

AUTHORIZING THE GENERAL MANAGER/ SECRETARY-TREASURER TO ENTER INTO AND RATIFYING APPROVAL OF A TWENTY-YEAR (20) LEASE AGREEMENT WITH CLEVELAND ELECTRIC ILLUMINATING COMPANY, AN OHIO CORPORATION, FOR THE BURIAL OF ELECTRICAL CABLE AND EQUIPMENT UNDER THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY'S RAPID TRANSIT TRACKS FOR A ONE-TIME FEE OF EIGHT THOUSAND DOLLARS (\$8,000) PAYABLE IN ONE INSTALLMENT TO THE GENERAL FUND.

WHEREAS, a SYSCO development is under construction in the Cleveland Corporate Business Park in Cleveland, Ohio requiring electrical power to be supplied by Cleveland Electric Illuminating Company (CEI), an Ohio Corporation; and

WHEREAS, to supply the necessary power to the said development, (CEI) requested that it be allowed to bury electrical cable and equipment under the Authority's Rapid Transit tracks along I-71 between the Puritas Rapid Transit Station and the Brookpark Rapid Transit Station; and

WHEREAS, the SYSCO Development is in the process of construction requiring immediate approval of said Agreement; and

WHEREAS, the Authority will create Incidental revenue by the Lease agreement with a one-time non-refundable fee from CEI in the amount of Eight Thousand (\$8,000) dollars payable in one installment for allowing CEI to bury electrical cable and equipment under the Authority's Rapid Transit tracks; and

WHEREAS, the Lease agreement with CEI for the burial of electrical cable and equipment under the Authority's real property under the Rapid Transit tracks for a term beginning on October 27, 2003 and ending October 26, 2023 subject to ratification by the Board of Trustees; and

WHEREAS, the Authority may cancel the Lease agreement with a sixty-day (60) notice for good cause as stated in the agreement; and

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

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

Section 1. That the Authority entered into a Lease agreement attached hereto as Exhibit "A" with CEI for the burial of electrical cable and equipment under the Authority's Rapid Transit tracks as shown on Exhibit "B" for a term beginning on October 27, 2003 and ending October 26, 2023, which may be cancelled for good cause as stated in the agreement.

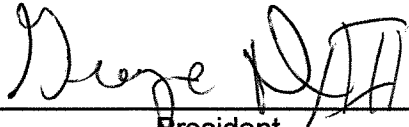
Section 2. That said contract is subject to the satisfaction of all statutes, regulations, rules and orders obligatory on the Greater Cleveland Regional Transit Authority for the transaction contemplated hereby.

Section 3. That given the urgency necessitated to enter into this Lease agreement, the General Manager/Secretary Treasurer's execution of the Lease agreement is hereby ratified, the Lease agreement is approved, and the General Manager/Secretary-Treasurer is hereby authorized to execute all documents and to take all actions necessary for the consummation of the Lease agreement.

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

Attachments: A) Lease agreement  
B) Location map

Adopted November 24, 2003

  
\_\_\_\_\_  
President

Attest:   
\_\_\_\_\_  
CEO, General Manager/Secretary-Treasurer

## LEASE AGREEMENT

RESOLUTIONS  
16478

THIS AGREEMENT, dated as of the \_\_\_\_\_ of \_\_\_\_\_ 2003 is made and entered into by and between the **GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY**, whose mailing address is 1240 West Sixth Street, Cleveland, Ohio 44113 (hereinafter called "Lessor"), and

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

WITNESSETH

WHEREAS, it is proposed by Lessee to install, maintain, operate and remove 536 linear feet of 36" steel casing pipe (.312W X 42 coated) carrying 9-5" schedule 40 conduit inside containing a 33kV electric power wire; 24' under and approximately 40" through the right of way or property and any tracks of Lessor, along Interstate-71 between the Lessor's Puritas Rail Station going Southwest towards the Lessor's Brookpark Rail station as part of a project known as the Cleveland Business Park to be located in accordance with and limited to the installation as shown on print of Drawing marked Exhibit "A", sheet 1, dated September 3, 2003, attached hereto and made a part hereof (hereinafter called "Facilities"); and

WHEREAS, Lessee desires a permanent Utility Lease to use such right of way or property of Lessor for the installation, construction, maintenance, operation and removal of the equipment.

NOW, THEREFORE, for and in consideration of the premises, the payment of a nonrefundable, nonassignable fee, in the amount of Eight Thousand and 00/100 Dollars (\$8,000.00) (hereinafter called the "Fee"), to cover the covenants hereinafter set forth, Lessor hereby permits and grants to Lessee, insofar as Lessor has the right to do so, without warranty and subject to all encumbrances, covenants and Leases to which Lessor's title may be subject, the right to use and occupy so much of Lessor's right of way or property under its tracks as may be necessary for the installation, construction, maintenance, operation and removal of the underground electrical equipment (said right of way or property of Lessor being hereinafter collectively called the "Premises"), upon the following terms and conditions:

1. Term. This utility Lease Agreement (hereinafter called the "Agreement") shall be in full force and effect beginning October 27, 2003 and ending October 26, 2023, subject to the Lessor's Board of Trustees approval of the terms and conditions.

2. Uses and Condition of the Premises. The Premises shall be used by Lessee solely for the installation, construction, maintenance, operation and removal of the underground electrical equipment and for no other purpose. Lessee accepts the Premises in their current "as is" condition, as suited for the installation and operation of the underground electrical equipment and without the benefit of any improvements to be constructed by Lessor. It is the understanding of the Lessor that the Lessee shall not go upon the property of the Lessor to install the electrical pipe/ conduit, but shall bore under the Lessor's tracks from sites off of Lessor's property. Lessee shall not enter upon or cross the property or tracks of Lessor without Lessor's express written consent.

3. Installation of the Underground electrical equipment; Support.. Lessor Lessee shall, at its expense, install, construct, maintain and operate the underground electrical equipment on a lien-free basis and in such a manner as will not interfere with the operations of Lessor, or endanger persons or property of Lessor. Such installation, construction, maintenance and operation of the equipment shall be in accordance with: (a) the plans and specifications (if any) shown on the print attached hereto and any other specifications prescribed by Lessor; (b) applicable laws, regulations, ordinances and other requirements of federal, state and local governmental authorities; and (c) applicable specifications of the National Electric Safety Code, when not in conflict with the applicable plans, specifications, laws, regulations, ordinances or requirements mentioned in (a) and (b), above. Any change to the character, capacity or use of the underground electrical equipment must have written approval by the Lessor's Board of Trustees.

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

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

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

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

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

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

10. Liens; Taxes. Lessee will not permit any mechanic's liens or other liens to be placed upon the Premises, and nothing in this Agreement shall be construed as constituting the consent or request of Lessor, express or implied, to any person for the performance of any labor or the furnishing of any materials to the Premises, nor as giving Lessee any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that could give rise to any mechanic's liens or other liens against the Premises. In addition, Lessee shall be liable for all taxes levied or assessed against the Lessee's underground electrical equipment within the Premises. In the event that any such lien shall attach to the Premises or Lessee shall fail to pay such taxes, then, in addition to any other right or remedy available to Lessor, Lessor may, but shall not be obligated to, discharge the same. Any amount paid by Lessor for any of the aforesaid purposes, together with related court costs, attorneys' fees, fines, penalties and interest, shall be paid by Lessee to Lessor within ten (10) days after Lessor's demand thereof.

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

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

13. Insurance. Prior to the installation of the Lessee's underground electrical equipment, or any subsequent entry by Lessee upon the Premises, Lessee, and each of its contractors, shall at its sole expense procure and maintain for the course of any such installation or entry, a Commercial General Liability Insurance policy having a combined single limit of not less than \$5,000,000 for each occurrence, naming Lessor as an additional insured and containing products and completed operations and contractual liability coverage. The commercial General Liability insurance policy will have the standard explosion, collapsed and underground (X, C, U) exclusions deleted.

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

15. Assignments and Other Transfers.

(a) Lessee shall not assign, transfer, sell, mortgage, encumber, sublease or otherwise convey (whether voluntarily, involuntarily or by operation of law) this Agreement or any interest therein, nor license, mortgage, encumber or otherwise grant to any other person or entity (whether voluntarily, involuntarily or by operation of law) any right or privilege in or to the Premises (or any interest therein), in whole or in part. Any such assignment or other transfer made without Lessor's prior express written consent shall be null and void and, at foregoing, upon prior written consent of the Lessor, Lessee may assign this Agreement to a parent, a wholly owned subsidiary of Lessee or a wholly owned subsidiary of

Lessee's parent; provided, however, that no such assignment shall relieve Lessee of its obligations under this Agreement.

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

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

17. Default; Remedies.

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

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

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

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

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

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

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

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

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

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

20. Removal of Facilities. The Facilities are and shall remain the personal property of Lessee. Upon any termination of this Agreement, Lessee shall remove the Facilities from the Premises within One Hundred and Eighty (180) days after the effective date thereof. In performing such removal, unless otherwise directed by Lessor, Lessee shall restore the Premises to the same condition as existed prior to the installation or placement of Facilities, reasonable wear and tear excepted. In the event Lessee shall fail to so remove the Facilities or restore the Premises, the Facilities shall be deemed to have been abandoned by Lessee, and the same shall become the property of Lessor for Lessor to use, remove, destroy or otherwise dispose of at its discretion and without responsibility for accounting to Lessee therefor; provided, however, in the event Lessor elects to remove the Facilities, Lessor, in addition to any other legal remedy it may have, shall have the right to recover from Lessee all costs incurred in connection with such removal and the restoration of the Premises.

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

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

23. Modifications; Waiver; Successors and Assigns. This Lease Agreement may not be altered, changed or amended, except by instrument in writing signed by both parties hereto. No provision of this Lease Agreement shall be deemed to have been waived by Lessor unless such waiver shall be in writing signed by Lessor and addressed to Lessee, nor shall any custom or practice that may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of Lessor to insist upon the performance by Lessee in strict accordance with the terms hereof. The terms and conditions contained in this Lease Agreement shall apply to, inure to the benefit of, and be binding upon

the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided. If there shall be more than one Lessee, the obligations hereunder imposed upon Lessee shall be joint and several.

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

If to Lessor:

Greater Cleveland Regional Transit Authority  
1240 West Sixth Street  
Cleveland, Ohio 44113  
Attention: Deborah A. McNeeley  
Property Management

If to Lessee:

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

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

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

26. Limitations of Grant. Lessee acknowledges that the lease granted hereunder is a quitclaim grant, made without covenants, representations or warranties with respect to Lessor's: (a) right to make the grant; (b) title in the Premises; or (c) right to use or make available to others the Premises for the purposes contemplated herein. Lessor is the owner and/or holder of the Premises subject to the terms and limitations under which it is owned or held, including without limitation conditions, covenants, restrictions, Leases (including any preexisting fiber-optic Leases or licenses), encroachments, leases, licenses, permits, mortgages, indentures, reversionary interests, fee interest, zoning restrictions and other burdens and limitations, of record and not of record, and to rights of tenants and Lessees in possession, and Lessee agrees that the rights leased hereunder are subject and subordinate to each and all of the foregoing. Lessee accepts this grant knowing that others may claim that Lessor has no right to make it, and Lessee agrees to release, hold harmless and indemnify (and, at Lessor's election, defend, at Lessee's sole expense, with counsel approved by Lessor) Lessor, its affiliated companies, and its and their respective officers, directors, agents and employees, from and against any detriments to, or liabilities of, any type or nature arising from such claims, including punitive damages and any forfeitures declared or occurring as a result of this grant.

27. Limitations Upon Demand. Notwithstanding any other provision of this Lease Agreement, Lessor shall not be liable for breach of this Lease Agreement or under this Lease Agreement for any consequential, incidental, exemplary, punitive, special, business damages or lost profits, as well as any claims for death, personal injury, and property loss and damage which occurs by reason of, or arises out



of, or is incidental to the interruption in or usage of the Facilities placed upon or about the Premises by Lessee, including without limitation any damages under such claims that might be considered consequential, incidental, exemplary, punitive, special, business damages or loss profits.

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

**Witness:**

**GREATER CLEVELAND REGIONAL  
TRANSIT AUTHORITY**

*Marilyn Lebon*  
As to Lessor

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

*Marilyn Lebon*  
(Printed Name)

The legal form and correctness of the within instrument are hereby approved.

*Sheryl King Benford*  
Sheryl King Benford, General Counsel  
Deputy General Manager for Legal Affairs

**Witness:**

**THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY**

*Frank Carson*  
As to Lessee

By: *Michelle A. Mazurek*  
Michelle A. Mazurek

*Frank Carson*  
(Printed Name)

Its: Director, Real Estate, Facilities, & Security for  
FirstEnergy Service Company on behalf of  
The Cleveland Electric Illuminating  
Company

STATE OF OHIO )  
 ) SS:  
COUNTY OF CUYAHOGA )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of November 2003 by Joseph A. Calabrese of Greater Cleveland Regional Transit Authority, on behalf of the authority.

Gizella D. Gregoire  
Notary Public

**GIZELLA D. GREGOIRE**  
Notary Public - State of Ohio, Cuya. Ct.  
My Commission Expires 7-22-08

STATE OF OHIO )  
 ) SS:  
COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of November 2003 by Michelle A. Mazurek, Director, Real Estate, Facilities, & Security, for FirstEnergy Service Company on behalf of The Cleveland Electric Illuminating Company, an Ohio corporation, on behalf of the corporation.

Donna J. Farris  
Notary Public

**Donna J. Farris, Notary Public**  
Residence - Summit County  
State Wide Jurisdiction, Ohio  
My Commission Expires July 19, 2008

ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED  
Hamilton, Bermuda

RESOLUTIONS  
16486

CERTIFICATE OF INSURANCE  
(Excess Liability)

This Certificate is furnished to the Certificate Holder named below as a matter of information only. Neither this Certificate nor the issuance hereof modifies the policy of insurance identified below (the "Policy") in any manner. The Policy terms are solely as stated in the policy or in any endorsement thereto. Any amendment, change or extension of the Policy can only be effected by a specific endorsement issued by the Company and attached to the Policy.

The undersigned hereby certifies that the Policy has been issued by Associated Electric & Gas Insurance Services Limited (the "Company") to the Named Insured identified below for the coverage described and for the policy period specified.

Notwithstanding any requirements, terms or conditions of any contract or other document with respect to which this Certificate may be issued or to which it may pertain, the insurance afforded by the Policy is subject to all of the terms of the Policy.

NAME OF INSURED: FirstEnergy Corp. and its subsidiaries, including Cleveland Electric Illuminating Company

PRINCIPAL ADDRESS: 76 South Main Street, Akron, Ohio 44308

POLICY NUMBER: XO 137 A1A03                      POLICY From: July 1, 2003  
PERIOD: To: July 1, 2004

RETROACTIVE DATE: June 1, 1986

DESCRIPTION OF COVERAGE: Claims-First-Made Excess Liability Policy (including Automobile Liability) covering claims for Bodily Injury, Property Damage and Personal Injury arising from the operations described below.

LIMIT OF LIABILITY: \$5,000,000. per occurrence and in the aggregate, where applicable.

ADDITIONAL INSURED: The Certificate Holder is an additional insured under the Policy but only (i) to such extent and for such Limits of Liability (subject always to the terms and Limits of Liability of the Policy) as the Named Insured has agreed to provide insurance for the Certificate Holder under the following contract: Cleveland Business Park Project

and (ii) with respect to the following operations: Utility wireline and pipeline crossings

Should the Policy be canceled, assigned or changed in a manner that is materially adverse to the Insured(s) under the Policy, the undersigned will endeavor to give 30 days advance written notice thereof to the Certificate Holder, but failure to give such notice will impose no obligation or liability of any kind upon the Company, the undersigned or any agent or representative of either.

DATE: October 31, 2003

ISSUED TO: Greater Cleveland Regional Transit Authority

("Certificate Holder")

ADDRESS: 1240 West Sixth Street  
Cleveland, Ohio 44113

AEGIS INSURANCE SERVICES, INC.

BY: \_\_\_\_\_  
At Jersey City, New Jersey

## SPECIAL CLAUSE ATTACHMENT

### WORK ON OR WITHIN THE PROPERTY OF THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY(GCRTA)

The grantee, and its agents, contractors and subcontractors agree:

1. To cooperate at all times with the local officials of the GCRTA.
2. To use all reasonable care and diligence in the work in order to avoid accidents, damage or unnecessary delay to, or interference with the trains and other property of the GCRTA.
3. To conduct its work in a manner satisfactory to the Chief Engineer of the GCRTA or authorized representative, to perform its work in such manner and at such time as not to unnecessarily interfere with the movements of trains or railroad traffic, and to hold its work at all times open to inspection of GCRTA inspectors.
4. To cooperate with a public utility, railroad or other organizations having occasion to do work on or in connection with the improvement.
5. To avoid unnecessary use of GCRTA property without written permission of GCRTA and to leave GCRTA roadbed and property in a condition acceptable to the Chief Engineer of the GCRTA.
6. To carry insurance of the following kinds and amounts:

**(a) Commercial General Liability and Property Damage Liability Insurance**

The Grantee shall cause its contractors shall furnish evidence to the GCRTA that, with respect to the operations performed, it carries regular Commercial General Liability and Property Damage Liability Insurance providing for a combined single limit for damages arising out bodily injuries to or death of one or more persons and out of injury to or destruction of property in the amount of \$5,000,000.00 per occurrence and subject to that limit per occurrence, an aggregate limit in the amount of \$5,000,000.00 during the policy period.

**(b) Commercial General Liability and Property Damage Liability Insurance**

The contractors shall furnish evidence to the Illuminating Company and the GCRTA that, with respect to the operations performed for it by sub-contractors, the sub-contractor carries in its own behalf regular Commercial General Liability and Property Damage Liability Insurance providing for a combined single limit for damages arising out of bodily injuries to or death of one or more persons and out of injury to or destruction of property in the amount of \$5,000,000.00 per occurrence and subject to that limit per occurrence, an aggregate limit in the amount of \$5,000,000.00 during the policy period.

**(c) Railroad Protective Liability Insurance**

In addition to the above, the grantee or its contractors shall furnish evidence that, with respect to the operations the Grantee or its contractors or any of the contractors sub-contractors perform, it has provided for and in behalf of the **Greater Cleveland Regional Transit Authority** a Railroad Protective Liability policy of insurance providing a combined single limit for damages arising out of bodily injuries to or death of one or more persons and out of injury to or destruction of property including such property in the care, custody and control of the GCRTA in the amount of \$5,000,000.00 per occurrence and subject to that limit per occurrence, an aggregate limit in the amount of \$10,000,000.00 for each annual period.

The above railroad protective policy of insurance shall conform to the Railroad Liability requirements prescribed by the Federal Highway Administration in Federal-Aid Policy Guide 23 CFR 646A as amended.

The corporate name and address of the "Named Insured" as listed on the policy shall be as follows:

**Greater Cleveland Regional Transit Authority  
1240 West 6<sup>th</sup> Street  
Cleveland, Ohio 44113**

The number of trains operating through the improvement is estimated to 206 Passenger trains per day at 60 miles per hour. N/A Freight trains per day at N/A miles per hour.

- (d) 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.
- (e) 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. 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 WC, or a copy of the Certificate of Employer's Right to Pay Compensation Directly.

**(f) General Insurance Requirements**

The insurance hereinbefore specified shall be with an acceptable insurance company authorized to do business in the State of Ohio, with a minimum rating of the AM Best Co. of A – X, and shall be taken out before execution of the Easement Agreement by the Illuminating Company and kept in effect until all work required to be performed under the terms of the contract is satisfactorily completed as evidenced by the formal acceptance by the Illuminating Company. Such policies shall include a thirty (30) days cancellation notice. The General Liability policy shall have the standard explosion, collapse and underground (x,c,u) exclusions deleted

Notwithstanding the Ohio Department of Transportation's Construction and Material Specification No. 107.14 "Evidence" as above set forth shall consist of furnishing the Illuminating Company and the GCRTA (1) original and two (2) certified copies of the railroad protective policy.

7. The GCRTA will assign, at the sole cost and expense of the Illuminating Company, railroad flaggers or other protective services and devices as necessary to insure the safety and continuity of any work to be performed. Said services and devices will be provided when necessary, as determined by the GCRTA, because of any of the Contractor's operations over, under or adjacent to tracks over which trains are operating. The provision of such protective personnel and devices does not relieve the Grantee or its contractors from the liability of payment for damage by their operations.

Such protection will be required when men or equipment are working within clearances limits of eight feet of a rail or when work being performed adjacent to operating tracks may present hazards to tracks, train operation, or when equipment does or may infringe upon such limits.

The Grantee or its contractor will not be permitted to operate any of its own equipment on railroad tracks except under an acceptable arrangement with the GCRTA. Such equipment and the operation of such equipment, or equipment rented from the GCRTA, shall be arranged for by the grantee or its contractor with the GCRTA and the cost for its use, including protection of railroad traffic, shall be borne by the Grantee or its contractor.

The Grantee or its contractor shall notify the following named individual for the GCRTA at least 48 hours, or as directed by the authorized representative of the GCRTA, in advance of starting any work, which might require protection:

Assistant Manager of Service Quality (216) 566-5133  
Rail Control Tower at (216) 566-5114 (For Emergencies Only)

The Grantee or its contractor shall notify the GCRTA at least 5 working days in advance of suspending or ceasing operations that require a flagger.

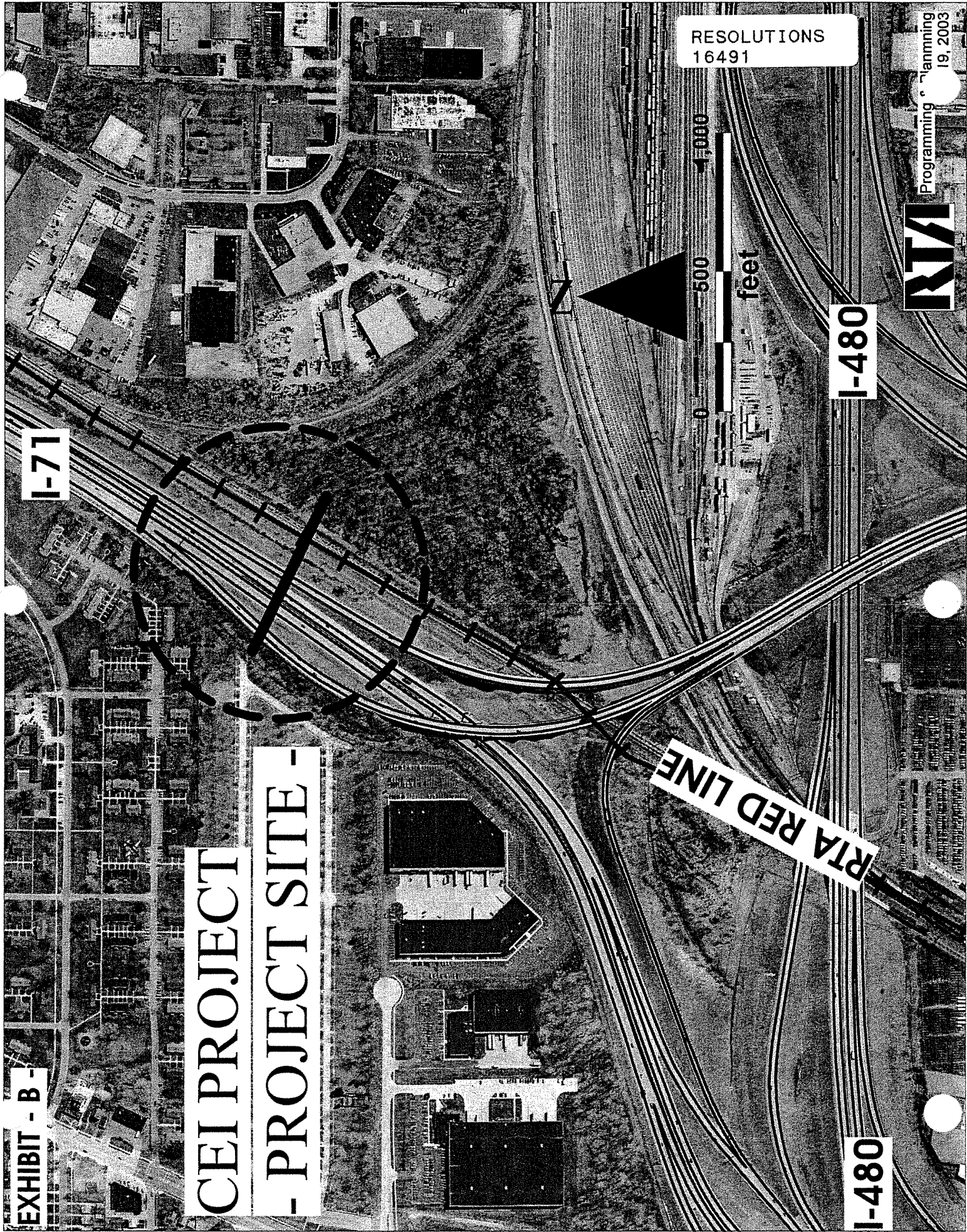
Railroad protective personnel assigned to the project will be responsible for notifying the Engineer upon arrival at the job site on the first working day that protective services begin and on the last day that such services are performed. This will be required for each separate period that such services are provided. The Engineer will document such notification in the project diary.

The Grantee or its contractor will be assessed for protective services provided upon request and not utilized due, in the opinion of the Engineer, to a change in the Grantee or its contractor's construction schedule or if it is determined by the Engineer that the requested services were not necessary. The actual costs for such protective services so assessed to the Grantee or its contractor.

The decision of the GCRTA shall be final in the event of controversy as to the necessity for any protection services provided and not utilized by the Grantee or its contractor as described in the preceding paragraph.

8. To pay the GCRTA or owning company for any changes, requested for its convenience, to GCRTA property, facility, wire, fiber optic and/or pipe lines other than shown on the plans for the project.
9. If at any time the Grantee or its contractor desires a temporary crossing of the GCRTA's tracks, it shall arrange with the GCRTA, execute its regular form of private grade crossing agreement covering the crossing desired, paying all construction, maintenance, removal, protection and other costs.
10. Methods and procedures for performing work on property of the Greater Cleveland Regional Transit Authority must be approved by:

Assistant Manager of Service Quality (216) 566-5133  
Rail Control Tower at (216) 566-5114 (For Emergencies Only)



I-71

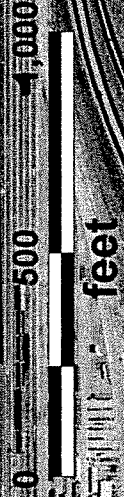
CEI PROJECT  
- PROJECT SITE -

RTA RED LINE

I-480

I-480

RESOLUTIONS  
16491



Programming & Planning  
19, 2003

EXHIBIT - B -





Greater Cleveland Regional Transit Authority  
**STAFF SUMMARY AND COMMENTS**

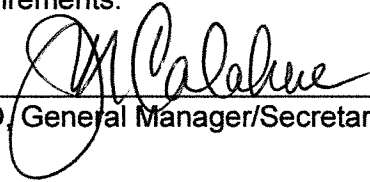
0-16

<b>TITLE/DESCRIPTION:</b> AUTHORIZING THE GENERAL MANAGER/ SECRETARY-TREASURER AND RATIFYING APPROVAL OF A TWENTY-YEAR (20) LEASE AGREEMENT WITH CLEVELAND ELECTRIC ILLUMINATING COMPANY, AN OHIO CORPORATION, FOR THE BURIAL OF ELECTRICAL CABLE AND EQUIPMENT UNDER THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY'S TRACKS FOR A ONE-TIME FEE OF EIGHT THOUSAND (\$8,000) PAYABLE IN ONE INSTALLMENT TO THE GENERAL FUND.	<b>Resolution No.:</b> 2003-172
	<b>Date:</b> November 19, 2003
	<b>Initiator:</b> Property Management
<b>ACTION REQUEST:</b> XX Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____	

- 1.0 **PURPOSE/SCOPE:** Authorizing the General Manager/ Secretary-Treasurer to enter into and ratifying approval of a Lease agreement with the Cleveland Electric Illuminating Company (CEI), an Ohio corporation, for the purpose of burying electrical cable and equipment under the Greater Cleveland Regional Transit Authority's Rapid Transit Tracks for a non-refundable fee of eight (\$8,000) dollars payable in one installment for a period of twenty (20) years beginning on October 27, 2003 and ending on October 26, 2023.
  
- 2.0 **DESCRIPTION/JUSTIFICATION:** A Sysco development is being constructed in the Emerald Corporate Business Park in Cleveland Ohio. This development requires additional electrical power to supply its energy needs. The construction of the facility is under a strict schedule that required GCRTA's immediate approval of a Lease agreement allowing CEI to bury electrical cable and equipment under the Authority's tracks along I-71 southwest between Puritas Rapid Transit Station and the Brookpark Rapid Transit Station. In exchange for its speedy approval, the Authority negotiated a premium lease rate above CEI's normal rate. The Authority is encouraged to create incidental revenue for any non-public transportation use of its real property in accordance with FTA Guidelines found in the FTA Circular 5010.1C. All necessary departments including Engineering, Operations, Safety, Risk Management and Legal have reviewed CEI's plans and/or documents and have concluded that CEI's plans and process for burying the electric cable and equipment will not interfere with the Authority's operations or create any future safety hazards. This lease is similar to other Agreements entered into by the Authority with CEI.
  
- 3.0 **PROCUREMENT BACKGROUND:** Not Applicable
  
- 4.0 **DBE/AFFIRMATIVE ACTION BACKGROUND:** Not Applicable
  
- 5.0 **POLICY IMPACT:** This is in compliance with the Real Estate Policy adopted by the Board of Trustees on May 21, 2002 under Resolution No. 2002-98. Board action is required because the Lease agreement exceeds a twelve (12) month period.
  
- 6.0 **ECONOMIC IMPACT:** The Authority will create incidental revenue by the Lease agreement with a one-time non-refundable fee from CEI in the amount of Eight Thousand (\$8,000) dollars payable in one installment for allowing CEI to bury electric cable and equipment under the Authority's tracks.

- 7.0 ALTERNATIVES: Do not approve the Lease agreement. This action would eliminate the Authority's ability to capture revenue and also impact CEI's ability to provide power to this development.
- 8.0 RECOMMENDATION: Approve the Lease agreement with CEI allowing it to bury electrical cable and equipment under the Authority's Rapid Transit tracks.
- 9.0 ATTACHMENTS: None

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



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CEO, General Manager/Secretary-Treasurer