

RESOLUTION NO. 2008-13

AUTHORIZING THE GENERAL MANAGER/SECRETARY-TREASURER TO ENTER INTO AN AGREEMENT WITH THE CLEVELAND CLINIC FOUNDATION ("CCF") FOR THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY ("GCRTA") TO PERFORM CCF PROJECT REVISIONS TO THE EUCLID CORRIDOR TRANSPORTATION PROJECT INVOLVING RECONFIGURATION OF THE PROJECT BETWEEN EAST 86TH STREET AND EAST 105TH STREET (RTA DEVELOPMENT FUND, EUCLID CORRIDOR TRANSPORTATION PROJECT BUDGET, 100% LOCAL FUNDS)

WHEREAS, the Greater Cleveland Regional Transit Authority (GCRTA) is constructing the Euclid Corridor Transportation Project (ECTP); and

WHEREAS, as part of the ECTP, the GCRTA is making drainage, utility, roadway, landscaping, transit and other improvements on Euclid Avenue; and

WHEREAS, CCF desires to have GCRTA make revisions to the ECTP ("Project Revisions") on Euclid Avenue between E. 86th and E. 105th Street; and

WHEREAS, the GCRTA desires to assist the CCF by having its ECTP contractors and private utility companies make the Project Revisions at the CCF's cost; and

WHEREAS, GCRTA sought and on September 24, 2007 received FTA concurrence to implement the Project Revisions at no additional cost to the Full Funding Grant Agreement; and

WHEREAS, the initial scope of the CCF Project Revisions is estimated to cost an amount not to exceed three million eight hundred seventy six thousand seven hundred eighty three & 59/100 dollars (\$3,876,783.59); and

WHEREAS, the additional scope items of the CCF Project Revisions is estimated to cost an amount not to exceed one million two hundred fifty eight thousand three hundred ninety two & 11/100 dollars (\$1,258,392.11); and

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

Section 1. That the Board of Trustees of the GCRTA hereby authorizes the General Manager/Secretary-Treasurer to enter into an Agreement with CCF for performance of the Project Revisions by the ECTP contractors at the CCF's cost. Said work shall be considered Non-FFGA work and will be performed as third party change orders to ECTP construction contracts C-04 and C-05B, the Construction Management Consultant, the Safety Certification Consultant, and various private utility contracts and shall be payable from the RTA Development Fund, Euclid Corridor Transportation Project budget, 100% local funds.

Section 2. That the General Manager/Secretary-Treasurer is authorized to enter into an Agreement with CCF substantially in the form attached in an initial amount not to exceed three million eight hundred seventy six thousand seven hundred eighty three & 59/100 dollars (\$3,876,783.59), and to add additional scope items in an amount not to exceed one million two hundred fifty eight thousand three hundred ninety two & 11/100 dollars (\$1,258,392.11) once those costs are determined;

Section 3. That the remaining terms of said Agreement shall be as is agreed to by the parties, as is permitted by State and Federal law, in accordance with this Board's policies and all other regulations governing the conduct of the GCRTA.

Section 4. That the Board of Trustees of the GCRTA hereby authorizes the General Manager/Secretary-Treasurer to execute Change Orders to ECTP construction contracts with Terrace Construction for ECTP C-04 in an amount up to \$2,743,670.96 and with Doan/Pyramid for ECTP C-05B in an amount up to \$826,423.01 for the performance of the Project Revisions for the benefit of CCF.

Section 5. That the General Manager/Secretary-Treasurer be and he is hereby re-authorized to exercise his full change order authority under the Authority's Procurement Policy, Section 9.0 as applied to contracts with Terrace Construction for ECTP C-04 and with Doan/Pyramid for ECTP C-05B.

Section 6. That the General Manager/Secretary-Treasurer is hereby authorized to accept payment from CCF in a total sum equal to sums paid to GCRTA contractors for performance of the Project Revisions for CCF, which sums are to be deposited to GCRTA Development Fund, Euclid Corridor Transportation Project budget.

Section 7. That said contracts shall continue to be binding upon and obligations of the GCRTA contingent upon funding for future years; the Affirmative Action Plan adopted by the Board of Trustees in Resolution 2006-77; bonding and insurance requirements, and all applicable laws related to contractual obligations of the GCRTA.

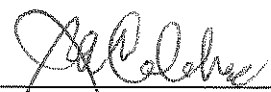
Section 8. That this resolution shall become effective immediately upon its adoption.

Attachment: Proposed Cleveland Clinic Agreement

Adopted: January 22, 2008



President

Attest: 

CEO, General Manager/Secretary-Treasurer

EUCLID CORRIDOR TRANSPORTATION PROJECT
RECONFIGURATION AGREEMENT
WITH
THE CLEVELAND CLINIC FOUNDATION

This Agreement ("Agreement") is entered into as of the _____ day of January, 2008 by and between the **Cleveland Clinic Foundation ("CCF")**, an Ohio non-profit corporation with its principal office located at 9500 Euclid Avenue, Cleveland, Ohio 44195, and the **Greater Cleveland Regional Transit Authority ("GCRTA")**, a political subdivision of the State of Ohio with its principal office located at 1240 West 6th Street, Cleveland, Ohio 44113-1331.

Whereas, CCF proposed reconfiguration of the GCRTA Euclid Corridor Transportation Project ("ECTP") design and construction between East 86th and East 105th Streets in conjunction with their Campus Master Plan Update which will involve CCF providing to GCRTA roadway design and final plans, specifications and quantities, construction documents, right-of-entry to CCF property and right-of-way acquisition necessary for the reconfiguration construction, payment for cost increases in or related to utility re-design, relocations and adjustments, construction, construction management, and safety certification ("Project Revisions"); and

Whereas, GCRTA and CCF (collectively the "Parties") anticipate that the Project Revisions will conform to the Peter Walker and Partners/WSA Option 14 dated July 13, 2007 and will include at a minimum: 1) Design and construction of a 70 foot face of curb to face of curb typical roadway section from Sta 281+00 to Sta 310+62 (The typical section is a 5 ft bike lane, 13 ft general use lane, 12 ft median, 12 ft transit lane, 11 ft general use lane, and 5 ft bike lane), and; 2) Elimination of traffic signals at East 90th and East 101st, and elimination of left turn lanes from Euclid Avenue at East 89th, East 93rd and East 100th Streets, and; 3) Landscaping improvements within the right-of-way extending beyond the roadway reconstruction limits noted above, including but not limited to landscaping treatments at the Euclid and East 86th and East 105th intersections; and

Whereas, GCRTA is willing to incorporate the Project Revisions into the ECTP design and construction with the understanding that the Project Revisions will be completed in such a manner and on such a schedule that the completion thereof shall cause no negative impact (i) on the As Bid Costs as shown on the Option 14 Cost Differential attachment ("Attachment A") to this Agreement which is hereby incorporated herein by reference, or (ii) the scheduled opening date of October 25, 2008 (hereinafter "Scheduled Opening Date"); and

Whereas, GCRTA shall incur no obligation nor pay any increases to ECTP costs to the extent that they are incurred on account of the Project Revisions and CCF shall be responsible for cost increases to the extent that they are on account of or in any way directly related to the Project Revisions.

Now, therefore, in consideration of the mutual promises contained herein, the parties agree as follows:

1. The Project Revisions shall be based upon the Option 14 design concept agreed to on July 13, 2007 (Attachment "B" hereto), and further defined by the 90% design submitted on July 31, 2007, the 100% plans, specifications, and quantities dated November 12, 2007 (Attachment "C" hereto).
2. GCRTA shall be responsible and shall pay for the utility relocations and adjustments and the construction costs within the proposed right-of-way included in the Project Revisions up to the As Bid Costs shown on Attachment "A" hereto. CCF shall be responsible and shall pay for any and all cost increases within the proposed right-of-way included in the Project Revisions that are for or related directly to utility re-designs, relocations and adjustments. Costs that CCF has agreed to pay for are set forth on Attachment A. They include but are by no means limited to any and all construction costs occasioned by or related directly to the Project Revisions.
3. GCRTA will pay for construction administration, construction management and safety certification for Project Revisions work within the right-of-way up to the existing contracted values and CCF shall be responsible and shall pay for any and all cost increases in or related to construction management and safety certification occasioned by or related directly to the Project Revisions, which sums are shown on Attachment A.
4. CCF: a) has completed and delivered to GCRTA 90% roadway design plans, specifications and quantities on July 31, 2007; b) granted to GCRTA a right-of-entry to any and all CCF property necessary for construction of the Project Revisions on October 11, 2007 and extended this grant January 3, 2008, and; c) delivered to GCRTA final construction documents, including plans, specifications and quantities on November 12, 2007 and; d) agrees to execute a right-of-way acquisition agreement with GCRTA concurrently with this Agreement.
5. CCF agrees that designs, plans and specifications submitted by CCF regarding Project Revisions: a) shall conform to the requirements of the GCRTA, the City of Cleveland, the Ohio Department of Transportation ("ODOT"), the Euclid Corridor Environmental Document and Full Funding Grant Agreement ("FFGA"); b) must receive FTA and U.S. Department of Transportation concurrence; c) shall be compliant with all federal (including NEPA), state and local laws, and d) must maintain exclusive transit lanes, general use vehicle lanes and bike lanes, and e) shall be modified in the field such that they comply with the requirements of the K & J Safety and Security Consulting Services, Inc., letter dated September 28, 2007 (Attachment "D") hereto to resolve the issue of the trees in the median noses at the East 93rd Street intersection.
6. On or about August 22, 2007, GCRTA sought Federal Transit Administration ("FTA") concurrence that the CCF Option 14 design concept was consistent with the purpose and need, environmental documents, design scope and FFGA of the ECTP. On September 24, 2007 the FTA concurred that the CCF Option 14 design concept was consistent with those project documents and agreements. FTA also noted that all additional costs associated with the Project Revisions must be outside of the FFGA and that the Revenue Operations Date of December 31, 2008 must not be missed. Both letters are attached hereto as Attachment "E" hereto.

7. GCRTA has approved plans and specifications CCF provided for Project Revisions. GCRTA shall on or about January 22, 2008 seek any authority required from its Board of Trustees to enter into the Agreement, to issue change orders that are in compliance with the terms of this Agreement with the roadway and systems contractors in support of the Project Revisions and complete utility agreements.
8. The Parties agree that they shall use their best efforts to complete the design and construction of the Project Revisions in such a manner and on such a schedule that they shall cause no negative impact on the Scheduled Opening Date.
9. CCF promises and agrees that it shall be responsible for all losses, costs, fines and penalties GCRTA incurs in any way related to the Project Revisions to the extent that they result directly from the fault of CCF and/or its contractors.
10. Within 30 days of the execution of this Agreement CCF will establish an interest bearing escrow account in an amount of \$3,876,783.59 which sum is estimated to be sufficient to reimburse GCRTA for the implementation of certain Project Revisions. That amount is shown on Attachment "A" hereto as "Total Difference." GCRTA and CCF shall determine any and all cost increases within the proposed right-of-way included in the Project Revisions that are for or related directly for Construction Management Consultant services and are for or related directly to utility re-designs, relocations and adjustments for Dominion East Ohio within 45 days of execution of this Agreement and shall add those sums to the "Total Difference" amount shown on Attachment "A" hereto and shall immediately deposit those sums into the escrow. The Escrow Agreement/Instructions shall be essentially as shown on Attachment "F" to this Agreement. The escrow account funds will be drawn down by GCRTA, subject to the written approval of CCF, as invoices for the items in the "Difference" column on Attachment A are processed. If funds in the escrow account are at any time(s) insufficient to cover the estimated extra costs, which are the responsibility of CCF hereunder, CCF shall immediately upon notice from GCRTA make additional deposits sufficient to cover current and anticipated invoices. At the completion of the Project Revisions any excess funds plus all interest earned on account will be returned to CCF.
11. The parties recognize that during construction there will be proposed change orders to third party contracts impacted by the implementation of the Project Revisions. Each party will designate an Owners Representative to track and assess financial responsibility for the payment of resulting change orders. Within 90 days of the execution of this Agreement the parties will agree upon an appropriate amount to be added to the Escrow Account as an Allowance from which payments may be made for changes for which CCF is responsible.
12. Enforceability of the terms contained in this Agreement are subject to the following contingencies as conditions precedent:
 - a. formal approval by the GCRTA's Board of Trustees (Board);
 - b. approval or waiver by the Federal Transit Administration (FTA); and
 - c. compliance of all of its terms with all applicable laws and regulations and with the terms of all agreements binding upon the GCRTA. GCRTA shall use reasonable efforts to obtain the approvals required in clauses a. and b. above,

within thirty (30) days after the Effective Date of this Agreement.

d. formal approval or waiver by CCF's Board of Trustees.

13. Amendments

No amendments or modifications of this Agreement shall be effective unless they are in writing and are executed by the Parties.

14. Entire Agreement

This Agreement, including the Attachments to this Agreement and documents referenced on them, which are all hereby incorporated herein by reference, evidences the entire agreement of the Parties hereto with respect to the Project Revisions. It supercedes, replaces and nullifies all discussions and the terms of all prior writings and agreements in any way related to the Project Revisions such that they shall be deemed to be void ab initio.

15. Notices

All notices which are required or permitted hereunder shall be in writing and served either by personal delivery to the party for who it is intended (which shall include delivery by Federal Express or similar service) or by depositing such notice postage prepaid, certified or registered mail, return receipt requested, in the United States mail bearing the address shown below for, or such other address as may be designated in writing hereafter by such party:

If to CCF: Cleveland Clinic Foundation
9500 Euclid Avenue (CC-46)
Cleveland, Ohio 44195
Attn: William Peacock
Executive Director, Facilities and Construction

Copy to: Cleveland Clinic Foundation
Office of General Counsel
9500 Euclid Avenue (H18)
Cleveland, Ohio 44195
Attn: Chief Legal Officer

If to GCRTA: The Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, Ohio 44113-1331
Attn: Joseph A. Calabrese, CEO, General Manager/
Secretary-Treasurer

Copy to: The Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, Ohio 44114-1331
Attn: Kenneth E. Banks, Jr.

Senior Counsel/Contracts & Real Estate

Notices shall be deemed given upon receipt or delivery refused.

16. Governing Law

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

17. Captions

The captions and section headings of this Agreement are inserted for convenience only and shall not constitute a part of this Agreement in construing or interpreting any provision hereof.

18. No Third Party Beneficiaries

Nothing herein, expressed or implied, is intended or shall be construed to confer upon or give any person, firm, corporation or legal entity other than the Parties hereto, any rights, remedies or other benefits, under or by reason of this Agreement.

19. Counterparts

This Agreement may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

20. Severability

In the event any provision or term of this Agreement shall be held to be invalid, illegal or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision or term hereof and such invalid, illegal or unenforceable provision or term shall be deemed enforceable to the fullest extent permitted by law.

21. Assignment

Neither party has a right to sell, convey, assign, sublet, pledge, encumber or otherwise transfer its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the other party. Consent by a party to any one or more of such transfers or encumbrances shall not be deemed to waive that party's right to approve any further encumbrance or transfer. Approval of an encumbrance shall not be deemed approval or permission for a transfer to occur without the consents in the event of default thereunder. Any transfer by operation of law, merger, consolidation or joint venture shall be deemed an assignment for purposes of this Agreement. Any sale, assignment, conveyance pledge, encumbrance or other transfer of a party's rights under this Agreement shall be void and shall constitute a breach of this Agreement.

22. Recordability

The Parties agree that this Agreement creates an interest in real estate which may be recorded.

Cleveland Clinic Foundation
Office of General Counsel
1950 Richmond Road (TR-38)
Lyndhurst, Ohio 44124

By: _____
Michael P. O'Boyle
Chief Operating Officer

**Greater Cleveland Regional
Transit Authority**
1240 West 6th Street
Cleveland, Ohio 44113-1331

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

Approved as to Legal Form

DRAFT

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

ATTACHMENT A

EUCLID CORRIDOR TRANSPORTATION PROJECT CLEVELAND CLINIC FOUNDATION AGREEMENT OPTION 14 COST DIFFERENTIAL UPDATED JANUARY 21, 2008

| ITEM | AS BID COSTS | OPTION 14 COSTS | DIFFERENCE |
|---------------------|------------------------|-------------------------|------------------------|
| ECTP C-04 CONTRACT | \$ 6,132,111.94 | \$ 8,875,782.90 | \$ 2,743,670.96 |
| ECTP C-05B CONTRACT | \$ 982,736.99 | \$ 1,809,160.00 | \$ 826,423.01 |
| DEO DESIGN | \$ - | \$ 47,262.00 | \$ 47,262.00 |
| CEI DESIGN | \$ - | \$ 40,920.00 | \$ 40,920.00 |
| CEI CONSTRUCTION | \$ 1,086,060.38 | \$ 1,244,086.00 | \$ 158,025.62 |
| ATT DESIGN | \$ - | \$ 7,000.00 | \$ 7,000.00 |
| ATT CONSTRUCTION | \$ 111,134.00 | \$ 144,634.00 | \$ 33,500.00 |
| K&J REVIEW COSTS | \$ - | \$ 19,982.00 | \$ 19,982.00 |
| TOTAL | \$ 8,312,043.31 | \$ 12,188,826.90 | \$ 3,876,783.59 |

ITEMS TO BE ADDED TO AGREEMENT ONCE OPTION 14 COSTS DETERMINED

| ITEM | AS BID COSTS | OPTION 14 COSTS | DIFFERENCE |
|------------------------|----------------------|------------------------|------------------------|
| CONSTRUCTION MGMT | \$ - | \$ 430,942.11 | \$ 430,942.11 |
| DEO CONST | \$ 238,400.00 | \$ 815,850.00 | \$ 577,450.00 |
| CHANGE ORDER ALLOWANCE | \$ - | \$ 250,000.00 | \$ 250,000.00 |
| TOTAL | \$ 238,400.00 | \$ 1,496,792.11 | \$ 1,258,392.11 |

- Estimated Amounts



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

| | |
|--|--|
| TITLE/DESCRIPTION: AUTHORIZING THE GENERAL MANAGER/SECRETARY-TREASURER TO ENTER INTO AN AGREEMENT WITH THE CLEVELAND CLINIC FOUNDATION ("CCF") FOR THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY ("GCRTA") TO PERFORM CCF PROJECT REVISIONS TO THE EUCLID CORRIDOR TRANSPORTATION PROJECT INVOLVING RECONFIGURATION OF THE PROJECT BETWEEN EAST 86 TH STREET AND EAST 105 TH STREET (RTA DEVELOPMENT FUND, EUCLID CORRIDOR TRANSPORTATION PROJECT BUDGET, 100% LOCAL FUNDS) | Resolution No.: 2008-13 |
| | Date: January 21, 2008 |
| | 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 enter into an agreement with the Cleveland Clinic Foundation that will allow the Authority to construct the Clinic's Proposed Revisions to the Euclid corridor project and reimburse the Authority for all costs associated with performing this work.

- 2.0 **DESCRIPTION/JUSTIFICATION:** The Authority was approached by the Cleveland Clinic foundation in October 2005 to consider design changes to the Euclid Corridor project. Since then the Authority has been working with the Clinic to produce a design concept that maintains the exclusive transit lanes, general use traffic lanes and bike lane through the Clinic Campus that is consistent with the projects Purposed and Need, Environmental Documents, Design Scope and Full funding Grant Agreement. On July 13, 2007 we received the Clinic's Option 14 Design Concept that met those requirements. On September 24, 2007 we received FTA's concurrence that the Option 14 Design Concept was consistent with the projects requirements and the Full Funding Grant Agreement. On November 12, 2007 the Clinic supplied the final construction plans, specifications and estimates for this design concept.

- 3.0 **PROCUREMENT BACKGROUND:** Since receiving the November 12, 2007 final documents we have been negotiating change orders with Terrace Construction for ECTP C-04 and with Doan/Pyramid for ECTP C-05B construction contracts, the Washington Group for the Construction Management Consultant contract. On November 20, 2007 the Board approved three resolutions for private utility work authorizations. The results of those negotiations and the private utility work authorizations are included in the total amount of the proposed agreement.

- 4.0 **AFFIRMATIVE ACTION/DBE BACKGROUND:** Does not apply.

- 5.0 **POLICY IMPACT:** Does not apply.

- 6.0 ECONOMIC IMPACT: This agreement shall be funded from the RTA Development Fund, Euclid Corridor Transportation Project Department budget, 100% Local Funds to be reimbursed by the Cleveland Clinic Foundation per the agreement for an initial amount not to exceed exceed three million eight hundred seventy six thousand seven hundred eighty three & 59/100 dollars (\$3,876,783.59), and to add additional scope items in an amount not to exceed one million two hundred fifty eight thousand three hundred ninety two & 11/100 dollars (\$1,258,392.11) once those costs are determined;
- 7.0 ALTERNATIVES: Reject this agreement and construct this section of the Euclid Corridor per the original design and construction documents. Rejection of this agreement will result in delay and escalation change orders to be forthcoming.
- 8.0 RECOMMENDATION: Pending agreement was discussed at the January 8, 2008 Planning and Development Committee. It is recommended that this agreement be accepted and the resolution passed authorizing the General Manager/Secretary-Treasurer to enter into this agreement.
- 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