

RESOLUTION NO. 1989 - 126

AUTHORIZING A CONTRACT FOR THE LEASE OF SPACE FOR THE CUSTOMER SERVICE CENTER WITH EUCLID/SUPERIOR PARKING LIMITED PARTNERSHIP FOR A TERM OF TEN (10) YEARS COMMENCING ON OR ABOUT APRIL 1, 1990 - ESTIMATED COST ONE MILLION FORTY-FOUR THOUSAND DOLLARS (\$1,044,000) GENERAL FUND - COMMUNICATIONS DEPARTMENT BUDGET.

WHEREAS, the Authority is currently leasing space from The Park Investment Company for its Customer Service Center at 2019 Ontario Street.

WHEREAS, the current lease term expires March 31, 1990; and

WHEREAS, the Authority requires additional floor area for its Customer Service Center; and

WHEREAS, additional floor area is not available at the present lease location; and

WHEREAS, Euclid/Superior Parking Limited Partnership has offered to lease the required floor area to the Authority at a location and on terms that are advantageous to the Authority; and

WHEREAS, the General Manager deems the offer of Euclid/Superior Parking Limited Partnership to be in the Authority's best interest and recommends the same to the Board.

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

Section 1. That the offer of Euclid/Superior Parking Limited Partnership to lease to the Authority three thousand six hundred sixty (3660) square feet of space at the BP America Parking Garage, 319 and 321 Euclid Avenue, Cleveland, Ohio 44114 for a period of ten (10) years beginning April 1, 1990 submitted September 13, 1989, be and the same is hereby accepted.

Section 2. General Manager be and he is hereby authorized to enter into a lease with Euclid/Superior Parking Limited Partnership for the lease of space at the BP America Parking Garage for a period of ten (10) years with successive options to renew for five (5) additional years each.


Section 3. That the rents and charges under said lease as awarded shall be payable from the General Fund in an estimated amount not to exceed One Million Forty-four Thousand Dollars (\$1,044,000) (Communications Department Budget).

Section 4. That said contract shall be binding upon and an obligation of the Authority contingent upon appropriations for future contract years and upon compliance by the contractor to its terms and conditions and all applicable laws relating to the contractual obligations of the Authority.

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Section 5. That this resolution shall become effective immediately upon its adoption.

Adopted: September 19, 1989

  
\_\_\_\_\_  
President

Attest:   
\_\_\_\_\_  
General Manager/Secretary Treas.

Greater Cleveland

# Regional Transit Authority

Inter-Office Correspondence

To: Ronald L. Barnes  
Deputy General Manager

Date: February 15, 1990

From: Robert C. Brooks, II  
Associate Counsel

Subject: Ability of Authority to Enter  
Into a Turn-Key Lease With  
the Landlord for the Customer  
Service Center in the  
Euclid/Superior Parking  
Building

As you know, I have had conversations with you and Management regarding the possibility of entering into a turn-key lease with the landlord for the Customer Service Center in the Euclid/Superior Parking Building in order to relocate as timely and economically as possible.

As per our conversations, I have drafted a legal opinion which sets out all pertinent law regarding the aforementioned questions. As such, the following represents an analysis of the pertinent law regarding this issue.

## Section 1 - State Law

RTA is a regional transit authority which was created pursuant to Ohio Revised Code section 306.31, etc. Revised Code section 306.31 states in pertinent part:

"[a] regional transit authority so created is a political subdivision of the state and a body corporate with all the powers of the corporation comprised of the territory of one or two or more counties, municipal corporations, townships or any combination thereof. . ."

Further, Ohio Revised Code section 306.35 states in pertinent part as follows:

". . . a regional transit authority (a) may sue or be sued in a corporate name; (b) may make contracts and exercise of the rights, powers, and duties conferred upon it; (f) shall have jurisdiction, control, possession, and supervision of all property, rights, easements, licenses, monies, contracts, accounts, liens, books, records, maps, or other property rights and interest conveyed, delivered, transferred or assigned to it; (g) may acquire, construct, improve, extend, repair, lease, operate, maintain or manage transit facilities within or without its territorial boundaries being necessary to accomplish the purposes of its organization and make charges for the use of

transit facilities; (j) may hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease as lessee or lessor use and, sell real and personal property, or any interest or right therein, within or without its territorial boundaries, for the location or protection of transit facilities and improvements and access thereto, the relocation of buildings, structures, and improvements situated on lands acquired by the regional transit authority or for any other necessary purpose or for obtaining or storing materials to be used in constructing, maintaining and improving transit facilities under its jurisdictions;  
. . . ."

A regional transit authority, however, as a political subdivision of the State of Ohio is required to adhere to the bidding procedures as specified pursuant to the pertinent legislation as same is contained in Ohio Revised Code 306.43. Revised Code section 306.43 provides in pertinent part as follows:

"The Board of Trustees of a regional transit authority or any officer or employee designated by such Board may make any contract for the purchase of supplies or materials or for labor or any work under the supervision of the Board, the cost of which shall not exceed \$15,000. When an expenditure other than for the acquisition of Real Estate, the discharge of noncontractual claims, personal services, or for the product or services of public utilities exceeds \$15,000, such expenditure shall be made only after a notice calling for bids has been published once a week for two consecutive weeks, in at least one newspaper of general circulation within the territorial boundaries of the regional transit authority. The Board may then let said contract to the lowest, best bidder who shall give a good and approved bond with ample security conditioned on the carrying out of the contract. Such contract shall be in writing and shall be accompanied by, or shall refer to plans and specification for the work to be done, approved by the Board. The plans and specification shall, at all times, be made and considered part of the contract. Said contract shall be approved by the Board and signed on behalf of the regional transit authority and by the contractor. No sale of any real or personal property or lease thereof having a term thereof in excess of five years shall remain accept with the highest and best bidder after publication of notice for bids in the manner above provided..." (Emphasis added)

Consequently, the bidding procedure as specified by Revised Code 306.43 specifically excludes an expenditure that would involve the acquisition of Real Estate. Therefore, the lease agreement in question, inclusive of the necessary construction work, would represent an acquisition of Real Estate and as such would not fall under the guidelines or competitive requirements of Revised Code 306.43. Thus, by amending the lease, which was heretofore agreed upon by RTA and the Euclid/Superior Parking Limited Partnership, the Authority will be able to enter into an amended lease which would be considered an acquisition of Real Estate. Simply put, the amended lease would represent the acquisition of Real Estate which has been improved in comparison to the original lease which represents only the acquisition of unimproved Real Estate. Since the statute in question which controls makes no differentiation between improved and unimproved Real Estate, it seems clear that the controlling passage would be simply the acquisition of Real Estate.

Pursuant, therefore, to the aforementioned controlling sections of the Ohio Revised Code, the Authority and the Euclid/Superior Parking Limited Partnership should be able to enter into a turn-key lease agreement whereby the Euclid/Superior Parking Limited Partnership could legally, and pursuant to statute, complete the construction of the leasehold space, in order for the Authority to relocate into same. Thus, there would be no conflict with state law which would serve to preclude this amended lease relationship.

#### Section 2 - Federal Regulations

The Federal Regulations regarding regional transit authorities which receive federal funds are derived from the Urban Mass Transportation Act. Congress has established the Urban Mass Transportation Administration (UMTA) as the enforcement agency to regulate the statute. As such, UMTA conducts yearly audits of regional transit authorities which receive federal dollars.

In accordance with a recent Ruling by UMTA during the September 1989 audit of the procurement system of GCRTA, it was determined that Real Estate acquisition procurements do not fall under the jurisdiction of the procurement department. The Ruling stated that Real Estate is a unique item that is normally procured by legal departments throughout the industry.

Therefore, the acquisition of Real Estate in any form, by whatever method employed by the respective legal departments, does not violate any procurement regulations or laws as it relates to the procurement department pursuant to UMTA regulations. The procurement department officially takes only an advisory role in the acquisition of Real Estate.

Consequently, as relating to the acquisition of Real Estate interests, federal regulations do not apply and the regional transit authority is guided by the applicable state statutory requirements (see section 1, supra).

Section 3 - Conclusion

Since the acquisition of Real Estate is not a procurement function which requires competitive bidding, GCRTA and Euclid/Superior Parking Limited Partnership need only execute an amended lease in order to allow for Euclid/Superior to complete the site improvement of the leasehold space. The proposed amended lease need only modify the construction procedure as same is now presently enunciated in the present lease agreement. The amended lease should contain all of the relevant clauses relating to the final site improvement such as price, construction schedule, etc. However, there is no need to modify or alter the present lease. Instead, we need only to simply add the construction information.

If you have any questions, please contact me at your convenience.

RCB:lk

cc: RoseMary Covington  
Russell Adrine  
Douglas Kohout  
Maynard Walters  
James Zingale  
Irie Turner