

AUTHORIZING THE GENERAL MANAGER/ SECRETARY-TREASURER TO NEGOTIATE AND ENTER INTO A LICENSE AGREEMENT WITH CLEVELAND ELECTRIC ILLUMINATING COMPANY, AN OHIO CORPORATION, FOR THE BURIAL OF ELECTRICAL CABLE AND EQUIPMENT UNDER THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY'S WEST 65TH STREET RAIL STATION TRACKS.

WHEREAS, The Ohio Department of Transportation (ODOT) will be reconstructing the West 65th Street Bridge between Lorain and Madison Avenues through an agreement with the City of Cleveland and the Greater Cleveland Regional Transit Authority (Authority) upon the Board of Trustees' approval of April 15, 2003; and

WHEREAS, The Cleveland Electric Illuminating Company (CEI), an Ohio Corporation, is being displaced from the West 65th Street Bridge by ODOT's Cuy-West 65th Street Bridge project and CEI has requested that it be allowed to bury electrical cable and equipment under the Authority's West 65th Street Rail station location; and

WHEREAS, The Authority is in the process of reconstructing it's West 65th Street Rail station with the assistance of federal funding and the Authority is mandated to create Incidental revenue for any non-public transportation use of its real property due to the federal regulations found in the FTA Circular 5010.1C; and

WHEREAS, The Authority will create Incidental revenue by a proposed twenty-year License agreement allowing CEI to bury electrical cable and equipment at its West 65th Street Rail station location for a proposed term beginning on April 15, 2003 and ending April 14, 2023 with an option for renewal that will be subject to the Board of Trustees approval; and

WHEREAS, All necessary departments including Engineering, Operations, Safety, Risk Management and Legal have reviewed CEI's plans and/ or documents and have concluded that CEI's plans and process for burying the electrical cable and equipment will not interfere with the Authority's operations or create any future safety hazards.

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

Section 1. That the Cleveland Electric Illuminating Company (CEI), an Ohio Corporation, is being displaced from the West 65th Street Bridge by ODOT's Cuy-West 65th Street Bridge project and CEI has requested that it be allowed to bury electrical cable and equipment under the Authority's West 65th Street Rail station location.

Section 2. That the Authority is in the process of reconstructing it's West 65th Street Rail station with the assistance of federal funding and the Authority is mandated to create Incidental revenue for any non-public transportation use of its real property due to the federal regulations found in the FTA Circular 5010.1C.

Section 3. That the General Manager is authorized to negotiate and execute a License agreement with CEI for the burial of electrical cable and equipment under the Authority's real property at its West 65th Street Rail station location for a proposed term beginning on April 15, 2003 and ending April 14, 2023, which may be cancelled for good cause as stated in the agreement and has an option for renewal that will be subject to the Board of Trustees' approval.

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Section 4. That the General Manager is hereby authorized to negotiate and enter into a License agreement with CEI for the burial of electrical cable and equipment under the Authority's real property at its West 65th Street Rail station location for a proposed term beginning on April 15, 2003 and ending April 14, 2023 substantially in the form of Exhibit "A" attached hereto.

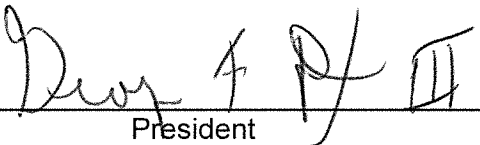
Section 5. That said contract is subject to the satisfaction of all statutes, regulations, rules and orders obligatory on the Greater Cleveland Regional Transit Authority for the transaction contemplated hereby.

Section 6. That the General Manager/Secretary-Treasurer be and he is hereby authorized to execute all documents and to take all actions necessary for the consummation of the agreement contemplated hereby.

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

Attachment

Adopted April 15, 2003



President

Attest: 

CEO/General Manager/Secretary-Treasurer

THIS AGREEMENT, dated as of the _____ of February 2003 is made and entered into by and between

GREATER CLEVELAND RAPID TRANSIT AUTHORITY, whose mailing address is 1240 West Sixth Street, Cleveland, Ohio 44113 (hereinafter called "Railway"), and

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, an Ohio corporation, whose mailing address is 76 South Main Street, Akron, Ohio 44308 (hereinafter called "Licensee").

WITNESSETH

WHEREAS, it is proposed by Licensee to install, maintain, operating and remove a 24-inch steel conduit carrying eleven (11) 4-inch innerducts with six (6) innerducts containing a 33kV electric power wire; one (1) innerduct containing an 11kV electric power wire; four (4) innerducts containing a 5kV electric power wire; and necessary manholes in, under and across the right of way or property and any tracks of Railway, 44.0 feet southeast of the center line of West 65th Street as measured along the center line of the southerly tracks, crossing under the right of way or property and any tracks of Railway and continuing up to a manhole located at the southeast corner of West 65th Street and Madison Avenue to be located in accordance with and limited to the installation as shown on print of Drawing marked Exhibit "A", sheets 1 through 3, dated December 4, 2001, attached hereto and made a part hereof (hereinafter called "Facilities"); and

WHEREAS, Licensee desires a license to use such right of way or property of Railway for the installation, construction, maintenance, operation and removal of the equipment.

NOW, THEREFORE, for and in consideration of the premises, the payment of a nonrefundable, nonassignable fee, in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) (hereinafter called the "Fee"), to cover the covenants hereinafter set forth, Railway hereby permits and grants to Licensee, insofar as Railway has the right to do so, without warranty and subject to all encumbrances, covenants and easements to which Railway's title may be subject, the right to use and occupy so much of Railway's right of way or property as may be necessary for the installation, construction, maintenance, operation and removal of the underground electrical equipment (said right of way or property of Railway being hereinafter collectively called the "Premises"), upon the following terms and conditions:

1. Term. This License Agreement (hereinafter called the "Agreement") shall be in full force and effect for a period of twenty (20) years (hereinafter called "Term") commencing on the _____ day of _____ 2003 and ending on the _____ day of _____ 2023. Licensee shall have the option to renew this Agreement for additional terms; provided however that the Licensor receives a written notice of the intent to renew this Agreement shall be given to Railway at least Six (6) months prior to the expiration of the original term and the Licensor's Board of Trustees approves the terms and conditions at the time of renewal.

2. Use and Condition of the Premises. The Premises shall be used by Licensee solely for the installation, construction, maintenance, operation and removal of the underground electrical equipment and for no other purpose. Licensee accepts the Premises in their current "as is" condition, as suited for the installation and operation of the underground electrical equipment, and without the benefit of any improvements to be constructed by Railway.

3. Installation of the Underground electrical equipment; Railway Support. Licensee shall, at its expense, install, construct, maintain and operate the underground electrical equipment on a lien-free basis and in such a manner as will not interfere with the operations of Railway, or endanger persons or property of Railway. Such installation, construction, maintenance and operation of the Facilities shall be in

CET

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NOW, THEREFORE, for and in consideration of the premises, the payment of a nonrefundable, nonassignable fee, in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) (hereinafter called the "Fee"), to cover the covenants hereinafter set forth, Railway hereby permits and grants to Licensee, insofar as Railway has the right to do so, without warranty and subject to all encumbrances, covenants and easements to which Railway's title may be subject, the right to use and occupy so much of Railway's right of way or property as may be necessary for the installation, construction, maintenance, operation and removal of the underground electrical equipment (said right of way or property of Railway being hereinafter collectively called the "Premises"), upon the following terms and conditions:

1. Term. This License Agreement (hereinafter called the "Agreement") shall be in full force and effect for a period of twenty (20) years (hereinafter called "Term") commencing on the _____ day of _____ 2003 and ending on the _____ day of _____ 2023. Licensee shall have the option to renew this Agreement for additional terms; provided however that the Licensor receives a written notice of the intent to renew this Agreement shall be given to Railway at least Six (6) months prior to the expiration of the original term and the Licensor's Board of Trustees approves the terms and conditions at the time of renewal.

2. Use and Condition of the Premises. The Premises shall be used by Licensee solely for the installation, construction, maintenance, operation and removal of the underground electrical equipment and for no other purpose. Licensee accepts the Premises in their current "as is" condition, as suited for the installation and operation of the underground electrical equipment, and without the benefit of any improvements to be constructed by Railway.

3. Installation of the Underground electrical equipment; Railway Support. Licensee shall, at its expense, install, construct, maintain and operate the underground electrical equipment on a lien-free basis and in such a manner as will not interfere with the operations of Railway, or endanger persons or property of Railway. Such installation, construction, maintenance and operation of the Facilities shall be in

accordance with: (a) the plans and specifications (if any) shown on the prints attached hereto and any other specifications prescribed by Railway; (b) applicable laws, regulations, ordinances and other requirements of federal, state and local governmental authorities; and (c) applicable specifications of the National Electric Safety Code, when not in conflict with the applicable plans, specifications, laws, regulations, ordinances or requirements mentioned in (a) and (b), above. Any change to the character, capacity or use of the underground electrical equipment shall void this agreement without written approval by the Railway's Board of Trustees.

4. Railway Support. Railway shall, at Railway's option, furnish, at the sole expense of Licensee, labor and materials necessary, in Railway's sole judgment, to support its tracks and to protect its traffic (including, without limitation, flagging) during the installation, maintenance, repair, renewal or removal of the Licensees' Underground electrical equipment.

5. Electronic Interference. If the Licensee's underground electrical equipment causes degradation of Railway's signal, communications and other electronic systems (hereinafter collectively called the "Electronic Systems") or endanger Railway's personnel or other individuals entitled to be on or about the Premises, through inductive or electrostatic interference or otherwise, Licensee, at its sole expense, will modify its underground electrical equipment to the satisfaction of Railway so as to eliminate such degradation or danger. Such modifications may include, without limiting the generality of the foregoing, transposing circuits or providing additional shielding, reactance or other corrective measures deemed necessary by Railway. The provisions of this paragraph 5 shall apply to the Electronic Systems existing as of the date of this Agreement and to any Electronic Systems that Railway may install in the future.

6. Corrective Measures. If Licensee fails to take any corrective measures requested by Railway in a timely manner, or if an emergency situation is presented, which in Railway's judgment, requires immediate repairs to the Licensee's underground electrical equipment, the Railway, at Licensee's expense, may undertake such corrective measures or repairs as it deems necessary or desirable.

7. Railway Changes. If Railway shall make any changes, alterations or additions to the line, grade, tracks, structures, roadbed, installations, right of way or works of Railway, or to the character, height or alignment of the Electronic Systems, at or near the Licensee's underground electrical equipment, Licensee shall its sole expense, upon thirty (30) days prior written notice from Railway, make such changes in the location and character of its underground electrical equipment required by the Licensor to accommodate any construction, improvements, alterations, changes or additions of Railway.

8. Assumption of Risk. Unless caused solely by the negligence of Railway or caused solely by the willful misconduct of Railway, Licensee hereby assumes all risk of damage to its underground electrical equipment relating to its use and occupation of the Premises or business carried on the Premises and any defects to the Premises; and Licensee hereby indemnifies Railway, its officers, directors, agents and employees from and against any liability for such damage.

9. Entry Upon Premises. Licensee shall give Railway thirty (30) day written notice in advance (or, in case of emergencies, a notice as may be reasonable under the circumstances) of any entry upon the Premises for any work to be performed on or about the Premises to the Licensee's underground electrical equipment. Licensee agrees to pay Railway, within thirty (30) days after delivery of an invoice therefor, for any costs including but not limited to, administrative costs, protection costs, and inspection costs incurred by Railway, in Railway's sole judgment, during any such entry.

10. Liens; Taxes. Licensee will not permit any mechanic's liens or other liens to be placed upon the Premises, and nothing in this Agreement shall be construed as constituting the consent or request of Railway, express or implied, to any person for the performance of any labor or the furnishing of any materials to the Premises, nor as giving Licensee any right, power or authority to contract for or permit

the rendering of any services or the furnishing of any materials that could give rise to any mechanic's liens or other liens against the Premises. In addition, Licensee shall be liable for all taxes levied or assessed against the Licensee's underground electrical equipment within the Premises. In the event that any such lien shall attach to the Premises or Licensee shall fail to pay such taxes, then, in addition to any other right or remedy available to Railway, Railway may, but shall not be obligated to, discharge the same. Any amount paid by Railway for any of the aforesaid purposes, together with related court costs, attorneys' fees, fines, penalties and interest, shall be paid by Licensee to Railway within ten (10) days after Railway's demand thereof.

11. Indemnification. Licensee hereby agrees to indemnify and save harmless Railway, its Board of Trustees, officers, directors, agents and employees, from and against any and all liabilities, claims, losses, damages, expenses (including attorneys' fees) or costs for personal injuries (including death) and property damage to whomsoever or whatsoever occurring (hereinafter collectively called "Losses") that arise in any manner from: (a) the installation, construction, maintenance, operation, presence or removal of, or the failure to properly install, construct, maintain, operate or remove, the Licensee's underground electrical equipment, or (b) any act, omission or neglect of Licensee, its agents, servants, employees or contractors in connection therewith, unless caused solely by the negligence of Railway or caused solely by the willful misconduct of Railway.

12. The Licensee, with respect to the indemnification provisions contained in this Agreement, hereby expressly waives any immunity granted or afforded Licensee pursuant to Section 35, Article II of the Ohio Constitution and Section 4123.74 of the Ohio Revised Code.

13. Insurance. Prior to the installation of the Licensee's underground electrical equipment, or any subsequent entry by Licensee upon the Premises, Licensee, and each of its contractors, shall at its sole expense procure and maintain for the course of any such installation or entry, a Commercial General Liability Insurance policy having a combined single limit of not less than \$2,000,000 for each occurrence, naming Railway as an additional insured and containing products and completed operations and contractual liability coverage.

14. Environmental Matters. Licensee assumes all responsibility for any environmental obligations imposed under applicable laws, regulations, ordinances or other requirements of federal, state and local governmental authorities relating to: (a) the installation, construction, maintenance, operation or removal of its underground electrical equipment, including notification and reporting of any releases; and (b) any contamination of any property, water, air or ground water arising or resulting, in whole or in part, from Licensee's operation or use of the Premises pursuant to this Agreement. In addition, Licensee shall obtain any necessary permits to install, construct, maintain, operate or remove its underground electrical equipment. Licensee agrees to indemnify and hold harmless Railway from and against any and all fines, penalties, demands or other Losses as described in Section 11 of this agreement (including attorneys' fees) incurred by Railway or claimed by any person, company or governmental entity relating to: (a) any contamination of any property, water, air or ground water due to the use or presence of its underground electrical equipment on the Premises; (b) Licensee's violation of any laws, regulations or other requirements of federal, state or local governmental authorities in connection with the use or presence of its underground electrical equipment on the Premises; or (c) any violation of Licensee's obligations imposed under this paragraph. Without limitation, this indemnity provision shall extend to any cleanup and investigative costs relating to any contamination of the Premises arising or resulting from, in whole or in part, Licensee's use of the Premises or any other activities by or on behalf of Licensee occurring on or about the Premises. Licensee further agrees not to dispose of any trash, debris or wastes, including hazardous waste, on the Premises and will not conduct any activities on the Premises, which would require a hazardous waste treatment, storage or disposal permit.

15. Assignments and Other Transfers.

(a) Licensee shall not assign, transfer, sell, mortgage, encumber, sublease or otherwise convey (whether voluntarily, involuntarily or by operation of law) this Agreement or any interest therein, nor license, mortgage, encumber or otherwise grant to any other person or entity (whether voluntarily, involuntarily or by operation of law) any right or privilege in or to the Premises (or any interest therein), in whole or in part. Any such assignment or other transfer made without Railway's prior express written consent shall be null and void and, at foregoing, upon prior written consent of the Railway, Licensee may assign this Agreement to a parent, a wholly owned subsidiary of Licensee or a wholly owned subsidiary of Licensee's parent; provided, however, that no such assignment shall relieve Licensee of its obligations under this Agreement.

(b) Railway shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder and in or to the Premises. From and after the effective date of any such assignment or transfer, Railway shall be released from any further obligations hereunder.

16. Meaning of "Railway". The word "Railway" as used herein shall include any other company whose property at the aforesaid location may be leased or operated by Railway. Said term also shall include Railway's Board of Trustees, officers, directors, agents and employees, and any parent company, subsidiary or affiliate of Railway and their respective officers, directors, agents and employees.

17. Default; Remedies.

(a) The following events shall be deemed to be events of default by Licensee under this Agreement.

(i) Licensee shall fail to pay the Fee or any other sum of money due hereunder and such failure shall continue for a period of ten (10) days after the due date thereof;

(ii) Licensee shall fail to comply with any provision of this Agreement not requiring the payment of money, all of which terms, provisions and covenants shall be deemed material, and such failure shall continue for a period of thirty (30) days after written notice of such default is delivered to Licensee;

(iii) Licensee shall become insolvent or unable to pay its debts as they become due, or Licensee notifies Railway that it anticipates either condition;

(iv) Licensee takes any action to, or notifies Railway that Licensee intends to file a petition under any section or chapter of the United States Bankruptcy Code, as amended from time to time, or under any similar law or statute of the United States or any State thereof; or a petition shall be filed against Licensee under any such statute; or

(v) A receiver or trustee shall be appointed for Licensee's license interest hereunder or for all or a substantial part of the assets of Licensee, and such receiver or trustee is not dismissed within sixty (60) days of the appointment.

(b) Upon the occurrence of any event or events of default by Licensee, whether enumerated in this paragraph 16 or not, Railway shall have the option to pursue any remedies available to it at law or in equity without any additional notices to Licensee. Railway's remedies shall include, but not be limited to, the following: (i) termination of this Agreement, in which event Licensee shall immediately surrender the Premises to Railway; (ii) entry into or upon the Premises to do whatever Licensee is obligated to do under the terms of this License, in which event Licensee shall reimburse Railway on demand for any expenses which Railway may incur in effecting compliance with Licensee's obligations under this License, but without rendering Railway liable for any damages resulting to Licensee or the Facilities from

such action; and (iii) pursuit of all other remedies available to Railway at law or in equity, including, without limitation, injunctive relief of all varieties.

18. Railway Termination Right. Notwithstanding anything to the contrary in this Agreement, Railway shall have the right to terminate this Agreement and the rights granted hereunder, after delivering to Licensee written notice of such termination no less than sixty (60) days prior to the effective date thereof, upon the occurrence of any one or more of the following events:

- (a) If Licensee shall discontinue the use or operations of the equipment; or
- (b) If Railway shall be required by any governmental authority having jurisdiction over the Premises to remove, relocate, reconstruct or discontinue operation of its railroad on or about the Licensees equipment; or
- (c) If Railway, in the good faith judgment of its Superintendent, shall require a change in the location or elevation of its railroad on or about the location of the Licensees equipment that might effectively prohibit the use or operation of the Licensees equipment; or
- (d) If Railway, in the good faith judgment of its Superintendent, determines that the maintenance or use of the Licensees equipment unduly interferes with the operation and maintenance of the facilities of Railway, or with the present or future use of such property by Railway, its lessees, affiliates, successors or assigns, for their respective purposes.

19. Condemnation. If the Premises or any portion thereof shall be taken or condemned in whole or in part for public purposes, or sold in lieu of condemnation, then this Agreement and the rights granted to Licensee hereunder shall, at the sole option of Railway, forthwith cease and terminate. All compensation awarded for any taking (or sale proceeds in lieu thereof) shall be the property of Railway, and Licensee shall have no claim thereto, the same being hereby expressly waived by Licensee.

20. Removal of Facilities. The Facilities are and shall remain the personal property of Licensee. Upon the expiration or termination of this Agreement, Licensee shall remove the Facilities from the Premises within thirty (30) days after the effective date thereof. In performing such removal, unless otherwise directed by Railway, Licensee shall restore the Premises to the same condition as existed prior to the installation or placement of Facilities, reasonable wear and tear excepted. In the event Licensee shall fail to so remove the Facilities or restore the Premises, the Facilities shall be deemed to have been abandoned by Licensee, and the same shall become the property of Railway for Railway to use, remove, destroy or otherwise dispose of at its discretion and without responsibility for accounting to Licensee therefor; provided, however, in the event Railway elects to remove the Facilities, Railway, in addition to any other legal remedy it may have, shall have the right to recover from Licensee all costs incurred in connection with such removal and the restoration of the Premises.

21. Entire Agreement. This Agreement contains the entire agreement of Railway and Licensee and supersedes any prior understanding or agreement between Railway and Licensee respecting the subject matter hereof; and no representations, warranties, inducements, promises or agreements, oral or otherwise, between the parties not embodied in this Agreement shall be of any force or effect.

22. Attorneys' Fees. If Railway should bring any action under this Agreement, or consult or place the Agreement or any amount payable by Licensee hereunder, with an attorney concerning or for the enforcement of any Railway's rights hereunder, then Licensee agrees in each and any such case to pay to Railway all costs, including but not limited to court costs and attorneys' fees, incurred in connection therewith.

23. Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby; and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

24. Modifications; Waiver; Successors and Assigns. This Agreement may not be altered, changed or amended, except by instrument in writing signed by both parties hereto. No provision of this Agreement shall be deemed to have been waived by Railway unless such waiver shall be in writing signed by Railway and addressed to Licensee, nor shall any custom or practice that may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of Railway to insist upon the performance by Licensee in strict accordance with the terms hereof. The terms and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided. If there shall be more than one Licensee, the obligations hereunder imposed upon Licensee shall be joint and several.

25. Notice. Any and all other notices, demands or requests by or from Railway to Licensee, or Licensee to Railway, shall be in writing and shall be sent by: (a) postage paid, certified mail, return receipt requested; or (b) a reputable national overnight courier service with receipt therefor; or (c) personal delivery, and addressed in each case as follows:

If to Railway:
Greater Cleveland Regional Transit Authority
1240 West Sixth Street
Cleveland, Ohio 44113
Attention: Property Management

If to Licensee:
The Cleveland Electric Illuminating Company
76 South Main Street
Akron, Ohio 44308
Attention: Frank Carson

Either party may, by notice in writing, direct that future notices or demands be sent to a different address. All notices hereunder shall be deemed given upon receipt (or, if rejected, upon rejection).

26. Miscellaneous. All exhibits, attachments, riders and addenda referred to in this License are incorporated into this Agreement and made a part hereof for all intents and purposes. Time is of the essence with regard to each provision of this Agreement. This Agreement shall be construed and interpreted in accordance with and governed by the laws of the State in which the Premises are located. Each covenant of Railway and Licensee under this Agreement is independent of each other covenant under this Agreement. No default in performance of any covenant by a party shall excuse the other party from the performance of any other covenant.

27. Limitations of Grant. Licensee acknowledges that the license granted hereunder is a quitclaim grant, made without covenants, representations or warranties with respect to Railway's: (a) right to make the grant; (b) title in the Premises; or (c) right to use or make available to others the Premises for the purposes contemplated herein. Railway is the owner and/or holder of the Premises subject to the terms and limitations under which it is owned or held, including without limitation conditions, covenants, restrictions, easements (including any preexisting fiber-optic easements or

licenses), encroachments, leases, licenses, permits, mortgages, indentures, reversionary interests, fee interest, zoning restrictions and other burdens and limitations, of record and not of record, and to rights of tenants and licensees in possession, and Licensee agrees that the rights licensed hereunder are subject and subordinate to each and all of the foregoing. Licensee accepts this grant knowing that others may claim that Railway has no right to make it, and Licensee agrees to release, hold harmless and indemnify (and, at Railway's election, defend, at Licensee's sole expense, with counsel approved by Railway) Railway, its affiliated companies, and its and their respective officers, directors, agents and employees, from and against any detriments to, or liabilities of, any type or nature arising from such claims, including punitive damages and any forfeitures declared or occurring as a result of this grant.

28. Limitations Upon Demand. Notwithstanding any other provision of this Agreement, Railway shall not be liable for breach of this Agreement or under this Agreement for any consequential, incidental, exemplary, punitive, special, business damages or lost profits, as well as any claims for death, personal injury, and property loss and damage which occurs by reason of, or arises out of, or is incidental to the interruption in or usage of the Facilities place upon or about the Premises by Licensee, including without limitation any damages under such claims that might be considered consequential, incidental, exemplary, punitive, special, business damages or lost profits.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, each part being an original, as of the date first above written.

Witness:

**GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY**

As to Railway

By: _____
Joseph A. Calabrese, CEO
General Manager / Secretary Treasurer

(Printed Name)

Witness:

**THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY**

As to Licensee

By: _____
Michelle A. Mazurek
Its: Director, Real Estate, Facilities, & Security for
FirstEnergy Service Company on behalf of
The Cleveland Electric Illuminating

(Printed Name)
Company



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

TITLE/DESCRIPTION: AUTHORIZING THE GENERAL MANAGER/ SECRETARY-TREASURER TO NEGOTIATE AND ENTER INTO A LICENSE AGREEMENT WITH CLEVELAND ELECTRIC ILLUMINATING COMPANY, AN OHIO CORPORATION, FOR THE BURIAL OF ELECTRICAL CABLE AND EQUIPMENT UNDER THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY'S WEST 65 TH STREET RAIL STATION TRACKS.	Resolution No.: 2003-052
	Date: April 10, 2003
	Initiator: Property Management
ACTION REQUEST: <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____	

- 1.0 PURPOSE/SCOPE: Authorizing the General Manager/ Secretary-Treasurer to negotiate and enter into a License agreement with the Cleveland Electric Illuminating Company (CEI), an Ohio corporation, for the purpose of burying electrical cable and equipment at the Greater Cleveland Regional Transit Authority's (Authority) West 65th Street Rail station location for a proposed term of twenty (20) years beginning on April 15, 2003 and ending on April 14, 2023 with an option to renew subject to the Board of Trustees approval. The License agreement will generate a fee for the Authority for the use of its property.

- 2.0 DESCRIPTION/JUSTIFICATION: The Ohio Department of Transportation (ODOT) will be reconstructing its' West 65th Street Bridge between Lorain and Madison Avenues through an interagency agreement with the City of Cleveland and the Authority pending the Board of Trustees approval on April 15, 2003. CEI is being displaced from the West 65th Street Bridge by ODOT's Cuy-West 65th Street Bridge project. CEI has requested that it be allowed to bury electrical cable and equipment at the Authority's West 65th Street Rail station location. The Authority is in the process of reconstructing its West 65th Street Rail station with the assistance of federal funding. The Authority is mandated to create Incidental revenue for any non-public transportation use of its real property due to the federal regulations found in the FTA Circular 5010.1C. All necessary departments including Engineering, Operations, Safety, Risk Management and Legal have reviewed CEI's plans and/or documents and have concluded that CEI's plans and process for burying the electric cable and equipment will not interfere with the Authority's operations or create any future safety hazards. The Authority may cancel the License agreement with a sixty-day notice for good cause as stated in the agreement.

- 3.0 PROCUREMENT BACKGROUND: Not Applicable

- 4.0 DBE/AFFIRMATIVE ACTION BACKGROUND: Not Applicable

- 5.0 POLICY IMPACT: This is in compliance with the Real Estate Policy adopted by the Board of Trustees on May 21, 2002 under Resolution No. 2002-98. Board action is required because the License exceeds a twelve (12) month period.

- 6.0 ECONOMIC IMPACT: The proposed License agreement with CEI is expected to generate revenue for allowing CEI to bury electric cable and equipment at the West 65th Street Rail station location.

- 7.0 ALTERNATIVES: Do not approve the License agreement. This would not allow GCRTA to cooperate in this project and generate additional revenue.

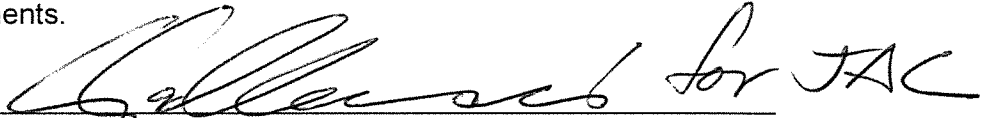
Staff Summary

Page 2

8.0 RECOMMENDATION: Authorize the General Manager to negotiate and execute a License agreement with CEI allowing it to bury electrical cable and equipment under the Authority's real property at the West 65th Street Rail station location.

9.0 ATTACHMENTS: NONE

Recommended and certified as appropriate to the availability of funds, legal form and conformance with the Procurement requirements.

A handwritten signature in black ink, appearing to read "G. Lawrence for JAC", written over a horizontal line.

CEO, General Manager/Secretary-Treasurer