six Hundred Forty-One One Hundred Sixty-Eight and 00/100 Dollars (\$641,168.00); and

WHEREAS, the City and Laketran desire to jointly pursue a sidewalk and transit-connectivity project along Vine Street in accordance with applicable funding requirements and the planning study (the “Project”); and

WHEREAS, Laketran will obligate the federal funding and procure and contract with the construction contractor for the Project, subject to the terms of the applicable grants, the availability of funding, and all required governmental approvals and appropriations.

NOW, THEREFORE, in consideration of the mutual promises, terms, and conditions stated herein, the Parties agree as follows:

Agreed Purpose and Project Scope. The Project improvements within the City’s municipal boundaries (the “City Improvements”) will include streetlighting, streetscaping, sidewalk and transit-connectivity improvements, and pedestrian crossings, as more particularly described in the final plans, specifications, and bid documents approved by Laketran (collectively, the “Project Documents”). The Project Documents may be modified as required by a funding agency, applicable law, field conditions, or an approved change order.

Nothing in this MOU obligates Laketran to construct any improvement that is not included in the final Project Documents or for which sufficient funding and required approvals are unavailable.

Laketran Transit Improvements. Laketran intends to use its funding to construct improved transit amenities along Vine Street, including a bus stop at 32114 Vine Street, Willowick, Ohio 44095, subject to final design, site availability, applicable approvals, and continued funding eligibility. Laketran retains control over the design, location, operation, alteration, and removal of improvements used primarily for transit purposes.

Construction Cost and Allocation. The total construction cost is currently estimated at Three Million Two Hundred Five Thousand Eight Hundred Thirty-Nine and 00/100 Dollars (\$3,205,839.00). Of the Two Million Five Hundred Sixty-Four Six Hundred Seventy-One and 00/100 Dollars (\$2,564,671.00) grant award, Seven Hundred Eleven Thousand Three Hundred Ninety-Eight and 33/100 Dollars (\$711,398.33) is currently allocated to the City Improvements as the City's grant share. The City shall provide a local share of not less than One Hundred Seventy-Seven Thousand Eight Hundred Forty-Nine and 58.100 Dollars (\$177,849.58) and shall reimburse Laketran for that amount in accordance with this MOU. The allocations are estimates based on the present Project budget and may be adjusted to reflect the accepted bid, approved change orders, actual quantities, funding-agency determinations, and final eligible costs.

City Responsibility for Costs. Except for costs expressly allocated to Laketran in Exhibit A attached hereto and incorporated herein, the City shall be responsible for all costs attributable to the City Improvements that are not paid from grant funds, including the required local share; bid overruns; approved change orders; utility relocation costs allocated to the City; costs resulting from City-requested work, City delay, or inaccurate information supplied by the City; and costs determined by a funding agency to be ineligible or disallowed to the extent attributable to the City Improvements or the City's act or omission. Laketran shall have no obligation to advance its own funds for the City's share or to perform work exceeding available grant funds and duly appropriated local funds. No material increase in the City's maximum financial obligation shall be effective unless approved in writing by the City and Laketran, except that the City remains responsible for costs already incurred or irrevocably committed at its written request or with its written approval.

Appropriations and Authority. Each Party's obligations are subject to its lawful authority, all required governmental approvals, and the appropriation and availability of funds. The City represents that it has obtained, or before authorizing Laketran to incur costs will obtain, all legislation, appropriations, and other approvals necessary to perform its obligations. If sufficient City funds are not appropriated or available, the City shall immediately notify Laketran and direct Laketran in writing not to incur additional City costs. Any non-appropriation or funding unavailability will not relieve the City from paying amounts lawfully incurred or irrevocably committed before Laketran receives that direction.

Grant Funding and Compliance. Laketran will administer the grant funds allocated to the Project and will serve as the contracting party for construction. Each Party shall comply with funding requirements applicable to its activities and shall furnish records, certifications, approvals, and cooperation reasonably requested by Laketran or a funding agency. The City shall not take or omit any action that causes a loss, reduction, delay, recapture, or disallowance of Project funding. If grant funds are reduced, withdrawn, delayed, or determined to be unavailable, Laketran may suspend, reduce, modify, rebid, or terminate all or any portion of the Project without liability for unperformed work.

Surveying, Design Engineering, and Construction Engineering. These services will be handled separately under existing Verdantas agreements with Laketran and the City. This MOU does not modify either Party's separate agreement with Verdantas or make either Party responsible for the other Party's obligations under such an agreement. Verdantas's review, recommendation, or approval will not relieve the City, the contractor, or any design professional from responsibility for its respective acts, omissions, or contractual

duties.

City Review and Approvals. The City shall review plans, specifications, proposed changes, and other submissions requiring City action within thirty (30) business days after receipt, or within any shorter period reasonably required by the Project schedule and identified in the submission. The City's review is limited to matters within its lawful jurisdiction and does not transfer design, engineering, construction, safety, or regulatory responsibility to Laketran. Delay attributable to the City may result in a schedule extension and additional costs chargeable to the City.

Specifications and Bids. Laketran will provide specifications and obtain bids for Project construction. The accepted bid amount will be divided and allocated in accordance with this MOU and Exhibit A, subject to adjustment based on bid items and actual quantities attributable to each Party's improvements. If bids are higher than the original estimate, Laketran may reject the bids, modify or reduce the Project scope, solicit new bids, or submit a written amendment or revised allocation to the City for approval. Laketran is not required to award a contract unless adequate funding and all required approvals are in place.

Contract Documents and Project Administration. Laketran will prepare and enter into a contract with the lowest responsive and responsible bidder, or other bidder lawfully selected by Laketran, as determined by Laketran in accordance with applicable procurement requirements. The Contract Documents will include all provisions required by applicable funding sources and law, including applicable wage, nondiscrimination, procurement, audit, records-retention, and federal contracting requirements. Laketran will administer the construction contract and will have authority to communicate with and direct the contractor. The City shall not direct the contractor or authorize changes to the work, schedule, price, or means and methods. A City request affecting the work is not binding unless accepted in a written change order or other written instrument executed or approved by Laketran. Nothing in this MOU makes the contractor or any subcontractor an agent of Laketran or the City.

Access, Right-of-Way, Utilities, and Permits. At no cost to Laketran, the City shall provide or secure all municipal consents, permits, licenses, easements, rights of entry, and rights-of-way within the City that are necessary for the City Improvements, except those expressly assigned to Laketran in the Project Documents. The City shall coordinate municipal utilities and identify known underground and above-ground facilities within the Project area. The City represents only that it has authority to grant access to property under its ownership or control. Laketran and its contractors may enter such property at reasonable times to design, construct, inspect, and close out the Project. The City shall not interfere with or permit conflicting work within the Project area without Laketran's prior written consent.

No Assumption of Municipal Duties; Ownership and Maintenance. Laketran's role as grant recipient, contracting party, or Project administrator does not constitute an assumption of the City's governmental, police-power, roadway, sidewalk, drainage, lighting, traffic-control, utility, inspection, maintenance, or public-safety duties. Except for transit amenities designated in writing as Laketran property, the City shall accept ownership and responsibility for operation, maintenance, repair, replacement, inspection, and public safety of completed City Improvements upon substantial completion or beneficial use, whichever occurs first. Final payment, grant closeout, or expiration of a contractor warranty is not a condition to the City's maintenance responsibility.

Payments and Reimbursement. Laketran will pay the contractor directly based on proper payment applications reviewed and approved by Verdantas, as Engineer of Record, and Laketran. Payment applications are expected monthly during construction and will be paid in accordance with the construction contract after receipt, review, and approval. Laketran may invoice the City monthly for the City's allocable share of approved costs and shall provide reasonable supporting documentation. The City shall pay each invoice within thirty (30) days after receipt. If the City disputes an invoice in good faith, it shall provide a specific written objection within fifteen (15) days after receipt and shall timely pay the undisputed amount. The Parties shall promptly

attempt to resolve any disputed amount, but a dispute does not authorize the City to withhold unrelated amounts. Laketran may issue a final reconciliation invoice following substantial completion or Project closeout.

Records and Audit. Each Party shall maintain Project records for the period required by applicable funding requirements and shall provide records reasonably requested for audit, reimbursement, closeout, or compliance purposes. Each Party acknowledges that records relating to this MOU may be subject to public disclosure. Neither Party shall represent that Project records are confidential unless a lawful exception applies, and the Party receiving a public-records request shall retain responsibility for responding to that request. Before producing records received from the other Party, the receiving Party may, when reasonably practicable, notify the other Party so that it may identify any claimed exception.

Insurance and Contractor Risk Allocation. Laketran shall require the construction contractor to maintain insurance of the types and limits stated in the Contract Documents and, to the extent permitted by law and commercially available under the applicable policies, to name Laketran, the City, their governing boards or councils, and their respective officers and employees as additional insureds for liabilities arising from the contractor's work. Laketran shall also require appropriate contractor indemnification obligations benefiting Laketran and the City, subject to applicable law and the Contract Documents. These requirements do not constitute a representation by Laketran regarding the sufficiency, collectability, or coverage of any policy. Each Party shall maintain insurance or a lawful self-insurance program appropriate to its own operations and exposures.

Responsibility for Claims; No Public-Entity Indemnity. Each Party is responsible for claims, losses, costs, and liabilities arising from its own acts or omissions and those of its officers, employees, and agents, but only to the extent imposed by applicable law. The City is responsible, to the extent imposed by applicable law, for claims arising from the ownership, condition, operation, or maintenance of the City Improvements after the responsibility for those improvements passes to the City. Neither Party assumes an obligation to indemnify the other beyond its lawful authority, and nothing in this MOU creates an indemnification obligation contrary to applicable law.

Preservation of Immunities and Defenses. Nothing in this MOU waives, limits, or modifies any governmental, sovereign, statutory, common-law, or other immunity, defense, limitation of liability, damages limitation, or privilege available to either Party or to its governing body, officers, employees, or agents. No provision requiring cooperation, insurance, responsibility for claims, or payment shall be construed as such a waiver.

Default and Cure. If either Party materially breaches this MOU, the non-defaulting Party shall provide written notice describing the breach. The defaulting Party shall have fifteen (15) days after receipt to cure a payment default and thirty (30) days after receipt to cure any other default; provided that, if a nonmonetary default cannot reasonably be cured within thirty (30) days, the defaulting Party shall not be in default if it begins corrective action within that period and diligently completes it. No cure period is required when immediate suspension is reasonably necessary to protect public safety, preserve funding, comply with law or a funding directive, or prevent material harm.

Suspension and Termination. Laketran may suspend affected work upon a City payment default, failure to provide required access or approval, material noncompliance with a funding requirement, or any event that threatens Project funding or lawful performance. Either Party may terminate this MOU for an uncured material breach. Laketran may also terminate or reduce the Project upon loss or material reduction of funding, rejection of bids, failure to obtain required approvals, or a determination that proceeding is unlawful or not reasonably feasible. Termination does not affect accrued payment obligations, records duties, ownership and maintenance responsibilities, responsibility for claims, or provisions intended by their nature to survive. The City shall remain responsible for its allocated share of costs incurred or irrevocably committed before the effective date

of suspension or termination, including reasonable closeout and cancellation costs attributable to the City Improvements.

Term. This MOU begins on the Effective Date and continues until final Project closeout and payment of all amounts due, unless earlier terminated in accordance with this MOU. Provisions concerning payment, audit and records, ownership and maintenance, public records, claims, immunities, and accrued rights survive expiration or termination.

Notices. A notice required under this MOU must be in writing and delivered personally, by nationally recognized overnight courier, by certified United States mail with return receipt requested, or by electronic mail with confirmation of receipt, to the following representatives. Notice is effective upon actual receipt; provided that a notice of default, suspension, or termination sent by electronic mail must also be sent on the same day by another permitted method. Either Party may change its notice information by notice given under this section.

If to the City:

City of Willowick
Attn: Michael J. Vanni
30435 Lakeshore Blvd, Willowick, OH 44095
Email: mvannie@cityofwillowick.com

With a copy to:

City of Willowick Director of Law
Mandy Gwartz Esq.
Mandy Gwartz, LLC
20050 Lakeshore Blvd.
Euclid, Ohio 44123
Email: mandy@gwartzlaw.com

If to Laketran:

Lake County Regional Transit Authority
Attn: Chief Executive Officer
555 Lakeshore Blvd.
Painesville, Ohio 44077
Email: bcapelle@laketran.com

With a copy to:

Legal Counsel to the Laketran Board of Trustees
Brandon Dynes, Esq.
Thrasher, Dinsmore & Dolan, Co., L.P.A.
100 7th Avenue, Suite 150
Chardon, Ohio 44024
Email: bdynes@tddlalaw.com

Compliance with Law. Each Party shall perform its obligations in accordance with applicable law and the binding requirements of the Project's funding agencies. Nothing in this MOU requires either Party to take an action that exceeds its statutory authority or violates applicable law.

No Partnership, Agency, or Employment. The Parties are independent public entities. This MOU does not create a partnership, joint venture, fiduciary relationship, employment relationship, or agency. Neither Party may bind the other or incur an obligation on the other's behalf, except as expressly stated in this MOU.

No Third-Party Beneficiaries. This MOU is solely for the benefit of the Parties. It does not confer any right, remedy, or benefit upon the contractor, Verdantas, any funding agency, any property owner, or any other person or entity.

Assignment. Neither Party may assign or transfer this MOU or any material right or obligation under it without the other Party's prior written consent, except that Laketran may assign or transfer administrative responsibilities when required or approved by a funding agency or governmental authority.

Governing Law and Venue. This MOU is governed by the laws of the State of Ohio, without regard to conflict-of-law principles. Any action concerning this MOU shall be brought in a court of competent jurisdiction located in Lake County, Ohio.

Entire Agreement; Amendments; Order of Precedence. This MOU, including Exhibit A, constitutes the entire agreement between the Parties concerning its subject matter and supersedes prior oral or written understandings concerning that subject matter. An amendment must be in writing and executed by authorized representatives of both Parties. If a conflict exists between the body of this MOU and Exhibit A, the body of this MOU controls, except that the final funding-agency-approved allocation controls to the extent required as a condition of funding. The Project Documents govern technical construction requirements but do not amend the Parties' allocation of financial responsibility unless both Parties approve the amendment in writing.

Waiver; Severability. A waiver is effective only if in writing and applies only to the specific matter waived. Delay or failure to enforce a right is not a waiver. If any provision is determined to be invalid or unenforceable, it shall be enforced to the maximum lawful extent, and the remaining provisions shall remain in effect.

Execution Authority. Each person signing this MOU represents that the person is duly authorized to execute and deliver it on behalf of the identified Party and that all actions necessary to authorize that Party's execution and performance have been taken, subject to any express funding or appropriation conditions stated herein.

Counterparts and Electronic Signatures. This MOU may be executed and delivered in one or more counterparts, all of which shall be considered one and the same MOU and shall become effective when each Party has signed and delivered a counterpart. Signatures delivered by facsimile, electronic transmission, or a legally valid electronic-signature method shall have the same force and effect as original signatures.

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IN WITNESS WHEREOF, the Parties have executed this MOU in Lake County, Ohio, as of the dates stated below.

CITY OF WILLOWICK, OHIO

By: _____

Printed Name: Michael J. Vanni
Title: Mayor

Date: _____

LAKE COUNTY REGIONAL TRANSIT AUTHORITY

By: _____

Printed Name: Ben Capelle
Title: Chief Executive Officer

Date: _____

APPROVED AS TO FORM:

Mandy Gwartz Esq.
Director of Law, City of Willowick

APPROVED AS TO FORM:

Brandon D.R. Dynes, Esq.
Legal Counsel to Laketrans Board of Trustees

Exhibit A
Grant Funding

The City of Willowick will reimburse Laketrans not less than One Hundred Seventy-Seven Thousand Eight Hundred Forty-Nine and 58.100 Dollars (\$177,849.58) for construction expenses incurred for the City Improvements, subject to adjustment and the additional City cost responsibilities stated in this MOU.

Grantor	Funding Source	Grant Awards	EASTLAKE		WILLOUGHBY		WILLOWICK		LAKETRAN		Total Cost
			Grant Share	Local Share	Grant Share	Local Share	Grant Share	Local Share	Grant Share	Local Share	
NOACA	TA	\$1,500,000	\$500,000.00	\$125,000.00	\$500,000.00	\$125,000.00	\$500,000.00	\$125,000.00	\$0.00	\$0.00	\$1,875,000
NOACA	TLCI	\$344,671	\$114,890.33	\$28,722.58	\$114,890.33	\$28,722.58	\$114,890.33	\$28,722.58	\$0.00	\$0.00	\$430,839
ODOT OTP2	STBG	\$720,000	\$193,016.00	\$48,254.00	\$96,508.00	\$24,127.00	\$96,508.00	\$24,127.00	\$333,968.00	\$83,492.00	\$900,000
TOTAL		\$2,564,671	\$807,906.33	\$201,976.58	\$711,398.33	\$177,849.58	\$711,398.33	\$177,849.58	\$333,968.00	\$83,492.00	\$3,205,839

The figures above reflect the current estimated allocation. Actual obligations will be determined under the MOU based on accepted bids, actual quantities, approved changes, funding eligibility, and final Project costs.