

RESOLUTION NO. 2005 – 37

AUTHORIZING THE GENERAL MANAGER TO ENTER INTO AN INTERAGENCY AGREEMENT WITH THE NORTHEAST OHIO REGIONAL SEWER DISTRICT FOR EUCLID CORRIDOR TRANSPORTATION PROJECT UTILITY IMPROVEMENTS.

WHEREAS, the Northeast Ohio Regional Sewer District is a regional sewer district organized and existing as a political subdivision under Ohio R.C. 6119 et seq. of the State of Ohio; and

WHEREAS, the GCRTA proposes to construct the Euclid Corridor Transportation Project (hereinafter "ECTP") in the public right-of-way of Cleveland and East Cleveland; and

WHEREAS, the construction of the ECTP and the performance of the construction contracts therefor may require certain facilities owned and operated in the public right-of-way by various public and private utilities to be adjusted and/or relocated; and

WHEREAS, both NEORSD and the GCRTA desire to set forth their mutual understanding and agreement concerning the adjustments, relocation, replacement, or betterment of NEORSD'S affected facilities:

WHEREAS the successful implementation of the ECTP will require modifications to the public right of way owned by the City of Cleveland and require the NEORSD's participation in the coordination and development of this project to insure its success; and

WHEREAS it is the GCRTA and NEORSD have negotiated an agreement to establish general guidelines between the GCRTA and the NEORSD with respect to the rights, duties and responsibilities of each party during the design, construction, and operational phases of ECTP; and

~~WHEREAS, pursuant to Section 306.44 of the Ohio Revised Code, the GCRTA may enter into agreements with other political subdivisions of the State of Ohio in the furtherance of its powers to construct and operate transit facilities.;~~

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 of the Authority is hereby authorized to execute an interagency agreement with the Northeast Ohio Regional Sewer District for the ECTP in substantially the form of Attachment A hereto.

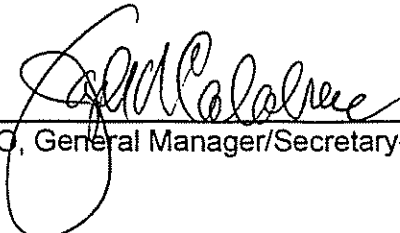
Section 2. That this resolution shall become effective immediately upon its adoption.

Adopted: March 15, 2005



President

Attest:



CEO, General Manager/Secretary-Treasurer

Agreement
between
**The Greater Cleveland
Regional Transit Authority**
and
**The Northeast Ohio
Regional Sewer District**

This Agreement is made and entered into this _____ day of _____, 2005, by and between **The Greater Cleveland Regional Transit Authority** (hereinafter referred to as the **GCRTA**) which is a regional transit authority acting pursuant to Ohio R.C. 306.31 et seq. and the Resolution No. _____ of its Board of Trustees and **The Northeast Ohio Regional Sewer District** (hereinafter referred to as the **NEORS**) which is a regional sewer district organized and existing as a political subdivision under Ohio R.C. 6119 et seq. and Resolution No. ____-05.

WHEREAS, the GCRTA proposes to construct the Euclid Corridor Transportation Project (hereinafter "ECTP") in the public right-of-way of Cleveland and East Cleveland; and

WHEREAS, the construction of the ECTP and the performance of the construction contracts therefor may require certain facilities owned and operated in the public right-of-way by various public and private utilities to be adjusted and/or relocated; and

WHEREAS, both NEORS and the GCRTA desire to set forth their mutual understanding and agreement concerning the adjustments, relocation, replacement, or betterment of NEORS's affected facilities:

WHEREAS the successful implementation of the ECTP will require modifications to the public right of way owned by the **City of Cleveland** and require the **NEORS's** participation in the coordination and development of this project to insure its success; and

WHEREAS it is the intent of this Agreement to establish general guidelines between the **GCRTA** and the **NEORS** with respect to the rights, duties and responsibilities of each party during the design, construction, and operational phases of ECTP; and

Whereas, the Federal Transit Administration has provided the grant monies for the ECTP to the **GCRTA** and therefore the **GCRTA** will serve as the lead agency responsible for administering the grant and reporting to the FTA.

Now, therefore, in consideration of the mutual covenants contained herein, the **GCRTA** and the **NEORS**D agree as follows:

I. **Definitions.** As used in this Agreement:

Additions mean – an increase in size or quantity of a facility

Adjustment means the minor movement of a Conflicting Facility required by the Project, including the work of (i) removing and reinstalling the facility at a higher or lower position, (ii) extending or reducing the height of the facility by constructive adding or dismantling, and/or (iii) protecting existing facilities during such activities.

Betterments mean and includes any new or Replacement Facility, or portion thereof, requested by the NEORS D and agreed to by the Authority which will increase or upgrade the service or design capacity, capability, appearance, efficiency or function over that which currently exists. However, the following shall not be considered Betterments:

i) An upgrade, which the parties mutually agree, will be of direct benefit to the construction or operation of the Project.

ii) An upgrade resulting solely because construction in accordance with or in response to the standards set in the Design Criteria is of higher or different standard than the standard in effect when the Conflicting Facility was originally constructed.

iii) Measures to mitigate any environmental impact identified in the Project's Final Environmental Impact Statement, addendum or revision thereto, and which are hereafter mutually agreed to be a Project responsibility of the Authority.

iv) An upgrade which is necessary to accomplish the Adjustments or Relocations required to accommodate the Project.

City means the City of Cleveland.

Conflicting Facility is an existing NEORS D facility that is so situated as

to require Adjustment or Relocation in order to construct or operate the ECTP as determined by GCRTA in its final Design Documents.

Cost means actual costs incurred in the performance of the work.

ECTP or Project means The Euclid Corridor Transportation Project.

GCRTA or Authority means The Greater Cleveland Regional Transit Authority.

Relocation means the lateral or vertical movement of a Conflicting Facility or a portion of a Conflicting Facility required by the Project, including the work of (i) removing and reinstalling the Facility or portion thereof at a new location, (ii) reconnecting the relocated Facility or portion thereof to its pre-existing connections, (iii) extending the length of the Facility as necessary to accomplish the reconnection, and/or (iv) protecting existing facilities during such activities. If a required movement cannot be achieved without damaging the Facility beyond repairability, then "Relocation" shall also be deemed to include demolition, removal and replacement or reconstruction of the Conflicting Facility or portion thereof with a permanent replacement facility, or a substitute facility functionally equal to the existing facility.

Replacement means – removal or abandonment of an existing facility and providing a new facility of comparable quality and performance.

NEORS D Facility or Facility means the real or personal property sited within the Project route such as structures, improvements, and other physical properties owned and/or operated by the NEORS D and which shall include, but not be limited to, poles, wires, cables, pipes, ductbanks, conduits, valves, regulators, tunnels, conductors, transformers, manways, manholes, lines, facilities and systems for producing, transmitting or distributing communications, cable television, power, electricity, light, gas, oil, crude products, water, steam, wastewater, reclaimed water, storm water not connected with highway drainage, and other similar commodities, including publicly owned fire and police signal systems.

Upgrade means – an increase in quality or performance of a facility.

II. Costs.

The cost of Adjustments and Relocation of NEORSD facilities required by, or necessary for, the ECTP shall be borne by the GCRTA. The cost of additions to and betterments of NEORSD facilities shall be borne by NEORSD. Unless authorized by specific work authorization or separate agreement, GCRTA shall not be responsible for payment of any cost to NEORSD.

III. Design Review.

GCRTA has furnished NEORSD with 60 percent project design drawings showing the location of ECTP project activities. NEORSD shall study such plans to confirm the location of NEORSD Facilities and advise GCRTA of any probable Conflicting Facilities and/or any design issues. After Conflicting Facilities are identified, GCRTA and NEORSD shall consult and confer as necessary such that resolution of such conflicts may be incorporated into the final design drawings and specifications. Resolution of Conflicting Facilities shall include but not be limited to: (1) redesign by GCRTA to eliminate the conflict; or (2) execution of an Adjustment or Relocation by GCRTA contractors. Identification of a Conflict shall in no event be deemed by that fact alone to require a compensable Adjustment or Relocation under this Agreement. GCRTA reserves the right to eliminate conflicts by redesign of the ECTP project elements and in that event GCRTA shall have sole discretion and authority over such redesign.

IV. Performance of Work.

- a. GCRTA and or its contractors or their subcontractors will perform the actual Adjustments and Relocations of NEORSD facilities required as part of the ECTP project. In such case, NEORSD consents and agrees to the GCRTA or its contractors performing the Adjustment or Relocation of its Facilities. The GCRTA will provide NEORSD with advance notice of any work affecting NEORSD Facilities. NEORSD shall have the right to have a representative present at the work to inspect, advise and comment upon the work in accordance with paragraph XI below.
- b. If NEORSD intends to perform related work within the Project Area for the purpose of improving or augmenting its Facilities in conjunction with the ECTP or an Adjustment or Relocation performed hereunder, it shall perform such work in coordination with the ECTP master schedule. Upon reasonable notice, NEORSD may schedule special progress meetings,

which representatives from GCRTA shall attend.

V. Betterments, Additions, Replacements.

The GCRTA encourages NEORSD to make any betterments or replacements prior to ECTP construction. NEORSD shall submit to GCRTA detailed plans for any work to be performed by it in the ECTP project area along with the schedule for such work including additions, replacements, and betterments. NEORSD shall use its best efforts to complete work on such betterments, additions or replacements prior to ECTP work at the affected site and shall coordinate with the GCRTA the schedule of any such work.

VI. Schedule of Work.

GCRTA shall provide NEORSD with a master schedule of work for the ECTP. NEORSD agrees to use its best efforts to coordinate schedules with the GCRTA and diligently complete its work in such time and manner as to not delay or hinder the design and construction of the ECTP and shall provide the GCRTA with firm completion dates for its work. GCRTA shall advise NEORSD of any revisions that may be made in the ECTP construction schedule and NEORSD shall use its best efforts to complete its work in conformity with any revised schedules. In the event that NEORSD and GCRTA or its contractors are performing work concurrently on, near, or within the same geographic area of work as NEORSD, NEORSD shall not impede or limit access to ECTP work. GCRTA shall coordinate ECTP work between all UTILITIES in accordance with paragraph XIII, and shall use its best efforts to eliminate conflicts between UTILITIES.

VII. Site Condition.

NEORSD shall complete all NEORSD work in the ECTP Project area in such a manner and leave the site in such a condition that it does not present a hazard or danger to the public and that will allow ECTP project activity to follow without added expense or delay to the GCRTA.

VIII. As Built Drawings.

NEORSD shall provide GCRTA "as built" drawings of all NEORSD work within 30 days of completion of construction. GCRTA will provide NEORSD "as built" drawings of all GCRTA work within 30 days of completion of

construction.

IX. Hazardous Substances and Contaminants.

NEORSD shall be responsible for disposing of all waste, contaminants, hazardous substances and excess materials resulting from, relating to, or the performance of any work by NEORSD in the ECTP Project area and NEORSD shall indemnify and hold the GCRTA, its trustees, officers, employees and agents harmless from any penalty, cost, damages, or judgment resulting from or caused by such waste, contaminant or hazardous substance.

X. Licenses and Permits.

GCRTA shall be responsible for obtaining any and all licenses and permits necessary for any adjustment or relocation required by the ECTP. NEORSD shall be responsible for obtaining any and all licenses and permits necessary for the completion of any other relocation, replacement or any betterment activity in the ECTP Project area. Each party shall be responsible for complying with all applicable federal, state and local laws, codes, rules and regulations related to their work.

XI. Inspections.

Work performed by a contractor employed by GCRTA or NEORSD in furtherance of any work authorization shall be inspected by GCRTA in accordance with GCRTA Quality Program Plan and Project Execution Manuals and the State of Ohio Department of Transportation, Construction and Material Specifications dated January 1, 2002 as they may be amended. NEORSD will provide a project representative at its own cost to observe the construction of all NEORSD Adjustments or Relocation performed by GCRTA's contractor. The NEORSD will provide a project representative, at its own cost, to observe its construction of all NEORSD relocations, rehabilitations, or betterments. The project representative shall act as a liaison during construction between the NEORSD and the GCRTA. NEORSD project representative shall meet regularly with GCRTA's authorized construction representative to discuss project schedules, changes, requests for information, and quality control issues. NEORSD 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 ECTP contractor working on the site.

XII. Key Contacts.

NEORSD, prior to commencement of any Adjustment, Relocation or Betterment, will provide a list of key contacts for all NEORSD facilities.

XIII. Weekly Coordination Meetings.

During the course of the construction of the ECTP, GCRTA will hold weekly progress meetings with its contractors. GCRTA shall invite NEORSD to attend such meetings in order to provide information and to resolve any potential conflicts. NEORSD agrees to attend ECTP construction progress meetings.

XIV. Insurance; Claims.

The following **minimum** limits of insurance will be maintained by any contractors or subcontractors retained by NEORSD or GCRTA to perform work that is part of or related to any NEORSD work in the project area or any work for the ECTP.

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 \$5 million combined single limit each occurrence for bodily injury and/or property damage with a \$5 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.

- Contractual liability coverage insuring the "hold harmless" provision set forth in this Agreement.
 - Liability for explosion, collapse and underground property damage.
 - Said policy shall be written on an "occurrence" basis.
 - GCRTA 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 million 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 million per accident / \$1 million 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, NEORSD and 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 NEORSD or any 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 NEORSD or GCRTA's Director of Procurement, depending on the identity of the contracting party.
- Name NEORSD 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 NEORSD 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 NEORSD 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 to the GCRTA. All certificates are subject to acceptance by NEORSD and GCRTA.

NEORSD 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 and 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 NEORSD or GCRTA shall not relieve or decrease the liability of the Contractor, NEORSD or GCRTA hereunder. It is to be understood that GCRTA and NEORSD 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 NEORSD or Contractor neglects, refuses or fails to provide the insurance required under the Contract documents, or if such insurance is canceled for any reason, the GCRTA or NEORSD 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.

XV. A. Federal Assistance.

The work authorized under this contract may be supported in part by Federal assistance under grants made by the Department of Transportation, Federal Transit Administration, pursuant to the Urban Mass Transportation Administration Act of 1964 and amendments (49 U.S.C. 1601 et seq.) and Surface Transportation Assistance Acts of 1982 and 1987. When so funded, this contract shall be subject to all rules and regulations promulgated pursuant thereto, as they may be amended from time to time during the course of this contract. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The NEORSD shall not perform any act, fail to perform any act, or refuse to comply with any (GCRTA) Owner requests, which would cause (GCRTA) Owner to be in violation of the FTA terms and conditions.

- B. **No Obligation by the Federal Government.** NEORSD and GCRTA agree that, notwithstanding any concurrence by the Federal Government in, or approval of the solicitation or award of this contract, absent the

express written consent of the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the GCRTA, the Contractor or any other party pertaining to any matter resulting from the underlying contract; NEORSR further agrees to include this clause, without modification, in any contract issued hereunder.

XVI. Indemnification.

To the extent permitted by law, with respect to work performed by NEORSR, its contractors or agents, it 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 NEORSR, or as a result of the performance of this Contract by the NEORSR, whether or not it shall be claimed that the injury was caused through a negligent act or omission of the NEORSR or his/her employee, and whether or not the persons injured or whose property was damaged were third parties, employees of the NEORSR or employees of any authorized contractor; and the NEORSR shall at his/her own expense defend GCRTA and the City of Cleveland in all litigation, pay all attorneys' fees, damages of any type, 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. The obligations of this duty to indemnify are separate from and not dependent upon the coverage or lack thereof provided by any policy of insurance required by this agreement.

XVII. Miscellaneous Provisions.

(a) **Approvals; Further Documents.** Where this Agreement requires approval, consent, permission, satisfaction, agreement, or authorization by either party, such approval, consent, permission, satisfaction, agreement, or authorization shall not be unreasonably withheld nor delayed.

The parties agree to execute such further documents, agreements, instruments and notices as may be necessary or appropriate to effectuate the transactions contemplated by this Agreement.

(b) **Notices.** Any notices required or permitted to be given under the terms of this Agreement shall be in writing and shall be deemed to be given as of the

time of delivery to the addresses set forth below:

To the AUTHORITY:

The Greater Cleveland Regional Transit Authority
Deputy General Manager, Engineering and
Project Management Division
1240 West 6th Street
Cleveland, Ohio 44113-1331

To the NEORSD:

Northeast Ohio Regional Sewer District
Charles J. Vasulka, Director of Engineering
3900 Euclid Avenue
Cleveland, Ohio 44115-2506

(c) Assignment.

This Agreement is not assignable, except with the prior written consent of the other party.

(d) Waiver.

The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach of waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

(e) Entire Agreement; Modification.

This Agreement contains the entire agreement of the parties with respect to the matters addressed herein. This Agreement may not be amended, modified, superseded or canceled, nor may any of the terms, covenants, representations, warranties or conditions hereof be waived, except by a written instrument executed by the party against which such amendment,

modification, supersedure, cancellation or waiver is to be charged.

(f) Force Majeure.

Neither party shall be held liable for any loss or damage due to delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such causes may include acts of God, acts of civil or military authority, government regulations (except those promulgated by the party seeking the benefit of this section), embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, other major environmental disturbances or unusually severe weather conditions.

(g) Termination for Convenience. The performance of work under this contract or any GCRTA Work Authorization may be terminated in whole or, from time to time, in part by the GCRTA whenever for any reason the GCRTA shall determine that such termination is in the best interest of the GCRTA. Termination of work hereunder shall be effected by delivery to the NEORSD of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.

(h) Governing Law and Venue.

This Agreement shall be constructed and entered in accordance with the laws of the State of Ohio. Any legal action to enforce the terms of this Agreement shall be brought in Cuyahoga County, Ohio.

(i) Headings.

Headings and captions contained herein are inserted for convenience and of reference only, and are not to be deemed part of or to be used in constructing this Agreement.

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

**NORTHEAST OHIO REGIONAL
SEWER DISTRICT**

**GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY**

By: _____
Erwin Odeal
Its: Executive Director

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

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

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