

RESOLUTION NO. 2008-46

RATIFICATION OF A CONTRACT WITH THE CLEVELAND CLINIC FOUNDATION AND UNIVERSITY HOSPITALS OF CLEVELAND TO PROVIDE FOR NAMING AND SPONSORSHIP RIGHTS FOR A 25-YEAR PERIOD FOR THE EUCLID CORRIDOR TRANSPORTATION PROJECT, IN AN AMOUNT OF \$6,250,000.00 (REVENUE-PRODUCING AGREEMENT)

WHEREAS, the Euclid Corridor Transportation Project is a major capital improvement project that will improve transit services and support increased development along Euclid Avenue in Cleveland and East Cleveland; and

WHEREAS, the unique brand and Bus Rapid Transit (BRT) technology used for the Euclid Corridor make it attractive for corporate sponsorship and naming rights; and

WHEREAS, proposals were solicited for corporate sponsorships and naming rights for the Euclid Corridor BRT line; and

WHEREAS, due to the confidential nature of the negotiations with proposed sponsors, the Board of Trustees, subject to ratification, authorized the General Manager to negotiate and enter into a Naming and Sponsorship rights agreement; and

WHEREAS, the proposal of The Cleveland Clinic Foundation and University Hospitals of Cleveland was determined to be the most advantageous to the Authority; and

WHEREAS, the General Manager/Secretary-Treasurer deems the negotiated offer of The Cleveland Clinic Foundation and University Hospitals of Cleveland to be in the best interest of the Authority, price and all other factors considered, and recommends ratification thereof by the Board of Trustees.

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

Section 1. That the General Manager/Secretary-Treasurer of the Authority entered into a contract with The Cleveland Clinic Foundation and University Hospitals of Cleveland to secure naming rights and designate them as sole Tier 1 sponsors.

Section 2. That the offer of The Cleveland Clinic Foundation and University Hospitals of Cleveland, as negotiated, for naming and sponsorship rights for the Euclid Corridor BRT line for 25 years, be and the same is hereby ratified.

Section 3. That the General Manager/Secretary-Treasurer of the Authority be given the authority to enter into agreements with Tier II sponsors for underwriting individual Euclid Corridor stations and other agreements provided for in the contract with the Cleveland Clinic Foundation and University Hospitals.

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

Adopted: March 18, 2008



President

Attest: 

CEO, General Manager/Secretary-Treasurer




Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

TITLE/DESCRIPTION: RATIFICATION OF A CONTRACT WITH THE CLEVELAND CLINIC FOUNDATION AND UNIVERSITY HOSPITALS OF CLEVELAND TO PROVIDE FOR NAMING AND SPONSORSHIP RIGHTS FOR A 25-YEAR PERIOD FOR THE EUCLID CORRIDOR TRANSPORTATION PROJECT, IN AN AMOUNT OF \$6,250,000.00 (REVENUE-PRODUCING AGREEMENT)	Resolution No.: 2008-46
	Date: March 13, 2008
	Initiator: Marketing
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 ratifies a 25-year agreement for sponsorship and naming rights for the Euclid Corridor Transportation Project. Revenue from the sponsorship would help pay for the cost of maintaining the 58 Corridor stations and the median strip.
- 2.0 **DESCRIPTION/JUSTIFICATION:** The two sponsors and the Authority mutually agree on the name of the line. As Tier I sponsors, this agreement gives them the right for logo placement on the exterior of Rapid Transit Vehicles; sponsor the three stations located on their respective campuses with appropriate signage, and various other means, as outlined in the attached contract.
- 3.0 **PROCUREMENT BACKGROUND:** The agreement was arranged by the Superlative Group, a firm retained by RTA as the result of a competitive selection process, to find corporate sponsors.
- 4.0 **DBE/AFFIRMATIVE ACTION BACKGROUND:** Does not apply.
- 5.0 **POLICY IMPACT:** Does not apply.
- 6.0 **ECONOMIC IMPACT:** Each Tier I sponsor shall pay to the Authority 25 consecutive annual fee payments of \$125,000.00. The total sum of the sponsorship fee is \$6,250,000.00 over the 25-year period. Tier II sponsors, who will be determined later, may pay \$50,000.00 for one station naming rights and interior panel signage on rapid transit vehicles. GCRTA is seeking 10-year agreements.
- 7.0 **ALTERNATIVES:** Rejects this offer. Rejection of this offer will leave the Authority without the needed funding to maintain this state-of-art project.
- 8.0 **RECOMMENDATION:** This contract was previously discussed with the Board of Trustees. It is recommended that contract entered into by the General Manager/Secretary-Treasurer with The Cleveland Clinic Foundation and University Hospitals of Cleveland be ratified.
- 9.0 **ATTACHMENTS:** The contract is attached.

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



 General Manager/Secretary-Treasurer

NAMING AND SPONSORSHIP AGREEMENT

THIS NAMING AND SPONSORSHIP AGREEMENT (the "Agreement") is made and entered into as of January 1, 2008, by and between the Greater Cleveland Regional Transit Authority, a political subdivision of the State of Ohio, doing business at 1240 West 6th Street, Cleveland, Ohio 44113-1331 ("RTA"), The Cleveland Clinic Foundation, an Ohio non-profit corporation, doing business at 9500 Euclid Avenue, Cleveland, Ohio 44195 (the "CCF"), and University Hospitals of Cleveland dba University Hospitals Case Medical Center, an Ohio non-profit corporation, doing business at 11100 Euclid Avenue, Cleveland, Ohio 44106 ("UH") (UH and CCF are sometimes referred to collectively as the "Sponsors").

RECITALS

Whereas, the City of Cleveland and RTA have embarked on the Euclid Corridor Transportation Project (the "Project"), a major transit capital improvement project with the goal of improving transit service and supporting increased development along Euclid Avenue in Cleveland, Ohio;

Whereas, UH and CCF recognize the Project as an important civic initiative in their community and wish to support the Project as area industry leaders;

Whereas, UH and CCF have agreed to sponsor the RTA's Euclid Corridor Bus Rapid Transit Line of approximately 21 vehicles operating on that portion of Euclid Avenue which has as its end points Public Square in the City of Cleveland, Ohio, and RTA Windermere Station in the City of East Cleveland, Ohio (the "ECBRT Line") as Tier 1 sponsors in exchange for exclusive naming rights of the ECBRT Line and other sponsorship designations;

NOW THEREFORE, in consideration of the mutual covenants and promises made herein, the parties hereby agree as follows:

- 1. Exclusive Naming Rights.** During the Term of this Agreement (as defined in Section 9 hereof), RTA hereby grants CCF and UH the exclusive naming rights of the ECBRT Line. UH, RTA and CCF will mutually agree on the name of the line (e.g, the "HealthCare Line"), however RTA's agreement on any exercise of naming rights by UH or CCF shall not be unreasonably withheld or delayed. UH and CCF will develop the design of the naming signage on the exterior and interior of the ECBRT Line fleet, station logos, and other ancillary media items, to be approved by RTA, which approval shall not be unreasonably withheld or delayed. It is contemplated by the parties that the designs will incorporate the names and logos of UH and CCF. UH and CCF are considered the sole and exclusive "Tier I Sponsors" of the ECBRT Line. For the avoidance of doubt, the naming rights granted to CCF and UH specifically include, without limitation, the right to place advertisements (as approved pursuant to this Agreement) on all exterior advertising space on all busses serving the ECBRT Line (with such space

evenly divided between CCF and UH), at no additional cost other than the fees expressly stated in this Agreement.

2. **Other Sponsorship Benefits.** While this Agreement is in effect, and except as otherwise specifically provided in this Agreement, CCF and UH shall be the exclusive Tier I sponsors of the ECBRT line. During the Term of this Agreement, RTA shall provide the following sponsorship benefits to the Tier I Sponsors in exchange for the Sponsorship Fee:

- a. Station Sponsorship. UH and CCF will each receive designation and acknowledgement for the sponsorship of three (3) stations located on their respective campuses. Design of this recognition will correspond with the other station sponsorships. By way of example, signage will indicate "Station Sponsor – Cleveland Clinic" or "This station is kept operational by the generous support of University Hospitals." UH, CCF and RTA will mutually agree on the names of each station, however RTA's agreement on any exercise of rights by UH or CCF shall not be unreasonably withheld or delayed.
- b. Measured & Non-Measured Media. RTA shall provide sponsorship identification of UH and CCF on the following:
 - i. Signage on all ECBRT Line stations
 - ii. Signage on scrolling signage on front of vehicles
 - iii. Interior of vehicles via electronic media
 - iv. All RTA station maps
 - v. RTA system hand held maps
 - vi. ECBRT Line hand held maps
 - vii. Front of ECBRT Line tickets
 - viii. RTA media release letterhead
 - ix. ECBRT Line promotional items
- c. Internet
 - i. Route list on RTA home page
 - ii. ECBRT Line Route information page
 - iii. RTA timetables, maps and schedule pages
 - iv. RTA news and updates page
 - v. RTA riding options page
 - vi. ECBRT Line home page
 - vii. ECBRT Line press releases page
 - viii. ECBRT Line project update page
 - ix. Link to UH and Clinic homepages on left hand side of all pages

Without limitation to the foregoing, the parties acknowledge that during the anticipated 25-year term of this Agreement, new technologies, procedures,

vehicle types and other changes may occur with respect to the ECBRT line. RTA agrees that as applicable to the ECBRT line, it shall, without requiring additional Sponsorship Fee amounts, offer CCF and UH the ability to participate in any new sponsorship or advertising media or modality that is first implemented by RTA after the commencement of this Agreement.

The rights granted under this Section 2 to UH and CCF are exclusive rights. RTA agrees that except for Tier II sponsors approved by UH and CCF whose rights are stated in Section 5 and the Underwriting Program described in Section 6. of this Agreement, no other logo, name recognition, or other sponsorship rights will be granted to any third party relating to the ECBRT Line during the term of this Agreement without the prior written consent of UH and CCF, which approval shall not be unreasonably withheld or delayed (and further provided that UH and CCF may reasonably withhold such approval on the basis that the grant of such rights materially diminishes or dilutes the value of their respective sponsorships of the ECBRT Line).

- d. Each of CCF and UH, with respect to its own use of Marks in advertising or media, shall be responsible for ensuring that it has all necessary rights to the Marks or other intellectual property used in such advertisements and media. RTA shall be solely responsible for installing and maintaining such advertisements and media, provided that it determines that items of advertising and media placed pursuant to this Agreement comply with all Federal, state and local laws and regulations, including but not limited to DOT and ODOT.

3. Limited Licenses to Use Trademarks and Service Marks.

- a. Subject to the terms of this Agreement and so long as UH and CCF are not in breach of any term or condition hereof, RTA grants UH and CCF for the entire Term the non-exclusive and royalty-free license, uncoupled with an interest, to use the RTA trademarks, service marks, logos and any secondary marks ("RTA Marks") to identify UH and CCF as a sponsors of the ECBRT Line in connection with advertising and the promotional activities and materials for UH and CCF, separately or collectively, as approved by RTA. Any and all materials produced by either UH or CCF using the RTA marks must be submitted to RTA for review and prior approval, which approval shall not be unreasonably withheld or delayed. However, neither UH nor CCF shall make any use of the RTA Marks without the prior written consent of RTA as to each use. Approval of the use of RTA marks must be in writing signed by the RTA Marketing and Communications Director.
- b. Subject to the terms of this Agreement and so long as RTA and CCF are not in breach of any term or condition hereof, UH grants RTA and CCF for the entire Term the non-exclusive and royalty-free license, uncoupled with an interest, to use the UH trademarks, service marks, logos and any secondary

marks ("UH Marks") to identify UH as a sponsor of the ECBRT Line in connection with advertising and the promotional activities and materials for CCF, separately or collectively, as approved by UH. Any and all materials produced by CCF or RTA using the UH marks must be submitted to UH for review and prior approval, which approval shall not be unreasonably withheld or delayed. However, neither RTA nor CCF shall make any use of the UH Marks without the prior written consent of UH as to each use. Approval of the use of UH marks must be in writing signed by the University Hospitals Health System Senior Vice President for Marketing and Communications, or such Senior Vice President's designee.

- c. Subject to the terms of this Agreement and so long as RTA and UH are not in breach of any term or condition hereof, CCF grants RTA and UH for the entire Term the non-exclusive and royalty-free license, uncoupled with an interest, to use the CCF trademarks, service marks, logos and any secondary marks ("CCF Marks") to identify CCF as a sponsor of ECBRT in connection with advertising and the promotional activities and materials as set forth in this Agreement. Any and all materials produced by either UH or RTA using the CCF Marks must be submitted to CCF for review and prior approval, which approval shall not be unreasonably withheld or delayed. However, neither RTA nor UH shall make any use of the CCF Marks without the prior written consent of CCF as to each use.
- d. All rights of approval of the use of a trademark, service mark, logo or other identification of a party (the "MARKS") shall be a continuing right so that any party may later object to the use of MARKS that had been previously approved should circumstances change or other reasons arise that, in the reasonable judgment of the party objecting, make continued use potentially damaging to reputation or image of the MARKS or to the objecting party.
- e. All uses of MARKS by a party hereto shall inure to the benefit of the party granting the license in their own marks and not the licensee hereunder. No licensee hereunder shall make any claim of ownership or other interest in any mark licensed to them hereunder.

4. **Affiliates, Sub-licensees and Assignment.** At any time during the Term, CCF and UH each has the right to sublicense to a third party the right to exercise any of its rights other than naming rights hereunder for a finite period of time, not to exceed six (6) months or a longer period that is approved by the Parties. However, notwithstanding the preceding, the parties agree that any sublicense must be an Affiliate of the party or another tax exempt organization. "Affiliate" shall mean an entity in which a party either owns directly or indirectly at least fifty percent (50%) of such entity, or has the right to determine management direction of such entity, or provides management services or information processing for such entity. RTA, CCF and UH each shall have the right to review and approve or reject each proposed Affiliate and third party sub-licensee, prior to such

Affiliate's or third party sub-licensee exercise of the rights of the party proposing the Affiliate or third part sub-licensee. CCF and UH shall be responsible for the performance or breach of this Agreement by the sub-licensee. Notwithstanding the preceding, other than the sublicense rights granted above, no party to this Agreement may otherwise assign their rights to any third party without the prior written consent of all of the parties. Any attempted assignment made without such consent shall be void *ab initio*.

5. Tier II Sponsors.

- a. Procurement of Tier II Sponsors. RTA is solely responsible for procuring Tier II sponsors. UH and CCF will provide support to RTA, the Superlative Group or their successors' efforts, such as attendance at a reasonable number of meetings with potential Tier II sponsors or supporting the solicitation efforts. RTA acknowledges and agrees that UH and CCF shall have no other obligation, financial or otherwise, regarding the procurement of Tier II sponsors.
- b. Right of Approval. CCF and UH must approve each Tier II sponsor, which approval shall not be unreasonably withheld or delayed.
- c. Tier II Sponsorship Benefits. In exchange for a ten-year sponsorship commitment to RTA of approximately Fifty Thousand Dollars (\$50,000.00) per year, Tier II sponsorship benefits shall consist of and be limited to the following:
 - i. One named station; and
 - ii. Interior panel signage on the ECBRT fleet vehicles.

6. Other Sponsors. RTA warrants and represents as an inducement to UH and CCF to enter into this Agreement that:

- a. Underwriting Program. It is understood and agreed to by RTA, CCF and UH that RTA and Superlative will conduct Station Underwriting Programs. These programs will encourage companies and individuals to underwrite the costs of stations not included in the Tier I or Tier II sponsorships. It is expected that the name of the underwriting companies and individuals will be displayed at, in and/or on these stations for ten-year terms. CCF and UH will be informed of target prospects for these programs and CCF and UH must approve each underwriter, which approval shall not be unreasonably withheld or delayed.
- b. Except for Tier I and Tier II sponsors and underwriters approved by UH and CCF, UH and CCF are the sole and exclusive sponsors for the ECBRT Line.
- c. RTA will not create other sponsorship programs for the ECBRT Line without the prior written approval of CCF and UH, which approval shall not be

unreasonably withheld or delayed (and further provided that UH and CCF may reasonably withhold such approval on the basis that the grant of such rights materially diminishes or dilutes the value of their respective sponsorships of the ECBRT Line).

- d. RTA will not create another bus line that is identified as being part of the Euclid Corridor unless, at no additional cost, UH and CCF are granted the rights described in this Agreement with respect to such additional bus line.

7. Artwork and Media Costs; Installation and Replacement Costs.

- a. Artwork and Media Costs. CCF and UH shall equally bear the costs of the design and production of the initial exterior signage for the ECBRT Line fleet; provided however, that RTA shall be solely responsible for any design or production costs it incurs or assumes, including but not limited to the engagement of third parties such as Brokaw and Associates. Accordingly, CCF and UH shall jointly own all intellectual property rights in any works created by them (the "WORKS"), except that neither CCF nor UH shall have any interest or ownership in the MARKS of the other or RTA that may be embodied in WORKS. To the extent RTA creates or participates in the creation of WORKS, RTA agrees to and does hereby assign all intellectual property rights, including copyright, in WORKS, excluding any RTA MARKS that may be embodied therein, to CCF and UH jointly. CCF and UH shall be deemed to own an undivided interest in WORKS and may use and exploit WORKS in any manner (excluding using MARKS of the other, not licensed herein) without any obligation to report use or pay royalties to each other. CCF and UH anticipate that the design work shall be generated by CCF and UH personnel. In the event CCF and UH determine it is necessary to engage a third party to assist in developing the artwork and media, CCF and UH shall mutually agree upon such third party and shall equally bear the third party's fees and other costs. As stated above, neither CCF nor UH shall be responsible for the fees or costs of any third party engaged by RTA.
- b. Schematics of busses and station stops. In order for CCF and UH to develop the artwork and media associated with the ECBRT Line, RTA shall provide UH and CCF with the schematics of the ECBRT Line fleet busses and station stops upon execution of this Agreement.
- c. Installation. RTA shall be solely responsible for ensuring that the installation of any signage, or other materials used by RTA in connection with this Agreement, complies with all Federal, state and local laws and regulations, including but not limited to DOT and ODOT. for the operation of the ECBRT Line. RTA shall install any exterior or interior artwork and media developed by UH and/or CCF pursuant to this Agreement; provided however, that UH and CCF shall equally bear the actual costs of RTA, without markup, incurred in the installation of any signage attributable to the ECBRT Line name that

bears their MARKS, which costs shall not exceed, in the aggregate for both UH and CCF combined, Seventy Two Thousand Five Hundred Dollars (\$72,500).

- d. Replacement; Security. RTA shall bear all costs of replacement or repair of the exterior and interior artwork and media. RTA shall be responsible for periodically inspecting the exterior and interior artwork and media on ECBRT busses and stations (which inspections shall occur no less than 4 times per year) and, upon noting any artwork or media that is damaged, missing or defaced, promptly repairing or replacing such artwork or media such that the repaired or replaced artwork or media appears substantially in the same condition as when originally installed. RTA shall further be responsible for maintaining the busses and stations ECBRT in good repair and in a generally attractive condition. RTA acknowledges and agrees that neither UH nor CCF shall be liable for any costs associated with replacement or repair of any exterior and interior artwork and media that either result from normal wear and tear, result from vandalism or other damage caused by persons not under the control of a Sponsor, or are performed at the sole desire of RTA. RTA shall be solely responsible for determining whether the installation of any signage, or other materials used by RTA in connection with this Agreement, complies with all Federal, state and local laws and regulations, including but not limited to DOT and ODOT for the operation of the ECBRT Line. RTA shall be responsible for providing or arranging for reasonable security and/or police protection to maintain the safety of the ECBRT Line.

8. **Payment of Sponsorship Fee.** In return for the rights granted above, CCF and UH shall each pay to RTA 25 consecutive annual fee payments of One Hundred and Twenty-Five Thousand Dollars (\$125,000.00) during the Initial Term (as defined in Section 9 of this Agreement) with the first such payment being due on January 4, 2008 and the subsequent payments being due on the same date in the subsequent years (the "Sponsorship Fee"). The total sum of the Sponsorship Fee is Six Million Two Hundred and Fifty Thousand Dollars (\$6,250,000.00) over the course of the Initial Term.

Neither UH nor CCF is responsible for the other's Sponsorship Fee. In the event either UH or CCF defaults on payment of the Sponsorship Fee, RTA acknowledges that it may not attempt to recover such Sponsorship Fee from the non-defaulting Sponsor. A default by UH shall not be deemed a default by CCF and a default by CCF shall not be deemed a default by UH.

No fee other than Sponsorship Fees and the installation costs described in Section 7(c) shall be due from either UH or CCF until and unless both UH and CCF have had the opportunity to review and approve or reject in writing, in their respective sole discretion, any costs or expenses of RTA or its agents or representatives, that are imposed on UH or CCF in this Agreement. With respect to installation costs described in Section 7(c): (1) UH and CCF shall not unreasonably withhold

approval of such costs that are below the aggregate limit stated in Section 7(c); and (2) UH and CCF shall respond to requests for approval of such costs that are below the aggregate limit stated in Section 7(c) within 10 business days of receiving the written proposal from RTA. No fees other than Sponsorship Fees shall be due from either UH or CCF if RTA is unreasonably withholding approval for any matter for which UH or CCF is required to obtain approval from RTA.

Fees, costs and expenses not imposed on UH or CCF or RTA in this Agreement shall not be imposed on any of them except by an amendment to this Agreement signed by all parties. UH and CCF may approve or reject such costs in their sole discretion. These would include costs and expenses for or related to new or different advertising, including but not limited to costs and expenses arising from the participation by UH and/ or CCF in any new sponsorship or advertising media or modality (but with respect to such costs and expenses, and as described in Section 2 of the Agreement, in no event would UH or CCF pay RTA additional sponsorship fees or similar payments on account of sponsorship opportunities relative to the ECBRT line, but rather such costs and expenses would be incurred relative to the design, creation and installation of new media, and other logistical expenses relative to such new sponsorship opportunities).

9. **Term.** The initial term of this Agreement shall commence on the date first written above and continue thereafter until the end of the year in which the 25th annual payment is made. ("Initial Term"). RTA agrees that UH and CCF shall have the sole and exclusive option to renew this Agreement, under terms acceptable to RTA, at the end of the Initial Term and any renewal term for additional terms of five (5) years each. The Initial Term and any subsequent renewals are collectively referred to herein as the "Term." If either CCF or UH decides not to exercise their option for renewal terms, the other party desiring renewal will have the option to (i) become the sole exclusive Tier 1 sponsor of the ECBRT Line in exchange for paying the Sponsorship Fee attributable to the non-renewing party or (ii) approve, in its sole discretion, a new Tier 1 sponsor. If both CCF and UH do not want to renew, then this Agreement shall terminate.

10. **Termination for Cause.**

- a. Termination Prior to Grand Opening. The parties anticipate that the ECBRT Line shall become operational and regularly serve passengers with its fleet of busses (the "Grand Opening") no later than December 31, 2008. If the Date of the Grand Opening is delayed beyond 6 months from the date described in the prior sentence, then either UH or CCF may terminate this Agreement by giving notice to the other parties and in the case of such termination, UH and/or CCF, as applicable, shall be entitled to a full refund of all moneys paid to RTA under this Agreement, to the extent that UH or CCF did not contribute to or cause the delay.

- b. Termination for Breach. This Agreement may be terminated by any party, at any time any other party to this Agreement:
- i. Is in material breach of this Agreement, and such breach has not been cured within thirty (30) days following provision of written notice of such breach to the breaching party.
 - ii. Seeks protection in bankruptcy, makes a general assignment of its assets for the benefit of its creditors.
 - iii. Is convicted of a felony or is excluded from participation in any health care program or procurement program funded in whole or in part by the federal or a state government.
 - iv. In the case of CCF or UH, loses its status as a tax-exempt charitable organization, and in the case of RTA, becomes privately owned or otherwise loses its status as a political subdivision of the State of Ohio.
 - v. Takes or omits taking such action relating to or arising under this Agreement, so as to cause material disrepute to accrue to another party, or to cause material harm to the reputation of another party.

Notwithstanding the foregoing, to the extent that the terminating party is RTA, and the termination by RTA is based upon the breach of one but not both Sponsors, then such termination by RTA shall be effective only as to the breaching Sponsor. The notice of material breach or default shall set forth in detail the act or omission giving rise to a breach of this Agreement and shall specify in detail what is reasonably expected of the breaching party in order to cure such breach. If UH or CCF terminates, the non-terminating party of UH or CCF shall have the option to (i) become the sole and exclusive Tier I sponsor by paying the fees that would have been due from the terminating party or (ii) approve a new Tier 1 sponsor secured by RTA. If the allegedly breaching party disputes the existence of the breach, then the dispute resolution procedures described in Section 19 hereof shall apply to the resolution of such dispute.

- c. Effect of Termination. Upon termination or expiration of this Agreement
- i. All rights of RTA to use the MARKS shall cease and RTA must remove all MARKS from busses, stations, advertisements and other instances where RTA had been using MARKS prior to the termination.
 - ii. All licenses granted in this Agreement shall terminate.
 - iii. In the event that this Agreement is terminated by a Sponsor for cause, then RTA shall refund to the terminating Sponsor (or to both Sponsors, if both Sponsors have elected to terminate this Agreement) a pro rated portion of any fees paid by such Sponsor(s) on account of time periods following the

effective date of termination.

In the event that this Agreement terminates as to one but not both Sponsors, then clauses (i) and (ii) above shall apply only as to the terminating Sponsor.

11. Warranties.

- a. General Warranties of RTA. RTA represents and warrants that (a) it has the full corporate power and legal authority to enter into and perform this Agreement in accordance with its terms; (b) all necessary corporate approvals for the execution, delivery, and performance by RTA of this Agreement have been obtained; (c) this Agreement has been duly executed and delivered by RTA and constitutes a legal, valid and binding obligation of RTA enforceable in accordance with its terms; and (d) the execution, delivery and performance of this Agreement by RTA will not conflict with its articles of incorporation, by-laws or other governing documents and will not conflict with or result in the breach or termination of, or constitute a default under, any lease, agreement, commitment or other instrument, or any order, judgment or decree, to which RTA is a party or by which RTA is bound.
- b. General Warranties of CCF. CCF represents and warrants that (a) it has the full corporate power and legal authority to enter into and perform this Agreement in accordance with its terms; (b) all necessary corporate approvals for the execution, delivery, and performance by CCF of this Agreement have been obtained; (c) this Agreement has been duly executed and delivered by CCF and constitutes a legal, valid and binding obligation of CCF enforceable in accordance with its terms; and (d) the execution, delivery and performance of this Agreement by CCF will not conflict with its articles of incorporation, by-laws or other governing documents and will not conflict with or result in the breach or termination of, or constitute a default under, any lease, agreement, commitment or other instrument, or any order, judgment.
- c. General Warranties of UH. UH represents and warrants that (a) it has the full corporate power and legal authority to enter into and perform this Agreement in accordance with its terms; (b) all necessary corporate approvals for the execution, delivery, and performance by UH of this Agreement have been obtained; (c) this Agreement has been duly executed and delivered by UH and constitutes a legal, valid and binding obligation of UH enforceable in accordance with its terms; and (d) the execution, delivery and performance of this Agreement by UH will not conflict with its articles of incorporation, by-laws or other governing documents and will not conflict with or result in the breach or termination of, or constitute a default under, any lease, agreement, commitment or other instrument, or any order, judgment.

12. Allocation of Responsibility; Insurance.

As between RTA, CCF and UH, RTA is responsible for costs, damages and liabilities arising from:

- a. Any bodily injury, including death, personal injury or property damage arising out of RTA transportation operations, including but not limited to the operation of the ECBRT Line. Without limitation to the foregoing, it is acknowledged that RTA shall have no liability or responsibility for costs or damages related to bodily injury, including death, personal injury or property damage arising out of actions, fault or negligence in the operation of the health care facilities and services of UH or CCF, as applicable.
- b. Its construction or installation of signs and/or promotional materials in busses, stations or otherwise on the ECBRT Line in connection with this Agreement.

RTA shall procure and maintain during the term of this Agreement and so long as any MARKS of UH or CCF are in use by RTA, comprehensive policies of insurance including:

- i. Worker's compensation and employer's liability;
 - ii. Commercial general liability;
 - iii. Automobile physical damage and liability,
- with carriers reasonably acceptable to UH and CCF, having limits of liability not less than Two Million Dollars (\$2,000,000.00) per occurrence, naming both UH and CCF as additional insureds, with waiver of subrogation provision in favor of UH and CCF, on the foregoing policies.

Self-insurance of the above requirements is acceptable; a letter of self-insurance will be provided by RTA to the CCF and UH as evidence thereof.

- 13. Binding Effect; Benefit.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their successors and permitted assigns. It is the explicit intention of the Parties hereto that no person or entity other than such Parties (or their successors or permitted assigns), including, without limitation any faculty member, staff member, employee, student or applicant, is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the Parties, as a third party beneficiary or otherwise. The covenants, undertakings, and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the Parties or their respective successors and permitted assigns.

- 14. Entire Agreement; Amendment.** This Agreement contains the entire agreement between the Parties relating to the subject matter herein. All prior proposals, discussions and writings by and among the Parties relating to the subject matter herein are superseded by this Agreement. This Agreement may not be amended

unless such amendment is in writing and signed by duly authorized representatives of both Parties and recites specifically that it is an amendment to this Agreement. With respect to UH, in order to be binding upon UH both this Agreement and any amendment or waiver under this Agreement must be executed as "Approved as to Form" by an attorney in the UH Law Department.

15. **Assignment.** Except as otherwise stated in this Agreement, no party's interests or obligations under this Agreement may be assigned or transferred to another party without the prior written consent of the all parties hereto, which may be granted or withheld in the sole discretion of that any party. Any attempted assignment without such consent shall be void *ab initio*.
16. **Waiver.** No party's delay or failure to exercise any right, power or privilege under this Agreement or under any other instrument given in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of any event of default hereunder or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid against any party unless made in writing and signed by an authorized officer of the party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.
17. **Severability.** If either: (a) a court of competent jurisdiction holds that a material provision or requirement of this Agreement violates any applicable law, or (b) a government agency with jurisdiction definitively advises the Parties that a feature or provision of this Agreement violates laws over which such department or agency has jurisdiction, then each such provision, feature or requirement shall be fully severable and: (1) this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; (2) the remaining provisions hereof shall remain in full force and effect and shall not be affected by the severable provision; and (3) the Parties shall in good faith negotiate and substitute a provision as similar to such severable provision as may be possible and still be legal, valid and enforceable. If the effect of such severance and substitution, or the inability promptly to agree upon such substitution, would be to deprive a party of the benefits contemplated under this Agreement or increase the risk or liability of a party, then any party may terminate this Agreement by giving such notice to the other Parties as is acceptable to such court or governmental agency, and as is sufficient to provide for an orderly transition consistent with the terms.
18. **Governing Law.** The validity, interpretation, construction and performance of this Agreement shall be governed by the substantive laws of the State of Ohio, to the extent not governed by federal law, without giving effect to the principles of conflict of laws of such State. Subject to Section 19 of this Agreement, the parties acknowledge that jurisdiction exists and venue is proper in the Courts of

Ohio for any action brought under this Agreement.

19. Dispute Resolution.

- a. Process. The Parties acknowledge that the establishment and operation of this affiliation will require an ongoing commitment by all parties to cooperate and make best efforts. Accordingly, the parties will seek to resolve any disputes regarding this Agreement or any other terms of this Agreement pursuant to this Article 19. Any party may at any time issue a notice that a dispute exists if such party believes that another party has caused a material breach of the Agreement, or a situation or circumstance exists which frustrates, in a material manner, the achievement of the objectives of this Agreement. Such notice shall start a process of Progressive Dispute Resolution which shall involve a good faith attempt to resolve the dispute for a period not to exceed 120 days. The specific allocation of such 120-day period is described in subparagraphs (c) and (d) of this Section 19.
- b. Any claim, controversy or dispute concerning the interpretation or performance of this Agreement or to the threatened, alleged or actual breach of this Agreement which is not disposed of by mutual agreement within a period of ten (10) days after one party has provided written notice of the dispute to the other, first shall be subject to Progressive Dispute Resolution procedures described in this Section 19. Notwithstanding the Parties' agreement to these procedures, either party may seek immediate injunctive relief if such party believes that injunctive relief is necessary to prevent immediate irreparable harm to its interests.
- c. Invocation of Progressive Dispute Resolution Procedures. The party believing itself aggrieved (the "Invoking Party") shall call for progressive management involvement in the dispute negotiations by written notice to the other party. Such notice shall be without prejudice to the Invoking Party's right to any other remedy permitted by this Agreement.
- d. Progression of Management Involvement. The Parties shall use their best efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and locations, between negotiators for the Parties at the successive management levels set forth below.

<u>Level</u>	<u>CCF</u>	<u>UH</u>	<u>RTA</u>
Level 1:	Senior Director Communications	Vice President Marketing	Director of Marketing and Communications
Level 2:	Executive Director Marketing and Communications	Senior Vice President Marketing	General Counsel

Level 3: Chief Marketing President
 Communications
 And Planning Officer

CEO, General
Manager

The negotiators at each management level shall have a period of forty (40) days in which to attempt to resolve the dispute. The allotted time for the first-level negotiators shall begin on the date of receipt of the Invoking Party's notice.

- e. If a resolution is not achieved by negotiators at any given management level at the end of the allotted time or any extension thereto agreed to by the parties in writing, the allotted time for the negotiators at the next management level, if any, shall begin immediately.
- f. If resolution is achieved at any management level, the resolution shall be memorialized in writing, shall state the agreements reached and describe the actions to be taken, if any, and shall be signed by the managers involved.
- g. The agreement of the Parties to these Progressive Dispute Resolution procedures is solely for the benefit of the Parties and is not intended to create any legal, equitable, or beneficial interest in any third party or to vest in any third party any interest with respect to the enforcement of performance of these procedures.
- h. If the Parties are unable to resolve a dispute in accordance with the Progressive Dispute Resolution procedures, any party may extend the mediation time period by mutual agreement with the other party(ies) involved in the dispute, or such dispute, controversy or claim shall be submitted to binding arbitration. The Parties shall agree on an arbitrator, and if they cannot agree, they each shall name one arbitrator, who together shall agree upon a two additional arbitrators and all five (5) such individuals shall form the arbitration panel. Arbitration proceedings shall be initiated by either Party making a written request to the American Arbitration Association, together with any appropriate filing fee, at the office of the American Arbitration Association in Cleveland, Ohio. All arbitration proceedings shall be held where initiated. All statutes of limitations which would otherwise be applicable shall apply to any arbitration proceeding hereunder. The arbitrator, or a majority of them, shall award reasonable attorneys' fees and costs to the prevailing Party(ies) pursuant to the terms of this Agreement. Each Party shall bear such Party's own expenses in connection with preparation for the presentation of such Party's case at the arbitration proceedings and the fees and expenses of the arbitrators and all other expenses of the arbitration (except those referred to in the preceding sentence) shall be borne equally by the Parties to such arbitration.

The provisions of this Section 19 shall survive any termination, amendment or expiration of this Agreement unless all the parties hereto otherwise expressly agree in writing.

20. **Notices.** All notices, requests, demands, waivers, consents and other communications hereunder shall be in writing, shall be delivered either in person, by overnight air courier, or by certified, registered or express mail, and shall be deemed to have been duly given and to have become effective (a) upon receipt if delivered in person, or on the next succeeding business day if delivered on a non-business day or after 6:00 p.m. local time, (b) one business day after having been delivered to an air courier for overnight delivery, or (c) three business days after having been deposited in the mails as certified, registered or express mail, return receipt requested, all fees prepaid, directed to the Parties at the following addresses (or at such other address as shall be specified in writing by a recipient Party hereto);

If to CCF, to:

Chief Executive Officer
Desk H-1 8
9500 Euclid Avenue
Cleveland, Ohio 44195

Chief Marketing Officer
Desk H-18
9500 Euclid Avenue
Cleveland, Ohio 44195

with a simultaneous copy (which shall not constitute notice) to counsel for CCF:

Office of General Counsel
Desk H-1 8
9500 Euclid Avenue
Cleveland, Ohio 44195

If to UH, to:

University Hospitals Case Medical Center
Attn: President
11100 Euclid Avenue
Cleveland, Ohio 44106

with a simultaneous copy (which shall not constitute notice) to counsel for UH:

University Hospitals Health System, Inc.
Attn: General Counsel
3605 Warrensville Center Road
Shaker Heights, Ohio 44122

If to RTA, to:
Joseph A. Calabrese, CEO
General Manager/Secretary-Treasurer
1240 West 6th Street
Cleveland, Ohio 44113

General Counsel, Deputy General
Manager for Legal Affairs
1240 West 6th Street
Cleveland, Ohio 44113

with a simultaneous copy (which shall not constitute notice) to counsel for RTA:

Senior Counsel/Contracts and Real Estate
1240 West 6th Street
Cleveland, Ohio 44113

21. **Additional Actions and Documents.** Each of the Parties hereto shall take or cause to be taken such further actions, execute, deliver and file or cause to be executed, delivered and filed such further documents and instruments, and use their respective best efforts to obtain such consents (including regulatory approvals), as may be reasonably necessary or as may be reasonably requested in order to fully effectuate this Agreement.
22. **Confidentiality.** The Parties agree that the terms of this Agreement are confidential and, except to the extent required by law, court order or government contract, no party will make any disclosure of the terms of this Agreement to any third party without the prior written consent of all of the parties.
23. **Survival.** Sections 11, 12, 18, 19, 21 and 22 shall survive termination or expiration of this Agreement.
24. **Construction.** Each Party hereto acknowledges that it was represented by counsel and participated equally in the drafting and negotiation of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one Party than against the other.

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

The Cleveland Clinic Foundation

By: *Dennis M. Cosgrove, M.D.*
Its: *CEO + President*

APPROVED AS TO FORM
CCF - OFFICE OF
GENERAL COUNSEL

BY: *WPK*
DATE: *1/14/08*
CMS# *GRE 19151*

Greater Cleveland Regional Transit Authority

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

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

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

University Hospitals of Cleveland
dba University Hospitals Case Medical Center

Fred C. Rattstein MD
By: *Fred C. Rattstein MD*
Its: *PRESIDENT*

Approved As To Form
Attorney Signature: *SA Wolf*
Print Type Name: *Sara Wolf*
Date: *1/17/07*