

RESOLUTION NO. 2003 – 128

AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL
AGREEMENT WITH THE CITY OF CLEVELAND FOR THE EUCLID
CORRIDOR TRANSPORTATION PROJECT (ECTP)

WHEREAS, pursuant to Section 306.35 of the Ohio Revised Code, the Authority may enter into agreements with any municipal corporation within its boundaries for the acquisition, construction, improvement, extension, maintenance or operation of any transit facility; and

WHEREAS, the City of Cleveland is a chartered municipal corporation within the territorial boundaries of the Greater Cleveland Regional Transit Authority; and

WHEREAS, the City of Cleveland and the Authority reached a general agreement for the construction, operation and maintenance of the Euclid Corridor Transportation Project that was authorized by Resolution 2000-126 passed September 12, 2000; and

WHEREAS, improvements and refinements to the ECTP since September, 2000 have affected numerous aspects of the Intergovernmental Agreement with the City of Cleveland requiring changes and amendments; and

WHEREAS, the Authority and the City of Cleveland have negotiated a restated general agreement for the coordination and management of the ECTP that sets forth the duties and obligations of both the City and the Authority, a copy of which is attached hereto as Attachment "A"; and

WHEREAS the negotiated restated agreement between the City and the Authority was unanimously approved by City Council in Ordinance No. 893-03 passed July 16, 2003; and

WHEREAS, the General Manager deems acceptance of the restated general agreement with the City of Cleveland, to be in the best interest of the Authority, and recommends acceptance thereof by the Board of Trustees.

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

Section 1. That the General Manager be and hereby is authorized to execute and enter into a restated general agreement with the City of Cleveland for the construction, operation and maintenance of the Euclid Corridor Transportation Project.

Section 2. That the terms of said agreement shall be substantially in the form of Attachment "A" hereto as agreed to by the parties in the restated general agreement subject to state and federal law, and this Board's policies and all other regulations governing the conduct of the Greater Cleveland Regional Transit Authority and the City of Cleveland.


Resolution 2003 – 128
Page 2

Section 3. That the terms contained in the restated general agreement shall supercede and take the place of the general agreement approved by Resolution 2000-126.

Section 4. That this resolution shall become effective immediately upon its adoption.

Attachment: A – Intergovernmental Agreement

Adopted: August 19, 2003



President

Attest: 

CEO, General Manager/Secretary-Treasurer

Ordinance No.

RESOLUTIONS
16358

AN EMERGENCY ORDINANCE

Authorizing the Director of Public Service to enter into an agreement with the Greater Cleveland Regional Transit Authority for the Euclid Corridor Transportation Project.

WHEREAS, the City of Cleveland controls and maintains the public rights-of-way on behalf of its citizens and the traveling public; and

WHEREAS, the City of Cleveland is committed to improving the public rights-of-way for its citizens and the traveling public, including the quality and availability of public transit services; and

WHEREAS, the Greater Cleveland Regional Transit Authority ("GCRTA") is a regional transit authority operating in the City of Cleveland; and

WHEREAS, GCRTA is a grant recipient from the Federal Transit Administration ("FTA") for the purpose of administering and implementing the Euclid Corridor Transportation Project ("ECTP"); and

WHEREAS, the ECTP will further the City of Cleveland's commitment to improving the public rights-of-way on Euclid Avenue and downtown Cleveland through Euclid Avenue Bus Rapid Transit improvements, Transit Zone improvements, and construction of an East Side Transit Center; and

WHEREAS, the successful implementation of the ECTP will require modifications to public rights-of-way and the City of Cleveland's participation with GCRTA in the coordination, development, and funding of the ECTP; and

WHEREAS, the City of Cleveland desires to enter into an agreement with GCRTA to determine the respective rights and responsibilities of the City of Cleveland and GCRTA for the implementation and funding of the ECTP; and

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the Director of Public Service is authorized to enter into an agreement with the Greater Cleveland Regional Transit Authority ("GRCTA") for the Euclid Corridor Transportation Project substantially in the form as follows:

**RESTATED
GENERAL AGREEMENT
BETWEEN
THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY
AND
THE CITY OF CLEVELAND
FOR
THE EUCLID CORRIDOR TRANSPORTATION PROJECT**

This General Agreement, (the "Agreement") is made and entered into this ____ day of _____ 2003, by and between the **GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY** ("GCRTA"), a regional transit authority and political subdivision of the State of Ohio, pursuant to Board Resolution No. 2000-126 and Board Resolution No. _____, and the **CITY OF CLEVELAND** ("CITY"), a municipal corporation of the State of Ohio, through its Mayor, pursuant to the authority of Ordinance No. 1102-A-2000, passed by the Council of the City of Cleveland on September 11, 2000, and Ord. No. _____ passed by the Council of the City of Cleveland on _____ 2003.

RECITALS

The Euclid Corridor Transportation Project ("ECTP") is comprised of the following elements:

- Euclid Avenue Bus Rapid Transit ("BRT") Improvements
- Transit Zone Improvements
- East Side Transit Center ("ESTC")

GCRTA, as the Federal Transit Administration ("FTA") grant recipient for ECTP, will serve as the lead agency responsible for administering the grant and reporting to FTA; and

The successful implementation of ECTP will require significant modifications to the public rights-of-way controlled by CITY, and CITY's participation in the coordination and development of this project is imperative to insure success; and

The ECTP has a \$213 million budget and CITY and GCRTA are both committed to meeting that budget. The CITY, in cooperation with the Ohio Department of Transportation ("ODOT"), has completed the design and construction of an integrated downtown signal system with which the ECTP shall be compatible in design and operation to the extent practicable; and

It is the intent of this Agreement to establish general guidelines between GCRTA and CITY with respect to the financing, duties, responsibilities, and rights of each party during the design, construction, and operational phases of ECTP, in order that ECTP may be defined, designed, constructed, operated, and maintained within the City of Cleveland; and

The construction and operation of ECTP as contemplated will contribute directly and continuously to the economy of Greater Cleveland and its surrounding region to the general benefit of its citizens and to the welfare of the State of Ohio and its citizens; and

GCRTA and CITY anticipate that the operation of ECTP will achieve travel-time savings and more frequent service, and GCRTA and CITY acknowledge and agree that such travel-time savings and more frequent service are essential ingredients in the ECTP's benefits to the CITY. Both parties agree to cooperate and use their best efforts to permanently maintain such travel time savings and service levels; and

CITY and GCRTA understand that certain phases of the ECTP will extend beyond the boundaries of the City of Cleveland and that such extensions are essential to the continuity and integrity of the ECTP; and

Under the authority of Section 3, Article XVIII of the Ohio Constitution, as well as Ohio Revised Code Section 723.01, the CITY has the power to regulate the use of the rights-of-way of Euclid Avenue, West 3rd Street, East 12th Street, East 13th Street, East

17th Street, East 18th Street, East 21st Street, East 22nd Street, Prospect Avenue, Chester Avenue, Superior Avenue, and St. Clair Avenue; and

Under the authority referred to in the preceding paragraph, the Council of the CITY has determined that the conveyance by CITY to GCRTA of an encroachment permit for the ECTP serves a public purpose fully consistent with the terms under which the rights-of-ways are dedicated to public use; and

The CITY's willingness to support the ECTP is in part motivated by GCRTA's continuing commitment to the operation of the community circulators and cross-town bus routes to meet the needs of its ridership.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties to this Agreement agree as follows:

ARTICLE I

DEFINITIONS

"AGREEMENT" shall mean this Agreement dated _____, 2003, which supersedes and replaces the agreement between the parties dated September 11, 2000.

"BETTERMENT" shall mean an improved or upgraded state or condition that exceeds current design standards in effect at the time of this Agreement, and shall consider cost, function, capacity, durability, obsolescence and efficiency.

"CENTER MEDIAN BUS STATION" shall mean the paved area between and behind the roadway median curbs dedicated to the specific purpose of a transit system boarding platform, and shall also include the bus shelter structures and furniture, transit facilities, equipment, and other transit-specific elements dedicated to the use of the GCRTA and its customers, and excludes all crosswalk and intersection areas.

"CERTIFICATIONS AND ASSURANCES" shall mean the annual Certifications and Assurances required of GCRTA as an FTA grantee by FTA Circular 9300.1A, Appendix C, as it may be amended from time to time."

"CITY" shall mean the municipal corporation known as the City of Cleveland, including the executive and legislative branches.

"CITY FACILITIES" shall mean all buildings, streets, sidewalks, street furniture, parcels, rights-of-way, medians, easements and licenses, permitted areas and leased parcels or buildings, owned or under the management and/or control of CITY. "CITY FACILITIES" shall not include basement areaways/vaults, Fire and Police alarm system cables, and those portions of CITY-owned utilities that are not included in the ECTP.

"CITY PROJECTS" shall mean CITY projects that are geographically proximate to ECTP, that reasonably could be foreseen to affect the ECTP, and that are performed during the terms of agreements between GCRTA and CITY regarding ECTP, including but not limited to the water line, sewer, street lighting, and basement areaway and vault construction or replacements described in Article 2.02.

"ECTP" shall mean Euclid Avenue Bus Rapid Transit Improvements and Transit Zone Improvements as described in Article II.

"FTA MASTER AGREEMENT" shall mean the annual agreement between GCRTA and the FTA, known as FTA MA(9) as it may be amended from time to time, that governs grant funding under 49 USC §5301 et seq., the National Capital Transportation Act of 1969 as amended, the Transportation Equity Act for the 21st Century, 23 USC §101, or other federal enabling legislation.

"FULL FUNDING GRANT AGREEMENT" shall mean an agreement entered into between GCRTA and the FTA for grant funding of the ECTP or any part thereof pursuant to the requirements of FTA Circular 5200.1A as it may be amended from time to time."

"FUNCTIONAL REPLACEMENT" is the replacement of any facility, building, structure, appurtenance, or utility in accordance with CITY's design criteria, standards, and construction requirements in effect at the completion of 60% design, subject

however to such changes in design criteria as may be mandated by state or federal laws and/or regulations taking effect after the completion of 60% design.

"INTEGRATED TRAFFIC MANAGEMENT SYSTEM" ("ITMS") shall mean a comprehensive traffic control system, to be owned by the City, consisting of mast arms, signal heads, pedestrian signals, traffic control signs, street name signs and lane marking, loop detectors, conduit, wiring and appurtenant equipment, all interconnected to interact in a coordinated fashion. This system must be of a type that is compatible with the CITY's integrated downtown signal system.

"MAINTENANCE" shall mean all reasonable costs associated with the day-to-day and seasonal upkeep and long-term retention, preservation, and restoration.

"NINETY PERCENT DOCUMENTS" shall mean the 90% design review plans as may be modified in accordance with design review by appropriate reviewing agencies.

"OPERATIONS PLAN" shall mean the plan developed by GCRTA to ensure the cost-efficient and effective operation of the ECTP Transit System within the specified budget.

"PEDESTRIAN AREAS" shall mean those areas that encourage transit usage, and include sidewalks, passenger shelters, and pedestrian lighting as appropriate.

"PRIORITY" shall mean the advantage given to GCRTA vehicles operating within the project limits as defined in Article II, Project Description, to deliver green lights, intersection by intersection, to allow GCRTA vehicles to advance through the intersection for the purpose of achieving travel-time savings and more frequent service. Notwithstanding the foregoing, emergency vehicles will have first Priority.

"RECONSTRUCTION," for purposes of Article II, shall mean total replacement of pavement, subgrades, sidewalks, curbs, curb drains, pavement markings, landscaping, and all appurtenances necessary to replace the roadway and sidewalk system.

"REHABILITATION," for purposes of Article II, shall mean pavement grinding, overlay, and base repairs as necessary, sidewalk and curb repairs as necessary, and construction of concrete bus pads and appurtenances as necessary.

"SIXTY PERCENT DOCUMENTS" shall mean the 60% design review plans as may be modified in accordance with design review by appropriate reviewing agencies.

"THIRTY PERCENT DOCUMENTS" shall mean the 30% design review plans as may be modified in accordance with design review by appropriate reviewing agencies.

ARTICLE II

PROJECT DESCRIPTION

2.01 The following is a brief description of the individual project elements included in ECTP:

1. Euclid Avenue Bus Rapid Transit (BRT) Improvements

Design, engineering, and construction of capital improvements on Euclid Avenue in the right-of-way from and including Public Square and continuing east to the City boundary, including:

- A. Creation of a Center Median on Euclid Avenue from Public Square to East 107th Street, with adjacent exclusive bus lanes and new bus stations;
- B. Inclusion of enhancements to pedestrian areas that encourage transit usage, including new sidewalks, passenger shelters, pedestrian lighting, landscaping, street trees and tree lawns;
- C. Reconstruction (as defined in Article I) of a roadway composed of both bus lanes and travel lanes for other vehicles. Roadway design incorporating the acquisition of additional right-of-way and the construction of appropriate curb lines, appropriate numbers and widths of travel lanes, upgraded street lighting, curbside parking bays where appropriate, and crosswalks at intersections designed to clearly identify pedestrian areas;
- D. Installation of an Integrated Traffic Management System ("ITMS"), to be owned by CITY, on Euclid Avenue, to provide Priority to transit vehicles operating on Euclid

Avenue. The elimination and/or relocation, where possible, as determined by the CITY, of on-street parking, and relocation, where possible, of loading zones and installation of pedestrian and vehicular signage to clearly identify the availability of transit service;

- E. Reconfiguration of on-street parking;
- F. Development of an Operations Plan and specifications for unique vehicles that are anticipated to be sixty (60) foot low-floor, articulated, environmentally friendly vehicles with doors permitting both left- and right-side boarding. The exact number of vehicles and propulsion system design will be determined during final design;
- G. Preparation of a detailed plan for the protection and maintenance of vehicle and pedestrian traffic during the construction of bus and roadway improvements. Consideration will be given to phasing some or all of the roadway work to minimize safety conflicts with regular daytime traffic. The plan must provide safe access to stakeholders and their invitees in the project area during construction, including, but not limited to, using directional signs, barriers and the like; and
- H. Bicycle lanes as indicated in the 60% design drawings.

2. Transit Zone Improvements

Design, engineering, construction, and rehabilitation (as defined in Article I) of a Transit Zone bounded by St. Clair Avenue, Prospect Avenue, West 3rd Street, and East 22nd Street in downtown Cleveland to provide for expanded, highly visible transit operations in the Central Business District, to allow for convenient transfer between transit routes for regional travel, and to bring all curb-ramps in the Transit Zone into national ADA compliance. The Transit Zone Improvements include:

- A. **St. Clair Avenue:** Rehabilitation of the roadway composed of bus lanes and travel lanes for other vehicles to facilitate the creation of a curbside peak-hours reserved transit lane in each direction between West 3rd Street and East 13th Street to minimize conflicts between private vehicles and transit vehicles, and to minimize the routine operating and maintenance costs of the designated bus lanes and other vehicular travel lanes;
- B. **Superior Avenue:** Rehabilitation of the roadway composed of both bus lanes and travel lanes for other vehicles to facilitate the creation of a curbside 24-hour exclusive transit lane between West 3rd Street and East 18th Street, with

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- curb-cuts to permit stakeholder deliveries as defined in the 60% design documents, to minimize conflicts between private vehicles and transit vehicles, and to minimize the routine operating and maintenance costs of the designated bus lanes and other vehicular travel lanes;
- C. **Chester Avenue:** Rehabilitation of the roadway pavement between East 12th Street and East 17th Street;
 - D. **East 12th Street:** Rehabilitation of the southbound roadway pavement between Superior Avenue and Chester Avenue;
 - E. **East 13th Street:** Rehabilitation of the roadway pavement between Superior Avenue and Chester Avenue;
 - F. **East 17th Street:** Acquire necessary right-of-way and perform new construction to extend roadway (including sidewalks and curbs) from Euclid Avenue to Prospect Avenue, and rehabilitate roadway surfaces between Euclid Avenue and Chester Avenue, to serve primarily as a two-way, three-lane street;
 - G. **East 18th, East 21st and East 22nd Streets, and Prospect Avenue:** No roadway improvements will be performed on these streets. Work will consist of the installation of bus stops and bus shelters;
 - H. Preparation of a detailed plan, subject to written approval by the Director of Public Service, for the protection and maintenance of vehicle and pedestrian traffic during the construction of all Transit Zone roadway improvements. Consideration will be given to phasing some or all of the roadway work to minimize safety conflicts with regular daytime traffic. The plan shall provide that any construction meet federal, state and CITY requirements for a dedicated roadway;
 - I. Improvement to the ITMS to provide appropriate traffic signalization Priority to transit and safety vehicles operating within the Transit Zone as proposed by GCRTA and approved in writing by the Director of Public Service;
 - J. Inclusion of enhancements as appropriate to pedestrian areas that encourage transit usage, including passenger shelters and pedestrian signage to provide greater visibility and information to transit riders; and
 - K. Modifications to traffic operations, as determined by CITY, to eliminate and/or relocate, where possible, on-street parking and loading areas.

3. East Side Transit Center (ESTC)

Design, engineering and construction of a transit center, which will be located in the northwest quadrant of the Prospect Avenue and East 21st Street intersection, which includes:

- A. The ESTC will serve as a transportation hub where customers can make convenient connections between local, circulator, intercommunity, regional, and downtown bus service. The consolidation of these routes provides an enhancement of transit service coverage by interfacing routes that were not previously connected. Transfer between routes is facilitated by timed arrivals and departures. The ESTC also allows coordination of RTA services with those provided by other transit systems. The construction of the ESTC will eliminate the need in the area for on-street bus layovers and increase pedestrian access.
- B. This facility will include a climate-controlled building providing a passenger waiting area, driver's restrooms, communications and security area, concession area, janitor's room, transit police sub-station, mechanical room and storage area. The building will have a footprint of approximately 5000 square feet. A layover area for 12 to 16 - 40' buses will be located adjacent to the building.
- C. There is a possibility of joint development in conjunction with this facility. The design will be flexible to include the possible development of housing, office space, commercial, retail or structured parking with escalator and/or elevator access. All such joint development will be constructed by other entities above the proposed ESTC location.

4. Utility Work

The anticipated ECTP work on CITY-owned utilities consists of the design of street lighting, the purchase of street lighting poles lights, wiring and connections, the installation of all pole foundations and ductwork for street lighting, and the replacement, as necessary, of catch basins and their first sewer lateral pipe section on Euclid Avenue. Except as otherwise provided for in this Agreement, City-owned utility relocation shall not be at the expense of ECTP or the GCRTA.

2.02 City Project Elements

Design, engineering and construction of the following City Projects are necessary for the construction of the ECTP:

1. Basement Areaways/Vaults

CITY shall repair, reconstruct, modify, or abandon the basement areaways/vaults in the public right-of-way on Euclid Avenue from Public Square and continuing east to the City boundary that must be so altered to accommodate construction of the ECTP. The work shall include related utility systems, and any work associated with asbestos abatement and the removal, disposal, or remediation of any other hazardous material. CITY shall undertake any appropriate vacations of easements and permits that may exist for such basement areaways and vaults.

2. Euclid Avenue Water Main

CITY shall install a new water main in Euclid Avenue from Public Square to the eastern boundary of the City. The work includes removal and replacement of existing connections and hydrants.

3. Euclid Avenue Sewer Work

CITY shall inspect the sewer in Euclid Avenue from Public Square to the eastern boundary of the City, identify sections that require repair or replacement, and repair or replace the identified sections.

4. Street Lighting Work

CITY shall install all street lighting poles, lights and all necessary wiring and connections supplied by ECTP. The maintenance obligations of the CITY and GCRTA are described in Article 7.06.

ARTICLE III

PROJECT ORGANIZATION AND COMMUNICATIONS

GCRTA and CITY agree to adopt the following project organization structure to oversee the execution of ECTP. The following narrative provides a description of the roles and responsibilities of the various participants.

3.01 GCRTA Representatives

- A. GCRTA CEO/General Manager – GCRTA CEO/General Manager or designee will coordinate with CITY’s Mayor or the Mayor’s designee regarding general GCRTA/CITY issues and report such issues to the City Council liaison.
- B. Project Manager - GCRTA will assign a full-time Project Manager who will be responsible for managing the staff of GCRTA and consultants for the ECTP. The Project Manager will coordinate with CITY Project Manager regarding policy issues for the design, construction, and maintenance of the ECTP. GCRTA Project

Manager will also report to the City Council liaison on a regular basis and will provide the liaison copies of all documents between the CITY and GCRTA concerning the ECTP.

3.02 **CITY Representatives**

- A. Mayor of the CITY - The Mayor or the Mayor's designee will coordinate with the GCRTA CEO/General Manager or designee regarding general issues between GCRTA and CITY.
- B. CITY Project Manager - The Mayor has appointed and will maintain a member of the Mayor's Administration to coordinate with the GCRTA Project Manager concerning design, construction and maintenance of ECTP. The CITY Project Manager will be responsible for coordinating CITY's technical staff for the ECTP.
- C. City Council Liaison – City Council will appoint a liaison to the ECTP. The liaison will coordinate with the GCRTA Project Manager and CITY Project Manager concerning all aspects of the ECTP.

3.03 **FTA Project Oversight**

- A. FTA will monitor all aspects of the ECTP.
- B. The FTA shall have access to applicable GCRTA and CITY ECTP project files as permitted by law during regular business hours and upon reasonable notice, including copies of all completed work products, invitations to bid, invitations to progress review and public involvement meetings, and copies of minutes generated as a result of all such meetings, and such other documentation as required.
- C. As the FTA grant recipient, GCRTA is responsible for facilitating the flow of information between the parties to this Agreement. GCRTA will serve as the lead agency for administration of the grant and reporting to FTA. All matters pertaining to grant funds expenditures, allocations and disbursement of funds will be within the purview and control of GCRTA as the grant recipient. Further, all contracts funded in whole or in part by the FTA grant will conform to GCRTA standards to insure their compliance with all applicable federal and state rules and regulations.

3.04 **Communications**

All communication, whether written or oral, concerning problems, approvals, payments, decisions, or any other pertinent matter between the parties shall be directed to the CITY Project Manager for CITY and to the GCRTA Project Manager for GCRTA.

ARTICLE IV**GENERAL PROVISIONS****4.01 Project-Affected Facilities**

- A. GCRTA shall cause to be performed and CITY shall agree to the relocation, modification or reconstruction of CITY Facilities included in the ECTP budget in accordance with CITY's design criteria, standards, and construction requirements in effect at the completion of 60% design subject, however, to such changes in design criteria as may be mandated by federal or state laws and/or regulations taking effect after the completion of 60% design.
- B. Functional Replacement of an operational CITY Facility shall be as indicated in the 60% documents and shall not be considered a Betterment. Any Functional Replacements outside the scope of the ECTP will be mutually agreed upon in a separate agreement, subject to legislative authorization for improvements over Ten Thousand Dollars (\$10,000.00).
- C. CITY shall be responsible for the costs of CITY Projects including the costs associated with the study and assessment, the preparation of detailed plans, the management of the work, and the construction of the CITY Projects. CITY Projects shall be commenced only after passage of any necessary authorizing and assessment legislation by Cleveland City Council. CITY shall notify all property owners affected by the CITY Projects. As soon as reasonably possible, CITY shall provide GCRTA and the City Council liaison with a final written disposition of all work performed in CITY Projects.
- D. Replacement or modification to CITY's street surfaces as part of or during construction necessitated by use of ECTP vehicles shall be at the ECTP's expense.
- E. To the extent any CITY design requirement imposes additional project costs that require another design element to be modified in cost, CITY and GCRTA shall achieve agreement without delay on project design increases and project design decreases, provided that transit operational elements shall not be affected by the cost of the design changes. CITY shall pay the cost for any new CITY Facilities and/or replacement or modifications to existing CITY Facilities that meet each of the following criteria: (1) the work is requested by CITY in writing pursuant to the "Notice" provisions in Article 11.11; (2) the work is not included in the ECTP 60% design documents approved by CITY as a project element; (3) the work achieves a Betterment to the CITY; and (4) any necessary legislative authorizations have been obtained from Cleveland City Council.

4.02 Plan Review and Approval

CITY shall review and approve, in writing, all phases of the design and construction of the ECTP, including without limitation, construction sequencing and completion times allotted for maintenance and surface flow of pedestrian and vehicular traffic, with particular concern being given to transit services, deliveries and emergency equipment including CITY emergency and service vehicles. GCRTA shall coordinate design review procedures with CITY in order to ensure the timely and efficient completion of engineering and architectural designs to the extent that they affect CITY Facilities, CITY-owned utilities, or other CITY-owned or controlled property or facilities. CITY's design review of GCRTA plans during each design review period specified below shall be coordinated through and by CITY Project Manager. CITY Project Manager shall transmit to the designated departmental representatives, the City Planning Committee and the Aviation and Transportation Committee of City Council, the City Planning Commission, and the Cleveland Landmarks Commission for review of the plans for conformance to CITY's standards. CITY's departmental comments pursuant to such design review shall be compiled into one document with a final recommendation and forwarded to GCRTA Project Manager and the City Council liaison by CITY Project Manager. CITY Project Manager shall furnish GCRTA and the City Council liaison with written comments on proposed designs within the time frames covered under Article 4.03 (E) and (F) herein. CITY's administrative approvals of GCRTA's designs shall not unreasonably be withheld.

4.03 Submittal Requirements

- A. At 60/90% design review periods, GCRTA shall submit: (1) a sufficient number of plans to CITY Project Manager for CITY departmental and Commission review, and (2) current cost estimates for all improvements comprising the ECTP.
- B. Appropriate design calculations may be submitted with the plans as requested.
- C. Prior to 60/90% design presentations to the City Planning Committee and the Aviation and Transportation Committee of City Council, the City Planning Commission, and the Cleveland Landmarks Commission, GCRTA shall present the plan to the City's Design Review Committee for comments on the architectural harmony of the ECTP's surface features and their relationship with adjacent existing or proposed development. CITY Project Manager will be notified of such submissions as well as any subsequent meetings or correspondence.
- D. At the 60/90% design review periods, in addition to departmental review, the plans shall be submitted to the City Planning Committee and the Aviation and Transportation Committee of City Council (to be held as a joint committee at Council's discretion), the City Planning Commission, and the Cleveland Landmarks Commission

for review. GCRTA shall issue written notification to CITY Project Manager and the City Council liaison of such submissions as well as any subsequent correspondence or meetings.

- E. Thirty (30) business days shall be allotted for CITY's departmental review at the 60% design review period, at which time CITY shall furnish GCRTA and the City Council liaison written notice of such comment, condition, objection, or approval pertaining to such plans. Within forty (40) business days of the conclusion of the design review, GCRTA shall seek and obtain final approval by the City Planning Committee, the Aviation and Transportation Committee of City Council, the City Planning Commission, and the Cleveland Landmarks Commission for the design and plans submitted or as modified as the result of departmental review.
- F. Thirty (30) business days shall be allotted for CITY's departmental review at the 90% design review period. CITY shall furnish GCRTA and the City Council liaison written notice of either approval or conditional approval, including formal action by the City Planning Committee and the Aviation and Transportation Committees of City Council, the City Planning Commission, and the Cleveland Landmarks Commission.
- G. After approval of the 90% design drawings by CITY and before GCRTA provides any contractor a Notice to Proceed with any portion of ECTP construction, GCRTA or its Contractor shall be responsible for obtaining the necessary CITY permits to perform work in the public right-of way, to perform any work on CITY-owned utility systems, or to build, shore, underpin, demolish or otherwise alter any structure on privately-owned land within the City of Cleveland. The Contractor will submit all necessary information required to support the requests for CITY permits. Through the efforts of CITY Project Manager, and provided that it is appropriate to issue a permit under the circumstances, CITY will expeditiously process all permit requests by GCRTA so that the permits will be available at Notice to Proceed for the various GCRTA construction contracts. Permits issued with exclusions shall be resolved by CITY and GCRTA before work begins on the excluded items.
- H. GCRTA's contractor shall obtain the appropriate permits from CITY before proceeding with any revisions to the approved plans. CITY Project Manager shall provide a monthly list of permits issued in connection with the ECTP to the City Council liaison.
- I. Upon completion of ECTP construction, GCRTA shall expeditiously proceed with preparation of "As-Built" Drawings in the manner specified in Article 8.03.

- J. All City Council Committee approvals of the 60/90% design review periods required in this Article IV shall be evidenced by the passage of legislation by Cleveland City Council.

4.04 Project Controls

- A. Schedule: CITY and GCRTA shall cooperatively develop a master schedule of ECTP and CITY Projects as soon after this Agreement is signed as practicable that will minimize the likelihood that CITY, GCRTA, or their contractors will cause delay in the construction schedule for ECTP or CITY Projects." During contract negotiations, design, and construction of ECTP and CITY Projects, CITY shall attempt to minimize any delay to the ECTP schedule and subsequently to ECTP Contractors caused by CITY, its contractors, or any CITY-owned utility. CITY and GCRTA agree to include provisions in all design and construction contracts that will mitigate delay claims including delays resulting from coordination of multiple contractors on the same site.
- B. Monthly Reports: CITY shall provide GCRTA with a monthly report detailing all progress on the design and construction of CITY Projects. The reports shall include contract value, percent completion of each contract task, critical issues, and updated project milestone dates. GCRTA will incorporate monthly reports as provided by CITY into the ECTP Monthly Report, a copy of which shall be provided to CITY.
- C. Site Condition Certification: Upon completion and final acceptance of the construction of each CITY Project, including subsurface preparation of roadway and sidewalk areas, CITY, within thirty (30) days, shall certify in writing to GCRTA whether the facilities have been constructed in accordance with CITY and/or State of Ohio specifications applicable to such CITY Project. CITY or its contractor shall be responsible for repair of all installations that are found to not be in adherence to such specifications, provided that such non-adherence negatively impacts the cost and/or schedule of ECTP. Upon prior written authorization by the Director of Public Service, GCRTA may accomplish such repairs as part of ECTP and submit invoices for all expenses to CITY.

ARTICLE V

FINANCIAL COMMITMENT BY THE CITY

- 5.01** CITY has committed to GCRTA the following schedule of funds for the ECTP budget for design and construction of the BRT with the payment delivery date prior to December 1 of the specified year as follows:

ECTP Phasing Schedule

	Element	City to RTA	Paid/To Be Paid
1	Concept Engineering	\$1,000,000	Pd. In 2000
2	Preliminary Engineering	\$1,000,000	Pd. In 2002
3	Final Design	\$500,000	To be paid in 2003
4	Construction – Phase I	\$2,000,000	To be paid in 2004
5	Construction – Phase II	\$3,000,000	To be paid in 2005
6	Construction – Phase III	\$500,000	To be paid in 2006

Phase I - Euclid Avenue from Innerbelt to East 79th Street
- Transit Zone (as defined in Article II)

Phase II - Euclid Avenue from Public Square to the Innerbelt

Phase III - Euclid Avenue from East 79th To East Corporation line

CITY's total payment shall not exceed \$8.0 million, except for matters that are not included in the ECTP budget for design and construction of the BRT and that are agreed to by CITY in this Agreement or another binding contract. City shall not be responsible for cost overruns on the ECTP contracts. At each phase of the ECTP, CITY shall meet its commitment in this Article V without making any offsets CITY shall furnish the appropriate evidence by July 1st of each year that CITY's Director of Finance has certified funds for CITY's financial commitment subject to annual appropriations as may be approved by legislation passed by Cleveland City Council. If the ECTP is discontinued or terminated prior to its completion, GCRTA shall send CITY a detailed and reasonable estimate of City's proportional share of the funds necessary to close out GCRTA's existing ECTP financial commitments. CITY shall pay GCRTA by December 1 such reasonable estimate up to the amount scheduled to be paid under this Article during the then-current year. Upon receiving such estimated payment, GCRTA shall close out and make final payment on all ECTP contracts, and shall return any unspent money to CITY and other funding agencies based upon their relative contributions after requisite approvals, if any, of the FTA. If the estimated payment is insufficient to pay CITY's proportional share of the close-out costs, GCRTA shall invoice the CITY for its proportional share of the deficiency. CITY shall pay such amount, but CITY's total payment shall not exceed the amount scheduled to be paid under this Article for the then-current year. Except for such close-out payments, CITY shall have no obligation to make further scheduled payments described in this Article, or to perform any other obligation under this agreement."

5.02 CITY also commits to provide and pay for all design, construction and management of basement areaways/vaults work described in Article 2.02. These costs are currently estimated by CITY to be \$10 million, which is in

addition to the payments stated in Article 5.01 above. All additional costs beyond \$10 million associated with the basement areaways/vaults shall be borne entirely by CITY. CITY shall have no obligation to proceed with the basement areaways/vaults project prior to the receipt of the Full Funding Grant Agreement."

ARTICLE VI

FINANCIAL COMMITMENT BY GCRTA

GCRTA has committed to reimburse CITY for median landscape maintenance in accordance with Article 7.03 B."

ARTICLE VII

PROJECT PROVISIONS

7.01 Maintenance of Traffic

- A. GCRTA shall develop a Maintenance of Traffic plan for CITY, which will provide for the overall maintenance of the traffic flow on commercial and arterial streets affected by the construction of ECTP. This plan must be approved in writing by the Commissioner of Traffic Engineering and Director of Public Service. This plan shall include general provisions for maintenance of pedestrian and vehicular access to public and private establishments, within the areas affected. Special consideration shall be given to the necessity of providing access to business establishments and/or pedestrians, deliveries, maintenance of transit services, and fire-fighting and other emergency equipment. Such plans will serve to coordinate the schedule of operations of GCRTA's Contractors and shall be submitted to CITY, including the City Council liaison, for its review.
- B. The cost of any variation from the approved Maintenance of Traffic plan during construction caused by the ECTP shall be at the ECTP expense unless otherwise mutually agreed.
- C. Transit service rerouting shall be coordinated between CITY and GCRTA. GCRTA shall be responsible for coordinating with CITY Traffic Engineering Division the rerouting of transit service necessitated by construction activities.
- D. GCRTA shall be financially and operationally responsible for the integration of the ECTP ITMS in CITY's existing traffic control network within the project area as described in Article II and as defined in 60% design documents. The traffic integration plan

must be approved in writing by the Commissioner of Traffic Engineering and Director of Public Service.

7.02 Street Restoration

All pavement restoration in public streets shall be in strict conformance with the specifications and practices of CITY in effect at the completion of 60% design subject, however, to such changes in design criteria as may be mandated by federal or state laws taking effect after the completion of 60% design.

7.03 Operation and Maintenance after Construction

- A. Except as provided in Article 7.03 (B), and (C) and 7.06 upon completion of the relocation, modification or reconstruction of CITY Facilities in accordance with the plans approved by CITY, CITY shall maintain such improvements at no cost to GCRTA. "Any project to install public art as part of the ECTP shall include provisions for maintenance from non-CITY funds."
- B. GCRTA will trim at its sole cost all trees and shrubs located within the immediate Center Median Bus Station area as defined in Article I. CITY will, with its own workforce, perform all remaining maintenance in the Center Median and sidewalk area. GCRTA will reimburse CITY for Center Median maintenance plus annual adjustment for inflation based upon the CPI. "CPI" shall mean the National Consumer Price Index for all Urban Consumers, U.S. City Average, as compiled by the United States Department of Labor or, if the United States Department of Labor no longer publishes such a Consumer Price Index, any comparable index published by the other branch or department of the United States Government. CITY's maintenance plan shall be subject to GCRTA's reasonable approval at the 90% design stage. The agreement on the maintenance plan shall be memorialized in writing and signed by GCRTA and the Director of Parks Recreation and Properties. This reimbursement shall be not less than Ten Thousand Dollars (\$10,000) and not more than Twenty Thousand Dollars (\$20,000) per year, plus annual adjustment for inflation based upon the CPI.
- C. GCRTA shall be responsible for all costs associated with the maintenance of the Center Median Bus Stations, including related utilities except as provided in Article 7.06(C).
- D. Existing bus shelters that no longer service buses shall be relocated based on GCRTA policy and the CITY approval process for bus shelters.
- E. The ITMS shall be owned, operated and maintained by CITY following completion of construction and acceptance by the Director of Public Service. CITY shall use its best efforts to maintain and operate the system so that it continues to provide Priority in accordance with the Euclid Corridor Transportation Management System ("ECTMS"). All

revisions to the ECTMS shall be mutually agreed to by CITY and GCRTA prior to the implementation of such revisions.

- F. CITY reserves the right to maintain its rights-of-way and utilities and will coordinate its normal repairs and inspections to not unreasonably impact GCRTA's regular operations and shall give a minimum of fourteen (14) days' notice prior to the start of such activities except in the case of emergencies affecting the public safety, health and welfare. If a CITY-owned utility disruption occurs that demands the disruption of GCRTA's ECTP operations, CITY will effect repairs to a level of Functional Replacement as originally designed as promptly as possible. The cost of the repairs shall be borne by the party responsible for the disruption. If CITY-owned utility services are disrupted and GCRTA has received prior written approval from the Director of Public Service, GCRTA may rectify and restore the disrupted utility service with GCRTA forces or contractors only upon the occurrence of all of the following: (i) the disrupted utility service significantly disrupts GCRTA ECTP service; (ii) CITY fails to commence repairs within 24 hours of the disruption and promptly execute repairs to the disrupted utility; and (iii) the Director of Public Utilities is notified of GCRTA's intent to rectify or restore utility services. GCRTA shall invoice CITY for its costs incurred to rectify or restore service. The invoice shall be due and payable within sixty (60) days. CITY shall accomplish invoice approval or notice of disapproval within fourteen (14) days of receipt of invoice.
- G. CITY reserves the right to inspect and maintain any and all CITY Facilities and will coordinate its routine inspections and maintenance repair with GCRTA. GCRTA will cooperate with CITY's efforts of inspection and maintenance. GCRTA shall also cooperate with CITY if a declared emergency condition arises.
- H. CITY retains the right, without notice to GCRTA, to penetrate the right-of-way for proper municipal purposes and to issue permits to third parties for uses of the right-of-way below the surface when such uses will not result in a disruption of GCRTA's operations. CITY or its permittee shall notify GCRTA a minimum of fourteen (14) days in advance of any uses of the right-of-way that will disrupt GCRTA operations with the exception of an emergency affecting the public safety, health or welfare. CITY's street opening and road replacement policy will include but not be limited to (1) minimizing the impact on transit operations; 2) maintaining the integrity of pavement materials; and (3) minimizing disruption of median bus stations.

7.04

Projections in Public Space

- A. GCRTA's plans shall indicate those basement areaways, vaults, signs, display windows, footings, foundations, and other projections in public space that must be modified or removed to accommodate the construction of ECTP.

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- B. Upon a reasonable determination by GCRTA that any projection into or occupancy of public space should be modified, removed or vacated, GCRTA shall notify CITY. CITY will expeditiously investigate such matters and mutually agree with GCRTA as to what action will be taken by CITY to resolve the issue. The City Council liaison shall be copied on all correspondence or notifications.

7.05

Disposition of CITY Equipment and Material

- A. CITY shall have the right to determine the disposition of its equipment and materials impacted by the operations of any GCRTA contractor. The items to be salvaged shall be determined prior to the 90% design review period and be incorporated in the contract documents for each individual contract. The methods of disposition shall include, but are not limited to:
 - 1. Abandonment in place by CITY.
 - 2. Salvage of material and equipment by CITY forces, which shall be accomplished in a timely manner, in accordance with the established construction schedules.
 - 3. Salvage by GCRTA's contractor, at request of CITY, with salvaged material being delivered to designated CITY storage yards. All costs associated with this salvage process shall be considered part of the ECTP.
- B. The cost of salvaging any CITY equipment or material, not identified prior to the 90% design review period, shall be at CITY's expense.

7.06

Street Lighting and Traffic Signal System

- A. Where practical, GCRTA's construction plans shall maintain the existing electrical ducts and cables used in support of the existing street lighting and traffic signals. In the event that a replacement of ducting and cables is required, the existing ducting and cables shall be maintained by the ECTP until the replacements have been installed and connected.
- B. Street lighting and traffic signal relocations shall be at ECTP's expense if such relocations are within the project limits as defined in Article II, Project Description.
- C. Streetlighting constructed under the ECTP that is solely for the benefit and lighting of the pedestrian ways and roadway shall become the maintenance responsibility of CITY once placed into

service. The cost of the power to operate such lighting shall be the responsibility of CITY. Lighting solely for the benefit of the transit stations, and not roadway lighting installed within the median, shall be the maintenance responsibility of GCRTA, which shall be responsible for the cost of power to operate this lighting.

7.07 Parking Meters Within ECTP Limits

CITY and GCRTA shall have the following responsibilities relating to parking meters located within the ECTP geographical limits defined in Article II:

- A. CITY shall remove and reinstall parking meter heads, at CITY's expense, and in coordination with the schedule of operations of GCRTA. The meters shall be state-of-the-art electronic meters.
- B. GCRTA shall remove and dispose of existing parking meter posts during construction and install new posts whenever necessary at ECTP's expense.

ARTICLE VIII

PROJECT PROVISIONS DURING CONSTRUCTION

8.01 Construction Inspection and Approval

- A. Work performed by any contractor employed by GCRTA in furtherance of ECTP shall be inspected by GCRTA in accordance with GCRTA Quality Program Plan and Project Execution Manuals. CITY will provide a project representative at its own cost to observe the construction of all CITY Facilities. The CITY project representative shall act as a liaison during construction between the City's Project Manager and GCRTA. CITY project representative shall meet regularly with GCRTA's Construction Superintendent to discuss project schedules, changes, requests for information, requests for change orders impacting CITY funding, and quality control issues. CITY project representative shall promptly report all problems, disagreements, and objections to GCRTA's Construction Superintendent at the ECTP construction site, and shall not issue any direction to any contractor working on the site.
- B. CITY project representative shall review all ECTP improvements for compliance with the plans and specifications approved by CITY. Upon completion of the work and before final acceptance by CITY, GCRTA or its designee shall certify in writing to CITY whether the facilities have been constructed in accordance with the plans and specifications. Upon receipt of such certification, the CITY project representative will schedule a final walk-through with GCRTA and, within thirty (30) days of completion of all punch list items

identified in the walk-through, CITY's Project Manager shall issue a written acceptance of the CITY Facilities.

- C. CITY's project representative shall keep a log of all problems, disagreements, and objections to any work observed in the field, and shall provide a copy to GCRTA's Construction Superintendent upon request.
- D. GCRTA will maintain a document control system approved by the FTA.

8.02

Construction Coordination

- A. All construction work performed in, on, under, or over public space located in the City of Cleveland shall, in the interest of public convenience and safety, be performed in accordance with schedules submitted to and approved by the Director of Public Service to coordinate such construction work with other construction work in such public space. CITY shall exercise its jurisdiction and control over such public spaces, including the issuance of permits, to facilitate GCRTA's use and occupation thereof for the purposes of this Agreement.
- B. GCRTA will be required to respond promptly to any complaints or comments received from CITY involving problems with utilities, pedestrian and/or vehicular traffic movement or access to public or private property resulting from ECTP construction.
- C. All utility services (water, wastewater, electric, etc.), the police and fire alarm systems and the traffic signal wiring shall not be interrupted at any time, except as mutually agreed upon, or under emergency conditions. GCRTA shall provide notification in writing to the CITY Project Manager forty-eight (48) hours prior to any planned interruption.
- D. If GCRTA's construction of the ECTP damages CITY-owned or private utility facilities or disrupts utility service, GCRTA and/or its contractors shall immediately notify CITY Project Manager and the affected utility. CITY shall rectify or repair the problem if the damaged utility facilities are owned by the Division of Water, Division of Water Pollution Control, or Cleveland Public Power. CITY shall invoice GCRTA for its damages. Reimbursement for such repair will be based upon actual, verifiable and reasonable repair costs with no mark-up. The invoice shall be due and payable within sixty (60) days of the approval of such invoice. Invoice approval or notice of disapproval shall be communicated by the GCRTA within fourteen (14) days of receipt of invoice.
- E. CITY, prior to the commencement of construction, will provide a list of contacts for all CITY agencies impacted by ECTP.

- F. During construction, GCRTA will schedule periodic joint meetings between GCRTA and CITY staff and the City Council liaison to review progress of construction and future project actions.
- G. Upon reasonable notice, CITY may schedule special progress meetings, which representatives from GCRTA shall attend.

8.03 "As-Built" Drawings

- A. GCRTA shall maintain a set of "as-built" drawings in the Construction Superintendent's field office at all times. CITY and City Council liaison shall have immediate access (i.e., less than 1 hour during emergencies) to the "as-built" drawings until CITY receives its own set. GCRTA will utilize an electronic format compatible with CITY's existing system.
- B. Within six (6) months after completion of the ECTP, GCRTA shall furnish CITY with full scale mylar film reproductions and half-scale equivalent reproductions of plans in booklet form showing all facilities installed in public space or rights-of-way.

ARTICLE IX

REAL ESTATE

9.01 Property Acquisition

A. Temporary staging, construction work and storage areas:

Upon obtaining any necessary authorization, CITY shall grant to GCRTA, in an expeditious manner, access to CITY-owned property to be mutually agreed upon prior to construction for GCRTA contractor staging, temporary construction work and storage areas. For uses up to one (1) year in duration, CITY shall issue a license under Section 183.16 of the Codified Ordinances. GCRTA will enter into license or lease agreement(s) identifying the license or lease terms for each parcel of CITY-owned property or properties identified for GCRTA contractor staging, temporary construction work and storage areas. The term of such license or lease agreements shall cover the period through demobilization by the construction contractors and shall include a property description that is reasonably satisfactory to CITY. These properties shall be provided to GCRTA without monetary consideration, rent or fee. "GCRTA shall restore each property to its preexisting condition when the property is no longer needed by GCRTA for the purposes described in this paragraph."

B. Public Streets

As provided in the ordinance authorizing this Agreement, the Director of Public Service is hereby authorized to issue GCRTA an encroachment permit (easement), prepared by the Director of Law, for the Transit Strips. The encroachment permit may be terminated only for one of the following reasons: (1) in the event that GCRTA uses the Transit Strips for other than public transit and incidental related purposes, (2) if GCRTA ceases use of public transportation operations in all or any significant portion of the Transit Strips available for its use for a period exceeding six (6) months after revenue service begins, or (3) the ECTP is abandoned before service begins. "Transit Strips" shall mean all Center Median Bus Stations, median strips and all dedicated bus lanes (as depicted in detail on the Sixty Percent Documents) located within the rights-of-way of the Euclid Avenue Bus Rapid Transit Improvements as defined in Article II. Termination for one of the above reasons shall be effective upon legislative action. Nothing herein shall be construed or deemed to impair or limit the City's rights and obligations to preserve and maintain the public rights-of-way in trust for public purposes.

C. Permanent (off-street) Property Transfers

1. As part of the consideration for the benefits to CITY from the ECTP, CITY shall convey to GCRTA the properties identified on Exhibit A, excluding street dedications or property on streets closed to traffic, and such other properties as may be agreed upon between CITY and GCRTA. The form of CITY's deed shall substantially conform to the deed attached as Exhibit "B." CITY shall also, where necessary for construction and maintenance of ECTP, grant to GCRTA slope and drainage easements on CITY-owned property. The property interests described in this paragraph shall be conveyed to GCRTA only after passage of appropriate legislation and resolutions by the Board of Control.
2. If necessary, CITY shall grant to GCRTA an interim license under Section 183.16 of the Codified Ordinances or encroachment permit to gain access to property to be conveyed to GCRTA until passage of appropriate legislation and resolutions by the Board of Control.

D. Preparation of Enabling Legislation

CITY Law Department shall prepare any and all municipal legislation pertaining to the ECTP and the transactions

contemplated herein, and the appropriate administrative official shall timely submit such legislation to the City Council for consideration.

9.02 Disposition of Remaining Property

GCRTA agrees, to the extent permitted by State law, federal requirements and GCRTA policies, that future development of any remaining portions of land acquired from CITY for the purpose of ECTP construction will be closely coordinated with the development and redevelopment programs of CITY. Any CITY property conveyed to GCRTA at no cost and not used by GCRTA shall be reconveyed to CITY by GCRTA at no cost upon completion of construction of the ECTP.

9.03 Eminent Domain

CITY shall exercise its rights of eminent domain if, and only if, all federal prerequisite land acquisition requirements have been satisfied and the following conditions are met:

- A. The property to be appropriated will be used for roadway purposes or other CITY purposes;
- B. GCRTA shall document to CITY its good faith negotiations with the property owner to purchase the property, including providing records of all contacts, meetings, and correspondence between GCRTA and the property owner;
- C. GCRTA shall provide CITY with an independent appraisal of the property to be appropriated;
- D. GCRTA shall provide CITY with a title report showing all interests in the property to be appropriated;
- E. GCRTA shall provide CITY with an environmental report to CITY's reasonable satisfaction on the property to be appropriated;
- F. GCRTA shall transfer to CITY the appraisal price for the property to be appropriated and shall transfer to the Court any remaining purchase price the Court determines to be due;
- G. GCRTA shall assume all liability for court costs, filing fees, and outside counsel costs to CITY which were approved in advance by GCRTA, if any, in connection with the appropriation; and
- H. City Council has passed all necessary and appropriate authorizing legislation.

ARTICLE X

REIMBURSEMENT

10.01 Reimbursement to CITY

- A. GCRTA shall reimburse CITY for work not required to be performed by CITY under this Agreement or otherwise and undertaken upon request by GCRTA. Reimbursement for this work will be based upon actual verifiable and reasonable design and construction costs with no mark-up. CITY reserves the right to decline any such work requested by GCRTA that is not a CITY Project. GCRTA will reimburse CITY its direct cost for specific work performed by CITY personnel or designees when requested by GCRTA.

CITY shall bill GCRTA monthly for the reimbursable cost accumulated in the previous calendar month. Such invoices shall clearly show GCRTA's contract number and CITY's control number and shall be in such detail to permit an evaluation of the materials furnished and the services performed by CITY. Payment shall be made on a monthly basis. CITY bills shall be submitted on a monthly basis within ninety (90) days from date of performance of the applicable work.

- B. To the extent permitted by law, GCRTA and FTA shall have the right to audit CITY's ECTP records at reasonable times and places mutually agreed upon including books, records, documents, papers and other supporting data involving those transactions in which CITY performed work or services for GCRTA. Such records shall be maintained and kept available for a period of seven (7) years from the completion of the work to which they pertain.

10.02 Work Authorization by GCRTA

Prior to the performance of work undertaken upon request by the GCRTA, unless otherwise indicated in this Agreement, CITY shall provide GCRTA with a detailed written estimate of all costs, including but not limited to labor, materials and overhead, for the services and, if applicable, secure the necessary legislative authorization prior to commencement of work. GCRTA shall issue a Work Authorization (the "Work Authorization") to CITY on GCRTA's standard form, and provide a copy to the City Council liaison. In the performance of any of the authorized work or services, CITY may not incur charges in excess of those shown on the Work Authorization without the prior written approval of GCRTA. GCRTA will not be obligated to pay for work absent an approved Work Authorization.

10.03 Reimbursement to GCRTA

- A. CITY shall reimburse GCRTA for work undertaken upon request by CITY unless otherwise indicated in this Agreement. Reimbursement for this work will be based upon actual verifiable and reasonable design and construction costs with no mark-up. GCRTA reserves the right to decline any work that is not an ECTP project. CITY will reimburse GCRTA its direct cost for specific work performed by GCRTA personnel or designees when requested by CITY. GCRTA shall bill CITY monthly for the reimbursable cost accumulated in the previous calendar month. Such invoices shall clearly show GCRTA's contract number and CITY's control number and shall be in such detail to permit an evaluation of the materials furnished and the services performed by GCRTA. Payment shall be made on a monthly basis. GCRTA bills shall be submitted on a monthly basis within ninety (90) days from date of performance of the applicable work.

- B. To the extent permitted by law, CITY shall have the right to audit GCRTA's ECTP records at reasonable times and places mutually agreed upon including books, records, documents, papers and other supporting data involving those transactions in which GCRTA performed work or services for CITY. Such records shall be maintained and kept available for a period of seven (7) years from the completion of the work to which they pertain.

10.04 Work Authorization by CITY

Prior to the performance of work undertaken upon request by CITY, unless otherwise indicated in this Agreement, GCRTA shall provide CITY with a written estimate for the services and, if applicable, the CITY shall secure the necessary legislative authorization prior to commencement of work. CITY shall issue a Work Authorization to GCRTA on CITY's standard form, and provide a copy to the City Council liaison. In the performance of any of the authorized work or services, GCRTA may not incur charges in excess of those shown on the Work Authorization without the prior written approval of CITY. CITY will not be obligated to pay for work absent an approved Work Authorization.

ARTICLE XI

MISCELLANEOUS

11.01 Modification of Agreement

The provisions of this Agreement may be modified or amended only after receipt of legislative authorization of Cleveland City Council and the GCRTA Board of Trustees consenting to such modification or amendment and in conformity with the Charter of the CITY and the bylaws of GCRTA.

11.02 Headings

The parties agree that article and paragraph headings are solely for convenience of reference and shall neither constitute a part of this Agreement nor have any legal effect whatsoever.

11.03 Recitals

The recitals are hereby made a part of this Agreement.

11.04 Governing Law

This Agreement shall be construed in accordance with the laws of the State of Ohio.

11.05 Waiver

The waiver of any terms of this Agreement or failure of CITY or GCRTA to insist on strict compliance and prompt performance followed by acceptance by CITY or GCRTA of such performance, shall not constitute or be construed as a waiver or relinquishment of any right by CITY or GCRTA to enforce all terms strictly in the event of a continuous or subsequent default.

11.06 Dispute Resolution

- A. GCRTA and CITY agree to attempt to resolve disputes arising from or relating to this Agreement, ECTP, and CITY Projects, through good faith negotiation among the parties involved. Any claim, controversy or dispute concerning the interpretation or performance of this Agreement, the performance of work relating to or necessary for the ECTP or CITY Projects, or to the threatened, alleged or actual breach of this Agreement which is not disposed of by mutual agreement within a period of seven (7) calendar days after one party has provided written notice of the dispute to the other, first shall be subject to Progressive Dispute

Resolution procedures described in this Article. If negotiations under the Progressive Dispute Resolution procedures are not successful within the time period contained in Article 11.06 (C) and (D), then either party may use any available remedy to seek resolution of the dispute in any court of competent jurisdiction and/or exercise the remedies provided in Article XIII, and these proceedings will have been without prejudice to either party. Notwithstanding the Parties' agreement to these procedures, either Party may seek immediate injunctive relief if such Party believes that injunctive relief is necessary to prevent immediate irreparable harm to its interests. Nothing in this paragraph is intended to create new causes of action for either party.

- B. Invocation of Progressive Dispute Resolution Procedures. The party believing itself aggrieved (the "Invoking Party") shall call for progressive management involvement in the dispute negotiations by written notice to the other party. Such notice shall be without prejudice to the Invoking Party's right to any other remedy permitted by this Agreement.

Progression of Management Involvement. The Parties shall use their best efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and locations, between negotiators for the Parties at the successive management levels set forth below.

<u>Level</u>	<u>CITY</u>	<u>GCRTA</u>
Level 1	CITY Project Manager	GCRTA Project Manager
Level 2	Director of Public Service	Deputy General Manager – Eng. & Project Mgmt.
Level 3	Mayor or Mayor's Designee	CEO/General Manager

- C. The negotiators at each management level shall have a period of ten (10) business days in which to attempt to resolve the dispute. The allotted time for the first-level negotiators shall begin on the date of receipt of the Invoking Party's notice.
- D. If a resolution is not achieved by negotiators at any given management level at the end of the allotted time or any extension thereto agreed to by the negotiators at that level in writing, the allotted time for the negotiators at the next management level, if any, shall begin immediately. The allotted time shall be deemed to have expired upon the Invoking Party's receipt of written notice that the other Party rejects the Invoking Party's position.
- E. If resolution is achieved at any management level, the resolution shall be memorialized in writing, shall state the agreements reached and describe the actions to be taken, if any, and shall be signed by the Deputy General Manager of Engineering and Project Management and the Director of Public Service.

- F. The agreement of the Parties to these Progressive Dispute Resolution procedures is solely for the benefit of the Parties and is not intended to create any legal, equitable, or beneficial interest in any third party or to vest in any third party any interest with respect to the enforcement of performance of these procedures.

11.07 Insurance

The following **minimum** limits of insurance will be maintained by any contractors or subcontractors retained by CITY or GCRTA to perform work that is part of or related to CITY projects and ECTP. GCRTA will also maintain such insurance limits as outlined in a., b., and c. below. CITY (for its contractors) and GCRTA (for its contractors) will evaluate each contract and the exposures presented by the work and increase required limits of insurance to a reasonable level as dictated by the nature of the work. For CITY, the Director of Law and Director of Finance will be responsible for setting appropriate insurance limits and types of insurance. For GCRTA, the Director of Risk Management will be responsible for setting appropriate insurance limits and types of insurance. There shall be no reduction of the insurance requirements of this article without the written agreement of the Director of Public Service and the Deputy General Manager-Engineering and Project Management.

In lieu of insurance, CITY shall be financially responsible for any CITY liabilities arising out of or related to this Agreement.

Prior to commencement of any work and until completion of its work under a contract, each contractor or subcontractor shall maintain the following insurance coverage, at its cost, from insurers acceptable to the contracting party, giving evidence of such coverage to the contracting party prior to commencing work at the project site:

- a. Commercial General Liability Insurance in the amount of \$2,000,000 combined single limit each occurrence for bodily injury and/or property damage with a \$2 million per project annual aggregate. Said policy shall also include:
- Premises / Operations coverage
 - Personal Injury coverage
 - Liability for independent contractors
 - Products / Completed Operations liability insurance: This insurance must be maintained for a period of not less than 5 years from the completion of the work

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- Contractual liability coverage insuring the "hold harmless" provision set forth in Article 11.08.
 - Liability for explosion, collapse and underground property damage
 - Said policy shall be written on an "occurrence" basis.
 - Owner will accept any combination of primary CGL and Excess or Umbrella policies to meet the minimum coverage requirements above.
- b. Automobile Liability Insurance in the amount of \$2,000,000 combined single limit each accident for bodily injury and /or property damage. Said policy shall apply to all owned, leased, hired and non-owned vehicles used in connection with the work.
- c. Statutory Workers' Compensation coverage in compliance with all applicable state workers' compensation laws to cover all employees furnishing labor under the terms of this contract and under the control of the Contractor or subcontractor. Employers' Liability coverage in the amount of \$1,000,000 per accident / \$1,000,000 per employee for disease will also be included, either under the Workers' Compensation policy or under the Commercial General Liability policy (Stop Gap) referenced under a. above. In Ohio: a copy of a certificate of premium payment from the Industrial Commission and Bureau of Workers' Compensation, or a copy of the Certificate of Employer's Right to Pay Compensation Directly.
- d. Contractors Equipment Coverage must be provided on an "All Risk" basis, covering physical damage to all tools and equipment, including automotive equipment, used by the contractor.
- e. Where exposures involve asbestos abatement work, Asbestos Liability Insurance in the amount of \$2 million per occurrence; Bodily Injury and Property Damage, \$2 million general aggregate; and \$2 million completed operations. As this insurance is written on a Claims-made basis, the policy shall either continue to be in force or that an extended notification period be provided allowing for claims to be submitted for a minimum of 5 years following completion of the contract.
- f. Where work involves environmental impairment exposures (to be determined by CITY & GCRTA) Environmental Impairment Liability Insurance in the amount of \$1 million each loss; \$2 million annual aggregate. As this insurance is written on a Claims-made basis, the policy shall either continue to be in force or that an extended notification period be provided allowing for claims to be submitted for a minimum of 5 years following completion of the contract.
- g. Where any work will be performed within 50 feet of GCRTA or other railroad tracks, Railroad Protective Liability Insurance naming GCRTA as insured in the amount of \$2 million per occurrence and \$6 million in the

aggregate to cover bodily injury and / or property damage liability as well as physical damage to property.

- h. General Requirements: The contractor shall not commence work herein until it has obtained the required insurance and has received written approval of such insurance by the contracting party. It shall furnish evidence of such insurance in the form of a certificate (Acord or similar form). The certificate shall provide the following:
- In the event the insurance should be changed or cancelled, such change or cancellation shall not be effective until 30 days after the contracting parties have received written notice of such change or cancellation from the insurance company. Such notice shall be mailed by certified mail, return receipt requested, to either CITY'S appropriate Director or GCRTA's Director of Procurement, depending on the identity of the contracting party
 - Name CITY and GCRTA as an additional insured for coverages required under a., b., e. and f. above, for claims arising out of operations in conjunction with the contract.
 - Contain a waiver of subrogation in favor of CITY and GCRTA.
 - Specific reference to the subject contract.
 - Specific reference to all deductibles & Self Insured Retentions (SIR).
 - Shall be primary and non-contributing to any insurance possessed or procured by CITY and GCRTA and any self-insurance program maintained by either.
 - An insurance company having less than an A- X rating by The A. M. Best Company will not be considered acceptable. All certificates are subject to acceptance by CITY and GCRTA. City and GCRTA shall be entitled to receive a full copy of the insurance policy (ies) upon request and reserves the right to review financial statements & approve any deductibles or self-insured retention (SIR). Any deductible or SIR is for the account of the Contractor.
- i. Approval of the insurance by CITY or GCRTA shall not relieve or decrease the liability of the Contractor, CITY or GCRTA hereunder. It is to be understood that GCRTA and CITY do not in any way represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect the Contractor's interests or liabilities.
- j. In the event Contractor neglects, refuses or fails to provide the insurance required under the Contract documents, or if such insurance is canceled for any reason, the CITY or GCRTA shall have the right but not the duty to procure the same, and the cost thereof shall be deducted from moneys then due or thereafter to become due to Contractor.

11.08 Construction Contract Language

- A. With respect to CITY Projects and the ECTP contracts that reasonably could be foreseen to affect existing CITY Infrastructure or the ECTP or CITY projects, the contracting party (CITY or GCRTA) shall include or require the inclusion of the following language in the contract:

INDEMNITY CLAUSE

1. The Contractor shall indemnify, keep and save harmless the GCRTA and the City of Cleveland and their respective officers; agents and employees against all suits or claims that may be based upon any death or injury to persons or property that may occur, or that may be alleged to have occurred in the course of the performance of this Contract by the Contractor, or as a result of the performance of this Contract by the Contractor, whether or not it shall be claimed that the injury was caused through a negligent act or omission of the Contractor or his/her employee, and whether or not the persons injured or whose property was damaged were third parties, employees of the Contractor or employees of any authorized Subcontractor; and the Contractor shall at his/her own expense defend GCRTA and the City of Cleveland in all litigation, pay all attorneys' fees and all costs and other expenses arising out of the litigation or claim or incurred in connection therewith; and shall, at his/her own expense, satisfy and cause to be discharged such judgments as may be obtained against the GCRTA and City, or any of its officers, agents or employees.
 2. With respect to any and all claims against GCRTA, the City, or other officer, partner, employee or agent of the City or GCRTA by any employee of the Contractor, Subcontractors, their agents, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation of subparagraph (1) above shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, Subcontractors or other person under applicable workers' or workmen's compensation, benefit or disability laws, it being clearly agreed and understood by the parties hereto that the Contractor expressly waives any immunity the Contractor or might have had under such laws.
- B. The Parties shall hold each other harmless with respect to matters described in subparagraph (1) above and each Party hereby waives any claim or right to assert any cause of action or alleged cause of action or claim or demand against the other Party, its officers, agents and employees that may arise regarding any matter described in subparagraph (1) above.

- C. With respect to the award of each CITY Project or ECTP construction contract that reasonably could be foreseen to affect the ECTP or existing CITY infrastructure, the contracting party (CITY or GCRTA) shall use best efforts to administer such contract in a manner that avoids or minimizes delay or disruption to the construction activities of the other party, including the use of liquidated damages provisions and other contractual remedies.
- D. CITY will name or cause to be named GCRTA as an additional insured on all insurance policies required for all construction contracts for CITY Projects. GCRTA will name or cause to be named CITY as an additional insured on all insurance policies required for all ECTP construction contracts.

11.09 Full Funding Grant Agreement

"The ECTP is subject to the award of federal grant funds and to the execution of a Full Funding Grant Agreement ("FFGA") by GCRTA and FTA. Prior to the execution of the FFGA, and to the extent required by law, regulations, or the terms of federal or state grants, CITY and GCRTA shall enter into a separate agreement to assure CITY compliance with applicable FTA laws, regulations, circulars and agreements that apply to ECTP and GCRTA including but not limited to the FTA Master Agreement, Certifications and Assurances, and the FFGA. The provisions contained in this paragraph shall apply to a CITY project only if such project is funded in part by federal funds. A copy of the FFGA shall be provided to the City Council liaison prior to execution by CITY."

11.10 Statutory Limitations

The provisions of 49 CFR, Section 18.36 or 49 CFR, sections 19.4-19.48 and Appendix A and with supplementary regulations and directives particularly FTA Cir. 4220.1D entitled "Third Party Contracting Requirements" and revision thereof shall govern the procurement of goods and services by GCRTA along with any and all applicable Ohio and federal law.

11.11 Notices and Approvals

When the approval of CITY is referenced in this Agreement, such approval shall be in writing and shall be executed by CITY officials having responsibility of the particular subject matter. All notices required to be given pursuant to this Agreement shall be given in writing and shall be deemed to have been duly given on the date delivered, if delivered personally, or if delivered to a nationally recognized overnight courier service, or, if mailed by U.S. registered or certified mail, postage prepaid, and addressed as follows:

- (a) Notice to GCRTA: 1240 W. 6th Street
 Cleveland, Ohio 44113
 Attention: Mr. Joseph A. Calabrese,
 General Manager

(b) Notice to CITY: Director of Public Service
 601 Lakeside Avenue, Room 113
 Cleveland, Ohio 44114

with copies to: Cleveland City Council
 601 Lakeside Avenue, Room 220
 Cleveland, Ohio 44114
 Attention: Frank Jackson, President

11.12 Advertising

In the event that GCRTA desires to place advertisements on Euclid Corridor BRT vehicles servicing the project area, all such advertisements must comply with federal, state and CITY requirements.

11.13 No Joint Venture

Nothing in this Agreement shall be deemed to constitute CITY and GCRTA as partners in a partnership or joint venture for any purpose whatsoever. Neither party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party.

11.14 Approvals by CITY

No inspections, certifications, design reviews, or other approvals by CITY shall operate to relieve GCRTA or its contractors of their responsibility to design and construct the ECTP in conformance with this Agreement or the terms, conditions, and specifications of any other agreement related to the ECTP. CITY shall not condition its certifications or approvals such as to require non-conformance by GCRTA with this Agreement or the terms, conditions, or specifications of any other agreement related to the ECTP.

11.15 Severability

Each provision of this Agreement shall be deemed to be a separate and individual provision, and if any court of competent jurisdiction invalidates or otherwise renders unenforceable any provision, the invalidity or unenforceability of such provision shall not effect the enforceability of any remaining provisions or this Agreement, which shall remain in full force and effect.

11.16 Architectural and Engineering Services

GCRTA shall use its best efforts to use architectural and engineering firms located in the City of Cleveland to the fullest extent permissible by federal regulations.

ARTICLE XII

ENVIRONMENTAL AND HISTORIC PRESERVATION

GCRTA agrees that any ECTP construction that is performed by GCRTA will comply with all required environmental and historic preservation regulations and permit processes. GCRTA will be responsible for obtaining all of the required approvals for construction performed by the GCRTA. CITY agrees that any construction performed by CITY will comply with all required environmental and historic preservation regulations and permit processes. GCRTA shall report its findings and reports to the City Planning Committee of City Council and the City Planning Director as to environmental and historic preservation conditions and regulations. The Director of City Planning shall use good faith efforts to schedule a public hearing concerning its findings and reports prior to the submission of such reports to regulatory agencies. CITY shall be responsible for obtaining all of the required approvals for construction performed by CITY. In the event that there is a delay in any permit or other approvals, the parties shall notify all representatives indicated in Articles 3.01 and 3.02 of this Agreement of this agreement as soon as practical.

ARTICLE XIII

DEFAULT; REMEDIES FOR BREACH

If either party to this Agreement shall fail to observe or perform any of the terms of this Agreement and such failure continues for a period of five business days after written notice of default is given by the non-defaulting parties, and the parties have been unable to resolve the issues through the process described in Article 11.06, the non-defaulting party may, at its option, exercise concurrently or successively any one or more of the rights and remedies it may have at law or in equity which may include:

- (1) To enjoin any breach or threatened breach;
- (2) To sue for the performance of any obligation, promise or agreement devolving upon the defaulting party for performance or for damages for the nonperformance thereof, all without terminating this Agreement;
- (3) To terminate this Agreement.

ARTICLE XIV

BINDING AGREEMENT

All the terms, provisions and obligations of this Agreement shall be binding upon the parties hereto and their successors or assigns.

ARTICLE XV

DISADVANTAGED BUSINESS ENTERPRISES

The Disadvantaged Business Enterprise (DBE) program will be implemented and monitored by GCRTA in accordance with 49 CFR Part 26 and all applicable Affirmative Action and Equal Opportunity laws, policies and directives that govern contracts that are executed with GCRTA. GCRTA as a FTA grantee, must comply with all Federal DBE program regulations to maintain its eligibility for FTA funding for ECTP and other projects. For all ECTP construction contracts, GCRTA will provide CITY's Director of the Office of Equal Opportunity with reports, on a quarterly basis, or as required by the Director, on employment of Cleveland residents, contractor compliance with DBE program requirements, participation of MBE/FBE firms as defined under CITY's MBE/FBE program, and other available related information upon CITY's reasonable request.

ARTICLE XVI

RESIDENT HIRE LAW

This Agreement and the construction contracts for the ECTP shall be subject to Chapter 188 of the Codified Ordinances regardless of the execution dates of this Agreement or any ECTP construction contract.

IN WITNESS THEREOF, the parties hereto have caused these presents to be executed by their proper officials the day and year first above written.

In the presence of

**GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY**

(Witness)

Joseph A. Calabrese
CEO and General Manager

(Witness)

The legal form and correctness of this instrument is hereby approved.

Sheryl King Benford
Deputy General Manager-Legal

CITY OF CLEVELAND

(Witness)

Mark Ricchiuto

Director of Public Service

(Witness)

The legal form and correctness of this instrument is hereby approved.

SUBODH CHANDRA
DIRECTOR OF LAW

By: _____
Assistant Director of Law
City of Cleveland

EXHIBIT "A"

EUCLID CORRIDOR TRANSPORTATION PROJECT
Property Owned by City of Cleveland

<u>Parcel Number</u>	<u>Site Address</u>	<u>Real Estate Interest to be Acquired</u>	<u>Size of Land Acquisition (in s/f)</u>
<u>118 02 017</u>	<u>5521 Euclid Avenue</u>	<u>Easement</u>	<u>330</u>
<u>118 04 017</u>	<u>5927 Euclid Ave</u>	<u>Easement</u>	<u>990</u>
<u>118 04 018</u>	<u>5903 Euclid Avenue</u>	<u>Easement</u>	<u>1,005</u>
<u>118 06 028</u>	<u>Euclid Avenue</u>	<u>Easement</u>	<u>6,820</u>
		----- <u>Temporary Construction</u>	----- <u>3,400</u>
<u>120 36 001</u>	<u>11030 East Blvd.</u>	<u>Easement</u>	<u>6,325</u>
		----- <u>Fee Simple</u>	----- <u>123</u>
<u>120 36 001</u>	<u>11030 East Blvd.</u>	<u>Temporary Construction</u>	<u>10,800</u>

EXHIBIT "B"

Form of Deed

OFFICIAL QUITCLAIM DEED

1. On _____, the Council of the City of Cleveland passed Ordinance No. _____, attached hereto as Exhibit "A" and incorporated herein by reference, authorizing the Commissioner of Purchases and Supplies to sell certain City-owned real property.

2. On August 28, 1996, the Board of Control of the City of Cleveland adopted Resolution No. _____ attached hereto as Exhibit "B" and incorporated herein by reference, authorizing the Commissioner of Purchases and Supplies to proceed with sale to the Grantee named below upon payment of the consideration stated below.

NOW, THEREFORE, the CITY OF CLEVELAND, a municipal corporation in the State of Ohio (the "City"), for the consideration of \$1.00 and other valuable consideration, grants and quitclaims to _____, its successors and assigns (the "Grantee") whose tax mailing address is _____, the real property described in Exhibit "C" attached hereto and incorporated herein by reference (the "Property").

This conveyance is made, notwithstanding the fact that valuable consideration has been paid, upon the express condition subsequent that Grantee shall perform the following obligations, pursuant to an Interagency Agreement between Grantor and Grantee dated _____ (hereinafter "Agreement"):

- (1) Within thirty-six (36) months of the date of the execution of this Deed by the Mayor, commence construction of the _____, described more fully in Exhibit "D", attached hereto and incorporated by reference (the "Improvements"); and
- (2) Within five (5) years of the date of the execution of this Deed, complete construction of the Improvements.

If Grantee defaults in or violates any one or more of the obligations set forth above, and fails to cure such default or violation within thirty (30) days after written notice of default by the City, then the City shall have the right at its option, to re-enter and take possession of the Property and to terminate (and revert in the City) the estate conveyed by this Deed, pursuant to Section 6 of the Agreement; provided, however, that the conditions subsequent created herein and any reversion of title as a result thereof shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way, the lien of any mortgagee financing the contraction of Improvements to the Property. Grantee agrees that all Improvements shall attach immediately and become a part of the

Property, and that if City exercises its right of re-entry all right, title and interest in and to the Improvements shall immediately vest in the City and Grantee shall have no claim for contribution or reimbursement for the Improvements.

City's right of re-entry and repossession of the Sale Parcel shall terminate upon Completion of Construction of the Improvements in satisfaction of the requirements of the Agreement. Within fourteen (14) days of Completion of Construction of the Improvements, City shall issue a certificate in recordable form stating that construction has been completed in satisfaction of the requirements of the Agreement, and that City no longer possesses a right of re-entry.

Grantee and City agree that the obligations of Grantee set forth herein shall also constitute covenants running with the land of the Property both as to burdens and benefits. The City's failure to exercise the right of re-entry reserved herein shall not be construed to waive any rights the City may have to enforce Grantee's obligations through any and all rights and remedies which the City or its successors and assigns may have at law or in equity for the enforcement of covenants. No waiver by the City at any time of any of Grantee's obligations shall be deemed or taken as a waiver at any time thereafter of the same or any other obligations of the strict and prompt performance thereof. No waiver shall be valid against the City unless reduced to writing and signed by an officer of the City duly empowered to execute same.

This conveyance is made further subject to the covenant that Grantee not use, or permit the use of, the Property or any structure erected or to be erected thereon, for billboards or other outdoor advertising devices. City and Grantee agree that violation of said covenant shall not entitle City to re-enter and take possession of Property or otherwise terminate the estate conveyed to Grantee by this Deed.

The Property is conveyed to Grantee "as is."

The City specifically reserves, and this conveyance is made expressly subject to, any easements of record in favor of the City and in addition thereto such easements as are necessary for public utilities (including without limitation, sanitary and storm sewers, electric, telephone and other transmission lines, cables, gas and water lines) presently located on the Property.

IN WITNESS WHEREOF, the City, by its Mayor on _____ and its Commissioner of Purchases and Supplies on _____ has caused this instrument to be executed, and Grantee has accepted this instrument, as evidenced by its duly authorized officer's execution of Grantee's Acceptance, set forth below.

(BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK)

Ordinance No.

RESOLUTIONS
16401

Signed and acknowledged
In the presence of the
Following witnesses:

CITY OF CLEVELAND

By:

MAYOR JANE L. CAMPBELL

(Print name)

(Print name)

By:

MYRNA BRANCHE,
COMMISSIONER OF
PURCHASES AND SUPPLIES

(Print name)

(Print name)

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Before me a Notary Public in and for said County and State, personally appeared CITY OF CLEVELAND by Jane L. Campbell, Mayor, who acknowledged that she did sign the foregoing Official Quitclaim Deed, and that said signing is her free act and deed as said officer, and the free act and deed of the City of Cleveland.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this _____ day of _____, 200__.

NOTARY PUBLIC
My Commission Expires _____

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Before me a Notary Public in and for said County and State, personally appeared CITY OF CLEVELAND by Myrna Branche, Commissioner of Purchases and Supplies, who acknowledged that she did sign the foregoing Official Quitclaim Deed, and that said signing is her free act and deed as said officer, and the free act and deed of the City of Cleveland.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this _____ day of _____, 200__.

NOTARY PUBLIC
My Commission Expires _____

GRANTEE'S ACCEPTANCE

The above Deed, together with all terms and conditions set forth therein, are hereby accepted this _____ day of _____, 200__.

By _____
Its _____

STATE OF OHIO)
)
COUNTY OF CUYAHOGA) SS:

Before me a Notary Public in and for said County and State, personally appeared the above-named Grantee _____ by _____, who acknowledged that s/he did sign the foregoing instrument, and that the same is his/her free act and deed personally and as said officer, and the free act and deed of said association.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this _____ day of _____, 200__.

NOTARY PUBLIC
My Commission Expires _____

This instrument prepared by:

Assistant Director of Law
City of Cleveland (Grantor)

**ALL EXHIBITS ARE ON FILE WITH CLEVELAND CITY COUNCIL
IN FILE NUMBER _____**

Section 2. That the Director of Public Service shall utilize best efforts to notify entities with infrastructure in the right-of-way of the dates that ECTP will be under construction and encourage such entities to perform maintenance functions and/or repairs during a time that precedes the construction of the ECTP.

Section 3. That the Director of Public Service is hereby authorized to issue GCRTA an encroachment permit (easement), prepared by the Director of Law, for the Transit Strips. The encroachment permit may be terminated only for one of the following reasons: (1) in the event that GCRTA uses the Transit Strips for other than public transit and incidental related purposes, (2) if GCRTA ceases use of public transportation operations in all or any significant portion of the Transit Strips available for its use for a period exceeding six (6) months after revenue service begins, or (3) the ECTP is abandoned before service begins. "Transit Strips" shall mean all Center Median Bus Stations, median strips and all dedicated bus lanes (as depicted in detail on the Sixty Percent Documents) located within the rights-of-way of the Euclid Avenue Bus Rapid Transit Improvements as defined in Article II. Termination for one of the above reasons shall be effective upon legislative action. Nothing herein shall be construed to impair or limit the City's rights and obligations to preserve and maintain the public rights-of-way in trust for public purposes.

Section 4. That the Director of Public Service is authorized to file all papers and execute all documents necessary to exercise the authority granted by this ordinance.

Section 5. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

WTZ:nz
5-19-03, FOR: Director Ricchiuto-R

Ord. No.

REPORT
after second Reading

Mr.

AN EMERGENCY ORDINANCE

Authorizing the Director of Public Service to enter into an agreement with the Greater Cleveland Regional Transit Authority for the Euclid Corridor Transportation Project.

REPORTS

and referred to _____
READ FIRST TIME

by the council _____ 2003

CITY CLERK

by the council _____ 2003
READ SECOND TIME

CITY CLERK

by the council _____ 2003
READ THIRD TIME

PRESIDENT

CITY CLERK

APPROVED

MAYOR

Recorded Vol. _____ Page _____

Published in the City Record _____

RESOLUTIONS
16405





TITLE/DESCRIPTION: AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF CLEVELAND FOR THE EUCLID CORRIDOR TRANSPORTATION PROJECT (ECTP)	Resolution No.: 2003- 128
	Date: August 14, 2003
	Initiator: Euclid Corridor Transportation Project
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: This action will allow the Authority to execute the Intergovernmental Agreement with the City of Cleveland for the ECTP project.
- 2.0 DESCRIPTION/JUSTIFICATION: On September 12, 2000 the Board approved Resolution 2000-126 to execute the current Intergovernmental Agreement with the City of Cleveland. Since that time there have been significant changes to the definition, schedule and cost of the project. An extensive revision to the agreement has been completed, and a restated agreement has been developed. The Cleveland City Council in Ordinance No. 893-03 on July 16, 2003 approved the restated agreement between the City and the Authority unanimously.
- 3.0 PROCUREMENT BACKGROUND: Does not apply
- 4.0 DBE/AFFIRMATIVE ACTION BACKGROUND: Does not apply.
- 5.0 POLICY IMPACT: The execution of this agreement will significantly enhance our upcoming FTA New Starts Application by formally defining the City's roles and responsibilities in the ECTP project. The execution of the agreement is also required prior to the submittal of our Full Funding Grant Agreement (FFGA) application later this year.
- 6.0 ECONOMIC IMPACT: This agreement commits the City of Cleveland to provide \$8 million in funding for the ECTP project with a defined payment schedule. It also commits the City to performing waterline replacement, sewer rehabilitation, and basement areaway/vault improvements as stand-alone City projects to be completed prior to the ECTP construction.
- 7.0 ALTERNATIVES: Reject the resolution. Rejection of this resolution would be detrimental to our New Starts ranking of the project and could delay the submittal of our FFGA application.
- 8.0 RECOMMENDATION: It is recommended that this Resolution be approved to allow the execution of the Intergovernmental Agreement with the City of Cleveland for the ECTP project.
- 9.0 ATTACHMENTS: None.

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

CEO, General Manager/Secretary-Treasurer