

RESOLUTION NO. 1975 - 46

APPROVING THE MASS TRANSIT SYSTEM TRANSFER AGREEMENT AND RELATED SCHEDULES, EXHIBITS AND DOCUMENTS, AND AUTHORIZING THE PRESIDENT AND THE SECRETARY-TREASURER OF THE AUTHORITY TO EXECUTE SUCH MASS TRANSIT SYSTEM TRANSFER AGREEMENT AND OTHER DOCUMENTS NECESSARY TO COMPLETE THE TRANSFER OF THE CLEVELAND TRANSIT SYSTEM FROM THE CITY OF CLEVELAND AND THE CLEVELAND TRANSIT SYSTEM BOARD TO THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY.

WHEREAS, the Authority, acting by Resolution No. 1975-4, adopted May 14, 1975, accepted the Memorandum of Understanding and the Transfer Agreement adopted by the Cleveland City Council, May 12, 1975, the Cuyahoga County Commissioners, May 19, 1975, and approved by the designated representatives of the Cuyahoga County Mayors and Managers Association, The Cleveland Transit System Board, and the Mayor of the City of Cleveland; and

WHEREAS, the Cleveland City Council, by Ordinance No. 342-75, adopted May 12, 1975, and the Cleveland Transit System Board, by Resolution No. 525-75, adopted August 28, 1975, has accepted the Mass Transit System Transfer Agreement, the schedules attached thereto, the exhibits attached thereto, and the other documents related thereto; and

WHEREAS, the one percent (1%) sales tax levy for transit purposes, referred to in the Memorandum of Understanding and the Transfer Agreement has been adopted by the electors of Cuyahoga County in a special election held on July 22, 1975; and

WHEREAS, the Authority has been presented with the Transfer Agreement, together with schedules, exhibits, and other related documents necessary to effectuate the transfer of the Cleveland Transit System to the Authority; now therefore:

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

Section 1. That the Authority hereby approves and accepts the Mass Transit System Transfer Agreement and the schedules attached thereto, the exhibits attached thereto, and the other documents related thereto attached hereto and marked Exhibit A.

Section 2. That the President and the Secretary-Treasurer be and they are hereby authorized and directed to execute and deliver in the name of and in behalf of the Authority the Mass Transit System Transfer Agreement, approve the schedules and exhibits attached thereto, and to execute such other documents as may be necessary to effectuate the transactions contemplated by the Mass Transit System Transfer Agreement, all in substantially the form of the documents presented to the Board of Trustees of the Authority, with any insubstantial changes therein, as the President and Secretary-Treasurer of the Authority, by their execution thereof, shall approve, the signing thereof by the President and the Secretary-Treasurer of the Authority to be conclusive evidence of their approval of such insubstantial change.

Section 3. That the President and the Secretary-Treasurer of the Authority be and they are hereby authorized and directed to execute a Payment Agreement promising to pay to the General Fund of the City of Cleveland the sum of Eight Million Eight Hundred Seventy-Five Thousand Dollars (\$8,875,000.00), the principal amount outstanding on the loan made by the City to the Transit Board of the City of Cleveland (the "Loan"), together with interest at the rate of six percent (6%) per annum on such principal amount from August 16, 1973, and the sum of One Million One Hundred Sixty Thousand Three Hundred Eighty Dollars (\$1,160,380.00), the amount of the City's investment in parking facilities (the "Investment"), attached hereto and marked Exhibit B.

Section 4. That the President and the Secretary-Treasurer of the Authority be and they are hereby authorized and directed to execute an Assumption of Obligations, Liabilities and Duties Agreement assuming and agreeing to discharge, pay and perform certain obligations, liabilities and duties incurred by the City of Cleveland and/or The Cleveland Transit System in operation of its mass transit facilities, attached hereto and marked Exhibit C.

Section 5. That the President and the Secretary-Treasurer of the Authority be and they are hereby authorized and directed to execute Acceptances of Assignments of Leases whereunder the City of Cleveland and/or The Cleveland Transit System, as lessor, has entered into leases with the Zapis Construction Corporation, attached hereto and marked Exhibit D, and Puritas Landing Co., attached hereto and marked Exhibit E.

Section 6. That the President and the Secretary-Treasurer of the Authority be and they are hereby authorized to take such further action and to execute and deliver all such further agreements, instruments, certificates and documents, in the name of and on behalf of the Greater Cleveland Regional Transit Authority as shall be necessary, proper or advisable in order to carry out the intent and to carry out the purposes of this resolution.

Section 7. That this resolution shall become effective immediately upon its adoption.

Adopted: September 2, 1975

President

Attest:

William C. Schuman
Secretary-Treasurer

PAYMENT AGREEMENT

FOR VALUE RECEIVED pursuant to the Mass Transit System Transfer Agreement dated September __, 1975 by and among The Greater Cleveland Regional Transit Authority, a regional transit authority created pursuant to Sections 306.30 through 306.54, 306.70 and 306.71 of the Ohio Revised Code (the "Authority"), the City of Cleveland (the "City") and the Transit Board of the City of Cleveland, the Authority hereby promises to pay to the General Fund of the City the sum of Eight Million Eight Hundred Seventy-Five Thousand Dollars (\$8,875,000.00), the principal amount outstanding on the loan made by the City to the Transit Board of the City of Cleveland (the "Loan"), together with interest at the rate of 6% per annum on such principal amount from August 16, 1973, and the sum of One Million One Hundred Sixty Thousand Three Hundred Eighty Dollars (\$1,160,380.00), the amount of the City's investment in parking facilities (the "Investment"), which amounts shall be payable as follows:

1. On or before December 31, 1975, the amount of the Investment, One Million One Hundred Sixty Thousand Three Hundred Eighty Dollars (\$1,160,380.00);
2. On or before December 31, 1975, the sum of One Million Seven Hundred Seventy-Five Thousand Dollars (\$1,775,000.00) plus all accrued interest on the unpaid

balance of the Loan from August 16, 1973 to the date of such payment;

3. On or before December 31, 1976, the sum of One Million Seven Hundred Seventy-Five Thousand Dollars (\$1,775,000.00) plus all accrued interest on the unpaid balance of the Loan to the date of such payment;

4. On or before December 31, 1977, the sum of One Million Seven Hundred Seventy-Five Thousand Dollars (\$1,775,000.00) plus all accrued interest on the unpaid balance of the Loan; and

5. On or before December 31, 1978, the sum of One Million Seven Hundred Seventy-Five Thousand Dollars (\$1,775,000.00) plus all accrued interest on the unpaid balance of the Loan.

6. On or before December 31, 1979, the sum of One Million Seven Hundred Seventy-Five Thousand Dollars (\$1,775,000.00) plus all accrued interest on the unpaid balance of the Loan.

IN WITNESS WHEREOF, the Authority has caused this Agreement to be executed by duly authorized officers as of the _____ day of _____, 1975.

GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY

By _____
President

and by _____
Vice President

MASS TRANSIT SYSTEM TRANSFER AGREEMENT

This MASS TRANSIT SYSTEM TRANSFER AGREEMENT made and entered into this 5th day of September, 1975, by the City of Cleveland, hereinafter referred to as the "City", the Transit Board of the City of Cleveland, hereinafter referred to as the "CTS Board", and the Greater Cleveland Regional Transit Authority, a regional transit authority created pursuant to Sections 306.30 and through 306.54 and 306.70 and 306.71 of the Ohio Revised Code, hereinafter referred to as the "Authority".

WITNESSETH:

WHEREAS, the City, by Ordinance 2380-B-74 and the County, by Resolution 2865, passed on December 30, 1974, created the Authority pursuant to Sections 306.30 through 306.54 and 306.70 and 306.71 of the Ohio Revised Code, with territorial boundaries and jurisdiction coextensive with the territorial boundaries of Cuyahoga County; and

WHEREAS, the City through the CTS Board, presently owns and operates a public transportation system servicing greater Cleveland pursuant to authorization of Chapter 21 of its Charter; and

WHEREAS, the enactments creating the Authority contemplate the transfer to the Authority of the transit system owned by the City through the CTS Board and the transit systems owned by other municipal corporations of Cuyahoga County; and

WHEREAS, such enactments required the execution of a Memorandum of Understanding among the City, the CTS Board, the Board of County Commissioners of Cuyahoga County, and three (3) designated representatives of the

Cuyahoga County Mayors and City Managers Association setting forth the basic understandings of the parties thereto relative to the terms of this Agreement which Memorandum was duly executed on the 21st day of May, 1975; and

WHEREAS, the City and the CTS Board agree, in accordance with the terms hereinafter set forth, to transfer to the Authority the properties and assets of the City's transit system for the purpose of providing a comprehensive coordinated public mass transportation system for Cuyahoga County; and

WHEREAS, this Agreement has been duly authorized by ordinance of the Council of the City, resolution of the CTS Board and by resolution of the Authority;

NOW, THEREFORE, in consideration of the mutual agreements, covenants, representations and terms as hereinafter set forth, the parties mutually agree as follows:

1. Transfer of Property

a. Assets and Properties Transferred. The City and the CTS Board agree to transfer to the Authority at the Closing on the Closing date, as hereinafter defined, the following assets and properties:

- i. The real estate and improvements thereon directly relating to the City's operation of its mass transit system as more particularly set forth in Schedule A.
- ii. All the tangible personal property used in the City's mass transit system as more particularly set forth in Schedule A-1, with final adjustment to be made at the Closing date to reflect changes in

supplies and equipment arising out of the normal operation of the City's transit system from the date of execution of this Agreement until such Closing date.

b. Excluded Assets and Properties. Schedules A and A-1 shall constitute the exclusive and complete listing of the properties to be transferred under this Agreement and there shall be excluded from said transfer the properties set forth in Schedule A-2 which are not directly related to the City's operation of its mass transit system.

c. Air Rights. With the exception of the properties for which an air right lease already exists as set forth in Schedule E, there shall be reserved to the City in the instruments of conveyance all air rights over the properties transferred hereunder beyond such air rights required in the reasonable opinion of the Authority for transit and related operations, including all necessary rights of support and the right to sell, assign, lease, mortgage, or permit the mortgage of such rights, provided that the City may not construct improvements within the areas over such property without the prior approval of the Authority, which approval shall not be unreasonably withheld.

The City further reserves such easements and rights as may be necessary for the construction, operation and use of such improvements as the City or its grantee may construct within such air rights over, in or upon the property transferred, provided, that the City shall not undertake any improvement or other construction which in the reasonable opinion of the Authority would interfere with, restrict or endanger transit operations and needs including maintenance, passenger access and all other transit related activities.

d. Reservation of Utility Easements. The documents transferring the title to the real property hereunder shall reserve to the City all easements of record and not of record necessary for existing water, electric, sanitary and storm sewer lines, connections and appurtenances thereto of the City.

The City, or its authorized agents and contractors, upon notice to the Authority, shall have the right to enter upon any property transferred hereunder for the purpose of operating, maintaining, repairing, replacing, renewing and removing any such line or connection located in or under the property transferred provided that upon completion of such operation, maintenance, repair, replacement, renewal or removal the City will leave the property in substantially the same condition as before any work was performed and will perform all work in a manner that will not interfere with the full use of the property by the Authority.

e. Instruments of Transfer. At the Closing on the Closing date, the City, through the CTS Board, agrees to deliver to the Authority appropriate documents to effect or evidence the sale, conveyance, assignment and transfer to the Authority, free and clear of all liens and encumbrances except as noted in Schedule B and to place the Authority, its officers, agents and employees in full possession and enjoyment of all such assets and property. Without limiting the generality of the foregoing, the City, at such Closing, shall deliver to the Authority the following:

- i. Bills of sale transferring to the Authority the motor coaches, rail cars, service equipment and other property listed or described on Schedule A-1, wheresoever located.

- ii. Certificates of title, properly executed, with respect to all motor vehicles covered by the bills of sale in (i) above.
- iii. Official deeds conveying to the Authority the property listed or described in Schedule A with the reservation of interests and rights as provided for by Sections 1 (c), (d), (e) and (f) of this Agreement.
- iv. All instruments necessary to transfer and assign all contracts and other interests as set forth in Schedules E and G, and all policies of insurance as set forth in Schedule H except those policies covering more than the transit business or transit property.

f. The documents provided for in subsection (e) above shall be in form satisfactory to counsel for the Authority and shall contain such reservation as is provided for by Section 9d and if required or permitted to be recorded, shall be in appropriate form for recording under the applicable recording laws.

g. The City agrees that, at any time and from time to time after the Closing date, it will, at the Authority's request, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged or delivered all such further acts, deeds, assignments, transfers, conveyances, powers of attorney or assurances as may be necessary to complete the assigning, transferring, granting, conveying, assuring and confirming to the Authority of any of the properties or other assets transferred hereunder.

2. Closing

a. Unless otherwise agreed by the parties hereunder, the Closing shall be this date to be effective at 11:59 P.M. on this date, and shall be held in the office of the Mayor of the City of Cleveland at City Hall. The City, through the CTS Board, shall transfer at such Closing all property of the City described and listed in Schedules A and A-1, all contracts and other interests set forth in Schedules E and G, all policies of insurance set forth in Schedule H, except those policies covering more than the transit business or transit property, and all other properties and assets of the transit system as of the date of Closing including cash, investments, receivables and intangible assets which are a part of its mass transit business, by instruments of transfer and delivery in the form required by Section 1(e) above, and to the satisfaction of counsel for the Authority upon:

- i. the delivery to the City of an instrument assuming all obligations of the City referred to in Schedules D, E, G and I, or obligations incurred in the course of business subsequent to the date of the last balance sheet included in Schedule D, except for those items listed in Schedule A-2 and M, the instrument or instruments of assumption to meet with the approval of the City's Director of Law and General Counsel of the CTS Board; and
- ii. receipt by the City of an instrument containing an undertaking by the Authority which shall provide as follows:

The Authority shall pay to the General Fund of the City Eight Million Eight Hundred Seventy-Five Thousand dollars (\$8,875,000.00), the principal outstanding on the loan made by the City to its Transit System (hereinafter referred to as the "Loan"), plus interest at the rate of six percent (6%) per annum on such principal from August 16, 1973, to date of payment by the Authority; and One Million One Hundred Sixty Thousand Three Hundred Eighty dollars (\$1,160,380.00) for the City's investment in parking facilities (hereinafter referred to as the "Investment"). The Authority shall pay to the City, on or before December 31, 1975, the Investment (\$1,160,380.00), plus one-fifth (1/5) of the Loan One Million Seven Hundred Seventy-Five (\$1,775,000.00), plus accumulated interest on the Loan from August 16, 1973, to the day of payment by the Authority. Thereafter, the remaining principal balance of the Loan shall be payable in four (4) equal annual installments on or before December 31, in each year with interest at the rate of six percent (6%) per annum. The principal and interest provided above shall be the total cash consideration to be paid to the City by the Authority; provided, however, that if the tax for transit purposes is not

passed by the electors in 1975, the total amount of such cash consideration shall be subject to re-negotiation among the City, the County and the Authority.

b. The City agrees to give to the Authority at Closing all records pertaining to the operation of the transit system not expressly provided for herein.

c. Either party may from time to time postpone the date of Closing to a date not later than December 31, 1975, if any of the conditions to its going forward with the Closing hereinafter set forth have not been met or waived by the date of Closing set forth in 2a above or any subsequently set date of Closing.

3. Representations of the City

The City represents and warrants to the Authority as follows, all such warranties expiring upon completion of the Closing provided for in Section 2:

- a. The City has the power to enter into and carry out this Agreement.
- b. This Agreement has been duly authorized by Ordinance of the Council of the City of Cleveland a certified copy of which ordinance is attached hereto as Exhibit 1, and resolution of the CTS Board, a certified copy of which is hereto attached as Exhibit 2, and the Agreement is binding on the City in accordance with its terms.
- c. No portion of any real property owned by the City in connection with its transit system and transferred

hereunder is being condemned or otherwise taken by any public authority, nor does the City know, or have grounds to believe that any such condemnation or taking is threatened or contemplated, except as noted on Schedule I.

- d. Schedules A and A-1 hereto list all real and tangible properties used in the City's operation of a mass transit system excluding all properties owned by the City in its capacity as owner of CTS as reflected in Schedule A-2.
- e. The City will cause conveyance to the Authority of title to all the assets and properties set forth in Schedules A and A-1, free and clear of all security interests, liens, encumbrances, conditional sales and title retention agreements, except as set forth on Schedule B or as otherwise excepted herein under Section 1 (e) iii.
- f. Schedule C sets forth the present fare structure and regularly-scheduled service operated by the City.
- g. Schedule D sets forth a complete and true financial balance sheet of the City's mass transit system as of December 31, 1974, together with financial statements for the previous three calendar years and monthly or quarterly financial statements from the end of 1974 to the end of the month immediately preceding the date of Closing.
- h. Schedule E sets forth all outstanding obligations, encumbrances, leases and contracts of the City relating to its mass transit system.

- i. Schedule F sets forth the date, amount and purpose of investments of the City in connection with the City's mass transit system.
- j. Schedule G sets forth a complete listing of all labor agreements, memoranda and other understandings relating to labor relations of the City in its mass transit business, and also sets forth the number of employees in each classification and the current pay rates applicable thereto.
- k. Schedule H sets forth a list of all policies of insurance relating to the City's mass transit business, specifying the term, premium and coverage, and identifying which policies cover more than the transit business or transit properties.
- l. Schedule I sets forth a complete listing of all contingent liabilities of the City relating to its mass transit system, and all matters threatened to be in litigation and all matters presently in litigation as of the date hereof brought by or against the City's transit system arising out of personal injury, property damage, contract or other cause.
- m. Except as set forth in Schedule J, the City is in good standing and not in default with respect to all contracts, franchises and other obligations, properties and contracts referred to in Schedules A, A-1, E, G and H, and under any outstanding notes, bonds or other obligations indicated in Schedule F.

- n. Except as set forth on Schedule K, the City has operated its mass transit system in accordance with Section 10 from the date of the last balance sheet in Schedule D to the date hereof.

4. Representations of The Authority

The Authority represents and warrants to the City as follows:

- a. The Authority has been formed under Chapter 306 of the Ohio Revised Code with the number, qualifications and mode of appointment of its members set forth in Section 5 of City of Cleveland Ordinance No. 2380-B-74, attached hereto as Exhibit 3, and incorporated herein, and in Section 5 of Resolution 2865 of the Board of County Commissioners of Cuyahoga County, adopted December 30, 1974, attached hereto as Exhibit 4, and incorporated herein.
- b. The Authority has the power to own and operate a mass transit system in Cuyahoga County and adjoining counties of Ohio.
- c. This Agreement has been duly authorized by resolution of the Authority, a certified copy of which resolution is attached hereto as Exhibit 5, and incorporated herein, is within its powers to carry out, and is legally binding upon it.
- d. The Authority has had the opportunity to inspect and examine all documents, records and data of the City's transit system to the Authority's satisfaction.

e. The representations of the Authority contained in this Section 4 shall be correct as of the date hereof and as of the date of Closing.

5. General Transit Authority Undertakings

a. The Authority shall recognize and continue existing rights, privileges and benefits of all employees in conformity with Section 306.35 of the Ohio Revised Code, as such section may from time to time be amended or supplemented.

b. The Authority shall make appointments and promotions in the Authority according to merit and fitness to be ascertained, as far as practicable, by competitive examination. The Authority shall make such rules and regulations for the enforcement of this provision and shall establish by rule the seniority provisions relating to the transit system employees at the time of the acquisition of the transit system by the Authority. The salary and compensation of the employees of the Authority shall be in accordance with the prevailing rates of salary of compensation for services rendered under similar conditions of employment, and of vacation, sick leave and retirement privileges for like employment in the industry generally.

c. The Authority shall place on the ballot in Cuyahoga County a sales levy of not less than one percent (1%) for transit purpose to be voted on at a special election to be held no later than September 30, 1975.

d. The Authority shall honor and perform, in compliance with the terms thereof, all contracts and other obligations of the City listed in Schedule E.

e. The Authority shall defend and hold the City harmless for all claims and liabilities as listed in Schedule I, in addition to all claims and causes that may hereafter be filed or initiated against CTS or the City, in its capacity as owner of CTS, which arose during the period of time the City owned and operated a transit system.

f. The Authority shall use its best efforts to execute agreements with all municipalities within Cuyahoga County presently operating systems of mass transit for their coordination with the transit system transferred hereunder.

g. Equal Employment Opportunity

The parties hereto agree that there shall be no discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin. It is further agreed that the parties, or either of them shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, recruitment, employment, upgrading, demotion, transfer and other terms of conditions of employment.

This Agreement is subject to the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et. seq.) and all rules and/or regulations issued pursuant thereto regarding non-discrimination in federally assisted programs of the United States Department of Transportation.

The parties hereto, or either of them will not discriminate on the basis of race, color, religion, sex or national origin in the selection and retention of contractees including, but not limited to, procurements of materials and leases of equipment.

In all solicitations, either by competitive bidding or negotiations, made by either party to this Agreement for work to be performed under a contract or subcontract including, but not limited to, procurements of materials, services or equipment, each potential contractee, subcontractee, or supplier shall be notified by said party of its obligations under this Agreement and the rules and/or regulations relative to non-discrimination on the basis of race, color, religion, sex or national origin.

The parties further agree that no person in the United States shall, on the ground of race, color, religion, sex or national origin, be excluded from participating in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance as said assistance relates to this Agreement.

h. The Authority shall provide competent management to operate the transit system provided, however, the Authority shall not enter into any agreement with any private firm, corporation or other entity for the management or operation of the total system.

6. Transit Authority Guarantees.

a. During the first five (5) years of the Authority's operation of transit services, the Authority shall provide not less than the number of route miles, vehicle miles and seat miles of bus and rail transit services being provided within the City by the Cleveland Transit System as of November, 1974 as shall be determined by application of the formulae and standards contained in Schedule N; provided, however, that the amount of any transit service provided by the Authority which was

provided within the City by any other transit system at the time of its acquisition or support by the Authority, except local service provided between stops within the City, shall not thereafter be included in determining the Authority's compliance with this guarantee.

b. During the first five (5) years of the Authority's operation of transit services, the Authority shall comply with the route-spacing and policy headway requirements pursuant to the standards established in Schedules N-1, and N-2. Within one year of the transfer of the City's transit system to the Authority, the Authority shall comply with not less than fifty percent (50%) of such requirements and shall progressively increase service so that by end of the fifth year such requirements shall have been fully met, provided, however, that the Authority shall have the right to discontinue, or adjust the frequency of any existing or additional route or service if such route or service is found not to be attaining the objective of optimization of service to the residents of the City. Such decision shall be made solely by the Authority; provided, however, that no route or service shall be discontinued until it has been in operation for at least four (4) months, and provided further that in the event such discontinuance is deemed justified by the Authority, notice of such intent along with evidence in support of such intent, shall be given to the Mayor and Council of the City and a public hearing shall be held, after notice of two (2) weeks in a newspaper of general circulation in the area to be affected, at which hearing the Authority shall hear community objections to such planned discontinuance.

c. During the first five (5) years of the Authority's operation of transit services, not less than fifty percent (50%) and not more

than sixty percent (60%) of all increases in transit service provided by the Authority shall be within the City, excluding from such formula all service on routes which are entirely within downtown Cleveland (defined as the area between the Innerbelt, the Cuyahoga River and Lake Erie), for which downtown service no more than ten percent (10%) of the system-wide increase may be provided. During such five (5) years, no local funds obtained from fares or sales tax revenue or federal operating or capital funds, shall be expended on the planning or construction of a subway or elevated transit facility in downtown Cleveland.

For purposes of determining the amount to be applied to fulfilling the City's guarantees stated herein, the amount available to the Authority for such increases in transit service shall be computed by first deducting from total annual system revenues and subsidies, all system operational expenses associated with the current level of service plus administrative, maintenance and general expenses, including debt service. Not less than fifty percent (50%) and not more than sixty percent (60%) of the amount of funds remaining, excluding from such formula all revenues and costs associated with service on routes which are entirely within downtown Cleveland, shall be devoted to fulfilling the Authority's service and improvement guarantees to the City which are more specifically set forth in Schedules N-1, N-2 and O.

d. During the first five (5) years of the Authority's operation of transit services, the Authority shall establish the fare structure set forth in Schedule P.

e. All costs and expenses incurred by the Authority in the

construction, improvement or extension of transit facilities in Cleveland in pursuance of the guaranteed improvements specified herein, including expenses associated with the relocation of utility lines belonging to the City of Cleveland, shall be borne by the Authority and the City shall not be liable for any portion thereof unless authorized by ordinance of Council.

f. The parties agree that the Authority shall be the regional authority responsible under state laws for the financing, construction, and operation of public transportation services and in this capacity shall be the recipient of, and dispense federal grant and loan monies, and shall be the designated recipient as provided in the National Mass Transportation Assistance Act of 1974.

g. Until such time as the Authority shall be operating the current transit facilities in Cleveland of the Cleveland Transit System, it shall approve and forward to the applicable federal agency any application for federal grant or loan monies which shall be presented to it by any operator of a transit facility within the territory of the Authority which is attempting to secure federal grant or loan monies. The Authority shall not exercise discretion and shall approve such applications without any condition. The obligation to approve such application is hereby established as a duty specifically enjoined by law and resulting from an office, trust or station of the Authority and its officers within the meaning of Section 2731.01 of the Ohio Revised Code.

h. For a period of five (5) years from the date of Closing, the Authority shall, no later than sixty (60) days following the end of

each calendar year, submit a written report to the Mayor and Council of the City. Such report shall contain:

- i. A complete statement of transit operations for the preceding calendar year which statement shall include a complete schedule of levels and frequency of service, routes, ridership data and fare structure on an Authority-wide and on a City-wide basis.
 - ii. All statements and data relating to the financial condition and operations of the Authority including, at a minimum, income statements, a year-end balance sheet and cash flow analyses.
 - iii. All operational and financial data and information relating to the extent to which the Authority has fulfilled the service guarantees enumerated in this Agreement separately listing the improvements in the coverage and frequency of service, the status of the implementation of CRT, expenditures made for security and information programs, alterations in route structure including the realignment or extension of existing routes and the creation of new routes, and the City's portion of capital improvements.
 - iv. A forecast of revenues and expenditures for the current calendar year. Such financial forecast shall include estimates of revenues to be derived from the sales tax, fare-box, charters, advertising, federal and state subsidies, and other sources. It shall also include estimates of those expenditures associated with maintaining the current level of service as well as administrative expenses, maintenance expenses, and other general expenses, including debt service.
 - v. An estimate of total funds available for improvements including a one-year plan for the expenditure of the City's fifty to sixty percent (50%-60%) guarantee. Such plan shall list separately those amounts which the Authority proposes to expend on meeting coverage and frequency standards within the City, on the implementation of CRT within the City, on security and information programs, on the realignment, extension and creation of routes, and on capital improvements.
- i. In addition to the foregoing, the Authority shall prepare

monthly, and submit to the Mayor and Council of the City, a summary statement of revenues and expenses for the preceding month detailed as to operations and funds in such manner as to show the exact financial condition of the Authority as of the last day of the preceding month.

j. The Authority's obligations and guarantees hereunder are hereby established as duties specifically enjoined by law and resulting from the office, trust or station of the Authority and its officers within the meaning of Section 2731.01 of the Ohio Revised Code.

7. Undertakings by City

a. The City agrees to cooperate in the transfer of facilities and assets, and in the start-up of the Authority's mass transit system, and will take such actions as may be reasonably necessary to carry out the transfer; provided, that the City shall be reimbursed by the Authority for any and all costs incurred.

b. The policies of insurance listed in Schedule H, shall, to the extent of the City's prior established practice, be extended in full force and effect until the date of Closing.

8. Conditions to Obligations of The Authority

Unless waived by the Authority, its obligations under this Agreement are subject to each of the following conditions precedent that, on the Closing date:

- a. The tax referred to in Section 5 c. has been approved.
- b. The Authority shall have received the opinion of the City's Director of Law, or the General Counsel of the CTS Board, where appropriate, dated the Closing date, in form and substance reasonably

satisfactory to the Authority and its counsel to the effect that (i) the City has full power and authority to transfer the properties and assets hereunder; (ii) all administrative and legislative actions necessary for the consummation of this transfer have been properly made; (iii) this Agreement has been duly authorized and is a legal, valid and binding obligation of the City in accordance with its terms; (iv) the instruments of transfer have been duly approved, executed and delivered. Such opinion shall also contain statements that counsel knows (i) of no suit or proceeding pending or threatened against the City which might materially or adversely affect the properties or other assets to be transferred hereunder, (ii) of any contract, instrument, order or decisions to which the City is bound which would prevent or adversely affect the carrying out of this Agreement, and (iii) of no inaccuracy in the representation contained in clause (d) of Section 3 except as may have occurred in the ordinary course of business.

c. The City shall have complied with this Agreement as of the date of Closing.

d. No litigation or threat of litigation shall exist with respect to consummation of this Agreement.

e. The representations of the City contained in Section 3 shall be correct as at the date hereof and as of the date of Closing.

9. Conditions to Obligations of City

Unless waived by the City, its obligations under this Agreement are subject to each of the following conditions precedent that, on the Closing date:

a. The tax referred to in Section 5 c. has been approved.

b. The City shall have received the opinion of counsel for the Authority, dated the Closing date, in form and substance reasonably satisfactory to the City's Director of Law and the General Counsel of the CTS Board, to the effect that (i) the Authority is a duly-constituted regional transit authority pursuant to Sections 306.30 to 306.54, inclusive, and 306.70 and 306.71 of the Ohio Revised Code; (ii) the Authority has full power and authority to acquire the assets and properties hereunder for the purpose of providing a regional transportation system (iii) this Agreement has been duly authorized, executed and delivered by the Authority and is a legal, valid and binding obligation of the Authority in accordance with its terms.

c. The Authority shall have complied with this Agreement to the date of Closing.

d. In the event that the Authority, for any reason, does not comply in every respect with Schedule P, the City shall have the right, which right shall be reserved in all instruments of conveyance provided for hereunder, to terminate the interest transferred, and to require the Authority convey to the City all the assets of CTS transferred hereunder, and in such event this Agreement shall terminate and neither party shall have further liability to or possess any rights against the other; provided that the Authority shall have the right, free from this reservation of rights, to consume or dispose of any such assets in the normal course of business, and the title to such assets, once transferred, shall be free and clear of this Agreement; provided further that in the

event this provision shall be determined to be in conflict with any law, rule of law, or regulation of the Urban Mass Transportation Administration, such conflict having the effect of preventing the Authority from receiving any grant, money, assistance, or aid of any type, this provision shall be waived to the extent necessary for the Authority to so qualify upon the opinion of counsel for the Authority that such waiver is necessary for the purpose of receiving such Urban Mass Transportation Administration assistance.

10. Operation Until Closing

a. From the date hereof until the Date of Closing, the CTS Board will carry on mass transit business as usual and agrees that except as set forth on Schedule L, or with the prior approval of the Authority, will (i) not make purchases or sales of capital assets; (ii) continue maintenance of motor equipment, motor coaches and rail cars at existing standards; (iii) maintain all materials, supplies and inventories at levels normal in the ordinary course of business; (iv) use its best efforts to retain its present work force and to make available to the Authority on the Closing date the employees necessary to operate the system; (v) maintain in full force and effect, on a current basis, all collective bargaining agreements, other employment agreements and all plans for the benefit of employees or former employees relating to insurance, pensions, and other fringe benefits; (vi) enter into only such contracts as may be necessary in the efficient daily operation of the transit system; and (vii) make no payments into the General Fund or any other fund of the City except in the ordinary course of business.

b. The CTS Board shall carry on transit operations as usual without changes in routes, frequency of service or fare structure except as such change is made necessary to avoid a greater deficit or except as such change is in pursuance of the service improvement objectives established herein, or except as approved by the Authority.

c. The Authority shall have the right of access to the properties, records and personnel of the City relating to mass transit at all reasonable times prior to Closing.

d. As soon as practicable after the Closing date, the results of operations by the City from and after December 31, 1974 pursuant to this section shall be determined and a full accounting thereof made to the Authority. For purpose of making such determination, the City shall establish and maintain a separate record of such operations and an income statement covering the period of such operations shall be prepared as of the Closing date to reflect such operations.

11. Miscellaneous

a. City's Covenant Not to Compete

For as long as the Authority is operating a mass transportation system within Cuyahoga County according to and in compliance with the terms of this Agreement, the City agrees that it will not engage or participate in the operation of, or license a public mass transportation system of similar mode either directly or indirectly, anywhere in the territory in which the Authority is, or may hereafter be authorized to operate, provided, that this section shall not prevent the City from operating demonstration projects.

b. Assignment

This Agreement shall bind and inure to the benefit of, and bind the parties hereunder and their respective successors and assigns; provided, however, that this Agreement may not be assigned by any party without the prior written consent of all the other parties.

c. Failure of Conditions

If the conditions of the consummation of this Agreement have not been met by the date of Closing or by the date to which the Closing may have been postponed, this Agreement shall be terminated and no party shall have any further liability to, or possess any rights against any of the other parties.

d. Dissolution of Authority

The Authority shall be dissolved if the Authority is not operating any transit facilities on December 31, 1976, or upon the enactment of an ordinance by the City and a resolution by the County and a resolution or ordinance by any other county, municipal corporation or township which is hereafter included in the Authority as provided in Section 306.52 of The Ohio Revised Code, providing for such dissolution. In the event of dissolution, any real or personal property or combination thereof which has been received from, or made available by the City or the County, or any other county, municipal corporation or township shall be returned to the political subdivision from which received or by which made available; and after paying all costs and expenses of the Authority, any balance remaining in the Authority funds shall be distributed to the City, the County and any county, municipal corporation, or township

hereafter included in the Authority pro rata according to the assessed valuation of each political subdivision at the time of dissolution.

If the Authority is dissolved and distribution is completed in accordance with this Section, this Agreement shall be terminated and neither party shall have any further liability to or possess any rights against the other.

e. City's Right to Inspect

Upon reasonable notice, the City shall have the right, at any reasonable time, to inspect or reproduce at its own expense any of the books of account, documents and records of the Authority.

f. City's Right to Audit

The City shall have the right, at any reasonable time, to cause to be audited all the books of account, documents and records of the Authority, the expense and costs of which shall be borne by the City.

g. Written Modification Required

This Agreement shall be superseded or amended only by a formal written document embodying the terms herein contained.

h. Severability

If any provisions of this Agreement shall be held, or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions or in all cases, because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstance shall not have

the effect of rendering the provisions in question inoperative or unenforceable in any other case or circumstances or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

i. Notices

All notices, consents or requests or other documents required or proper hereunder shall be in writing and delivered personally or sent by certified mail, postage prepaid, with return receipt requested.

Authority's Address:

1404 East 9th Street
Cleveland, Ohio 44114

City's Address:

City of Cleveland
601 Lakeside Avenue
Cleveland, Ohio 44114
Attention: Director of Law

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF CLEVELAND

TRANSIT BOARD

By: _____
Mayor

By: _____
Chairman of the Board

Attest: _____
Director of Law

Attest: _____
General Counsel

GREATER CLEVELAND
REGIONAL TRANSIT AUTHORITY

By: _____
President

By: _____
Vice-President

ASSUMPTION OF OBLIGATIONS, LIABILITIES
AND DUTIES

The Greater Cleveland Regional Transit Authority, a regional transit authority created pursuant to Sections 306.30 through 306.54, 306.70 and 306.71 of the Ohio Revised Code (the "Authority"), pursuant to the Mass Transit System Transfer Agreement dated September __, 1975 (the "Transfer Agreement") by and among the Authority, the City of Cleveland (the "City") and the Transit Board of the City of Cleveland (the "CTS Board"), hereby absolutely and unconditionally assumes and agrees to discharge and perform whenever payment or performance is due, the following:

(a) All the obligations and liabilities of the City and/or the CTS Board reflected on the balance sheets contained in Schedule D of the Transfer Agreement and all obligations and liabilities of any nature incurred by the City and/or the CTS Board in the course of the operation of the transit system including, but not limited to, all obligations and liabilities of any nature incurred in connection with the carrying out of the transaction contemplated by the Transfer Agreement, from the date of the last balance sheet included in said Schedule D (dated July 31, 1975) to the date hereof;

(b) All liabilities, obligations and duties of the City and/or the CTS Board under the encumbrances, leases, agreements, contracts, and other obligations listed, referred to or generally described in Schedule E of the Transfer Agreement.

(c) All liabilities, obligations and duties of the City and/or the CTS Board under the labor agreements, memorandum of understanding or other understandings relating to labor relations which are listed, referred to or generally described in Schedule G of the Transfer Agreement;

(d) All liabilities, obligations and duties of the City and/or the CTS Board based upon or arising out of the contingent liabilities listed, referred to or generally described in Schedule I of the Transfer Agreement; and

(e) All liabilities, obligations and duties of the City and/or the CTS Board resulting from or arising out of matters involving pending or threatened litigation as listed, referred to or generally described in Schedule I of the Transfer Agreement.

(f) All of the duties and obligations of the City and/or the CTS Board under and pursuant to its Operating Assistance Grant under Section 5 of the Mass Transportation Act of 1964, as amended, including all amendments to such grant which may heretofore or hereafter be made

(collectively herein the "Grant"). The Authority agrees that from and after the date hereof it will carry out and perform all of the duties and obligations of the grantee under the Grant and will indemnify and save harmless the City and the CTS Board and CTS Board members, both personally and as members of the Board, against any losses or liabilities resulting from said Grant during the period from the date hereof to December 31, 1975. The Authority agrees that the Urban Mass Transit Administration of the United States Department of Transportation shall be the third party beneficiary of the agreements and covenants contained in this paragraph and shall be entitled to enforce its provisions.

The Authority shall indemnify, save harmless and defend the City and the CTS Board (including individual City officials and members of the CTS Board against whom suits or claims may be asserted in their individual capacities) against any loss, cost, damage, claim or expense, including attorneys' fees, incurred or suffered by the City or the CTS Board (including individual City officials and members of the CTS Board) arising out of or connected with (i) any of the obligations, liabilities or duties assumed hereby, or (ii) any transaction entered into, or any state of facts existing, during the period of time the City and the CTS Board owned and/or operated the transit system.

The Authority shall, from time to time hereafter, execute and deliver such further instruments of assumption by the Authority, in form satisfactory to counsel for the City and the CTS Board, of such specific items of the liabilities, obligations and duties hereby assumed by the Authority as may be reasonably requested by the City and the CTS Board.

The dissolution or termination of the existence of the CTS Board through the resignation of Board members, the amendment of the City Charter or otherwise, shall not reduce or affect the obligations of the Authority under this Assumption with respect to the liabilities, obligations and duties assumed or the obligation to indemnify and save harmless individual CTS Board members.

Any request for indemnification pursuant hereto shall be made in writing and delivered to the Authority at its main office which currently is located at 1404 E. 9th Street, Cleveland, Ohio.

IN WITNESS WHEREOF, the Authority has caused this Assumption of Obligations, Liabilities and Duties to be executed by its duly authorized officers on _____, 1975.

GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY

By _____
President

and

ASSIGNMENT OF LEASE

KNOW ALL MEN BY THESE PRESENTS: THAT

WHEREAS, the City of Cleveland (the "City"), by ordinance No. 2380-B-74 passed on December 30, 1974, and the County of Cuyahoga (the "County"), by Resolution 2865, created the Greater Cleveland Regional Transit Authority (the "Authority"), pursuant to Sections 306.30 through 306.54 and 306.70 and 306.71 of the Ohio Revised Code; and

WHEREAS, the City, by virtue of said ordinance and an amendment to said ordinance, designated Ordinance No. 342-75, expressed its intent to transfer to the Authority all operating assets directly relating to the operation of the Cleveland Transit System subject to an agreement (the "Transfer Agreement") in form satisfactory to the City to be entered into among the Authority, the Transit Board of the City of Cleveland (the "Transit Board") and the County; and

WHEREAS, the Transfer Agreement has been prepared and has been executed, effective as of _____, 1975, by all such parties, and provides for the transfer by the City and the Transit Board to the Authority of all their interest in the real estate and improvements situated thereon directly related to the City's operation of its mass transit system; and

WHEREAS, the City of Cleveland, Cleveland Transit System, is party, as lessor, to a lease with Zapis Construction Corporation, as lessee, dated November 24, 1972.

NOW, THEREFORE, the City of Cleveland, CLEVELAND TRANSIT SYSTEM ("Assignor"), in consideration of One Dollar

(\$1.00) and other good and valuable considerations to it paid by the GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY ("Assignee"), a regional transit authority created pursuant to Sections 306.30 and 306.54 and 306.70 and 306.71 of the Ohio Revised Code, does hereby assign unto Assignee, its successors and assigns, all of the right, title and interest of Assignor in and to that certain lease (the "Lease") dated November 24, 1972, wherein Assignor is lessor and Zapis Construction Corporation is lessee, recorded _____, 1972, in Volume _____, Page _____, of Cuyahoga County Lease Records and covering the air rights and other rights, as are more fully described in the Lease, to the parcel of land described on Exhibit A attached hereto and made a part hereof, it being the intention of Assignor to transfer to Assignee all of Assignor's right, title and interest in and to the Lease.

TO HAVE AND TO HOLD such right, title and interest of Assignor unto Assignee, its successors and assigns, for and during all the rest, residue and remainder of the term of the Lease.

IN WITNESS WHEREOF, Assignor has executed this Assignment of Lease this _____ day of _____, 1975.

CITY OF CLEVELAND, CLEVELAND TRANSIT SYSTEM

By _____

Nicholas A. Bucur, Jr., Chairman
of The Transit Board

STATE OF OHIO)

)SS

COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named NICHOLAS A.

BUCUR, JR., Chairman of the Transit Board of the City of

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio and known as being part of Original Rockport Township Section Number 3 and forming a parcel of land bounded and described as follows:

Beginning in the Northerly line of Brookpark Road, S.W. (100 feet wide), as shown dedicated for widening in Volume 131 of Maps, Page 176 of Cuyahoga County Records, at its intersection with the Westerly line of a parcel of land conveyed to Bi Lo Stations, Inc., by deed dated September 10, 1959, and recorded in Volume 9751, Page 125 of Cuyahoga County Records;

Course No. 1

Thence North $88^{\circ} 03' 38''$ West, along the Northerly line of Brookpark Road, S.W., 772.39 feet to an angle point;

Course No. 2

Thence North $89^{\circ} 30' 58''$ West, along the Northerly line of Brookpark Road, S.W., 174.37 feet to its intersection with the Easterly line of the Penn Central Transportation Company;

Course No. 3

Thence North $31^{\circ} 48' 47''$ East, along said Easterly line 268.10 feet to a point of curve;

Course No. 4

Thence Northeasterly along said Easterly line along the arc of a curve to the right a distance of 263.19 feet to a point of tangent, said curve having a radius of 2,345.78 feet and a chord which bears North $35^{\circ} 01' 37''$ East, 263.05 feet to said point of tangent; said point of tangent being in the South Limited Access Right-of-Way Line of Interstate 480;

Course No. 5

Thence North $88^{\circ} 54' 48''$ East along the South Limited Access Right-of-Way line of Interstate 480, a distance of 366.32 feet to a point;

Course No. 6

Thence continuing along said South Line, North $83^{\circ} 55' 54''$ East, 201.09 feet to a point;

Course No. 7

Thence continuing along said South Line, South $89^{\circ} 30' 28''$ East, 102.26 feet to an iron pin;

EXHIBIT A TO ASSIGNMENT OF LEASE
BETWEEN CITY OF CLEVELAND,
CLEVELAND TRANSIT SYSTEM, AND
ZAPIS CONSTRUCTION CORPORATION

(Page 1 of 2)

Course No. 8

Thence South $89^{\circ} 01' 12''$ East along the South Limited Access Right-of-Way Line of Interstate 480, a distance of 307.14 feet to an iron pin in the Westerly Limited Access Right-of-Way of Interstate 71;

Course No. 9

Thence South $25^{\circ} 40' 12''$ East along the Westerly Limited Access Right-of-Way Line of Interstate 71, 312.60 feet to an iron pin and angle point therein;

Course No. 10

Thence South $01^{\circ} 39' 48''$ East along the Westerly Limited Access Right-of-Way Line of Interstate 71, 214.63 feet to an iron pin in the North Right-of-Way Line of Brookpark Rd;

Course No. 11

Thence North $89^{\circ} 34' 32''$ West along the North Right-of-Way Line of Brookpark Rd., 235.81 feet to an iron pin therein;

Course No. 12

Thence North $01^{\circ} 39' 48''$ East, 155.00 feet to an iron pin;

Course No. 13

Thence North $89^{\circ} 34' 32''$ West, 215.00 feet to an iron pin in the Westerly Line of said land conveyed to Bi-Lo Stations, Inc.;

Course No. 14

Thence South $01^{\circ} 39' 49''$ West, along said Westerly Line, 155.00 feet to the place of beginning and containing 12.6278 acres, be the same more or less;