

RESOLUTION NO. 2009-104

AUTHORIZING THE GENERAL MANAGER TO ENTER INTO A LETTER CONTRACT WITH KBC BANK N.V. TO CONSIDER TERMINATION OF LEASE FINANCING OF RAIL EQUIPMENT CONTRACT 2002-KBC1 AT A COST NOT TO EXCEED ONE HUNDRED AND FORTY THOUSAND DOLLARS (\$140,000.00) AND AUTHORIZING THE GENERAL MANAGER TO EXECUTE AND DELIVER ALL DOCUMENTS REQUIRED FOR CONTRACT TERMINATION

WHEREAS, this Board of Trustees by Resolution No. 2002-132A adopted on July 16, 2002 authorized the General Manager to enter into contracts with ICX Corporation located at 2 Summit Park Drive, Suite 300, Cleveland OH 44131 ("ICX") and with KBC Bank N.V. located at 125 West 55<sup>th</sup> Street, 10<sup>th</sup> Floor, New York, New York 10019 (KBC) , as equity investors for U.S. Lease-To-Service contracts for various passenger rail vehicles; and

WHEREAS, the Greater Cleveland Regional Transit Authority ("Authority") entered into contracts with ICX and KBC for such services September 30, 2002; and

WHEREAS, the Authority has learned that recent financial market crashes have caused a risk that the credit ratings of guarantors of contracts such as the Authority's contracts may be downgraded; and

WHEREAS, a credit rating downgrade of guarantors of the Authority's contracts could put the Authority in technical default under the contracts and potentially make the Authority liable for millions of dollars in early termination payments; and

WHEREAS, KBC has proposed a Letter Agreement under which the Authority would authorize termination of its contract with KBC ("Contract") and pay a sum not to exceed One Hundred and Forty Thousand Dollars (\$140,000) for transactional costs of the termination, and KBC would pursue such termination under the conditions that in KBC's reasonable opinion a sale of certain Pledged Securities on the Termination Date would not result in proceeds of less than Twenty Three Million Dollars (\$23,000,000.00) and that the other parties involved in the Contract approve and agree; and

WHEREAS, the General Manager has determined that performance of the Letter Agreement, as negotiated, ("Agreement") would permit the parties to explore the possibility of terminating the Contract, and that such termination would eliminate the risk of technical default and liability of the Authority for early termination payments; and

WHEREAS, this Board of Trustees has determined that it is in the best interest of the Authority to enter into the Agreement, cost and all other factors considered.

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 be and he is hereby authorized to enter into the Agreement with KBC which provides that the Authority will pay a sum not to exceed One Hundred and Forty Thousand Dollars (\$140,000.00) for transactional costs of the termination, whether or not the termination occurs.

Section 2. That the General Manager of the Authority be and he is hereby authorized without further action of this Board of Trustees to execute and deliver all documents necessary to cause and complete the termination of the Contract.

Section 3. That the Agreement shall be payable from the General Fund.

Section 4. That the Agreement shall be binding upon and an obligation of the Authority contingent upon compliance by KBC with all applicable laws relating to contractual obligations of the Authority.

Section 5. That this Resolution shall take effect immediately upon its adoption.

Adopted: December 15, 2009

  
\_\_\_\_\_  
President

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



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

TITLE/DESCRIPTION:  AUTHORIZING A LETTER CONTRACT WITH KBC BANK N.V. TO CONSIDER TERMINATION OF RAIL CAR LEASE FINANCING TRANSACTION	Resolution No.: 2009-104
	Date: December 10, 2009
	Initiator: Finance & Administration
ACTION REQUEST: X Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____	

- 1.0 PURPOSE/SCOPE: This action will authorize the General Manager to enter into a letter contract with KBC Bank N.V. to terminate the lease financing transaction.
- 2.0 DESCRIPTION/JUSTIFICATION: The letter contract would authorize the Authority to terminate a portion of the rail equipment lease financing transaction, which occurred in 2002. This will relieve the threat of a possible default on a portion of the transaction, due to the downgrade of guarantors in the transaction.
- 3.0 PROCUREMENT BACKGROUND: The Authority previously approved Resolution 2002-132A which authorized the transaction with KBC Bank N.V.
- 4.0 DBE/AFFIRMATIVE ACTION BACKGROUND: Does not apply.
- 5.0 POLICY IMPACT: Does Not Apply
- 6.0 ECONOMIC IMPACT: This may eliminate the possibility of technical default on a portion of the transaction, which could cost the Authority millions of dollars in early termination payments. The cost to terminate will be approximately \$140,000 in transaction fees.
- 7.0 ALTERNATIVES: Rejection of this resolution may cause the Authority to risk having to pay millions of dollars in early termination payments.
- 8.0 RECOMMENDATION: It is recommended that this resolution be adopted authorizing the General Manager to enter into a letter contract with KBC Bank N.V.
- 9.0 ATTACHMENTS: Draft letter contract with KBC Bank N.V.

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

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

December 10, 2009

KBC Bank N.V., as Owner Participant  
1177 Avenue of the Americas  
New York, NY 10036

Ladies and Gentlemen:

We refer to the Participation Agreement (GCRTA-2002-KBC1), dated as of September 30, 2002 (the "Participation Agreement"), among KBC Bank N.V. (the "Owner Participant"), Greater Cleveland Regional Transit Authority ("GCRTA"), GCRTA-2002-KBC1 Statutory Trust (the "Trust"), FSA Global Funding Limited ("FSA"), Premier International Funding Co. ("Premier"), and Wells Fargo Bank Northwest, National Association, not in its individual capacity, but solely as Trustee (the "Trustee").

1. Defined Terms. Capitalized terms not otherwise defined in this Letter Agreement (this "Letter Agreement") have the same meanings as specified in Appendix A to the Participation Agreement and the rules of usage specified in Appendix A shall apply to this Letter Agreement.

2. Termination. Each of GCRTA and the Owner Participant agrees to use their best efforts to enter into agreements, in form and substance acceptable to each of GCRTA and the Owner Participant, for the termination of the Participation Agreement and all other Operative Documents (except for those provisions of such agreements and documents that shall survive the termination thereof) (the "Termination") by a date to be mutually agreed upon by the Owner Participant and GCRTA (the "Termination Date"). In connection with the Termination, the securities held as Account Collateral pursuant to Section 21(e) of the Participation Agreement (the "Pledged Securities") shall be sold and the proceeds of such sale shall be paid to the Owner Participant. Notwithstanding anything contained herein to contrary, if the sale of the Pledged Securities on the Termination Date would result in sale proceeds of less than \$23 million, as reasonably determined by the Owner Participant, the Owner Participant shall have no obligation to consummate the Termination.

3. Fees and Expenses. GCRTA agrees that whether or not the Termination occurs, it shall pay all fees and expenses, not to exceed the sum of the amounts set forth on Exhibit A hereto, incurred

by the Owner Participant and the Trustee and any other party solicited in connection with the Termination, including, without limitation, legal fees and expenses, in connection with the negotiation, execution and delivery of this Letter Agreement and any documentation related to the Termination. In the event that the Termination shall not occur, GCRTA shall promptly pay such fees and expenses.

4. Approval and Agreement of Other Parties. It is understood and agreed by GCRTA and the Owner Participant that the Termination shall only occur with the approval and agreement of FSA, Premier and the Trustee.

5. Governing Law. This Letter Agreement will be construed, performed and enforced in accordance with the laws of the State of New York without giving effect to its principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of the laws of another jurisdiction.

6. Execution in Counterparts. This Letter Agreement may be executed by the parties in separate Counterparts, each of which, when so executed and delivered, shall be an original, but all of which counterparts shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Letter Agreement by telecopier or electronic mail in "Portable Document Format" (PDF) shall be effective as delivery of an original executed counterpart of this Letter Agreement.

Sincerely,

**GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY**

By: \_\_\_\_\_  
Joseph A. Calabrese  
Title: CEO, General Manager/  
Secretary-Treasurer

Agreed as of the date first above written:

**KBC Bank N.V.,**  
as Owner Participant

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A****Fees and Expenses**

	<b>Item</b>	<b>Amount</b>
1.	KBC Legal Fees	\$50,000
2.	Wells Fargo	\$1,000
3.	UCC Termination Fees	\$150
4.	Trust Termination Fees	\$450
5.	PFM	\$30,000
6.	Eckert Seamans Legal fees	\$30,000
7.	FSA Fees-White and Case	\$22,000
8.	FSA Fees-Maples and Calder	\$2,500
	<b>Total Estimated Fees</b>	<b>\$136,100</b>