

RESOLUTION NO. 2010-42

AUTHORIZING THE GENERAL MANAGER/SECRETARY-TREASURER TO ENTER INTO A SUBRECIPIENT AGREEMENT AND AN INTERAGENCY AGREEMENT WITH THE CITY OF CLEVELAND FOR THE PLANNING OF AN INTERMODAL TRANSPORTATION FACILITY AT THE LAKEFRONT NEAR DOCK 32

WHEREAS, the Greater Cleveland Regional Transit Authority ("GCRTA") is a designated recipient for federal funds for the Cleveland Urbanized Area from grants issued by the Federal Government and in particular the Federal Transit Administration ("FTA Funds"); and

WHEREAS, the City of Cleveland ("City") is undertaking a mass transportation project within Cuyahoga County, specifically, the planning and design of an intermodal transit facility near Dock 32 at the Lakefront ("Project") for which it expects to receive FTA Funds; and

WHEREAS, the GCRTA will act as the recipient of FTA Funds under a contract for financial assistance for and on behalf of the City ("Contract") and enter into a SubRecipient agreement with the City permitting the pass-through of FTA Funds for the Project; and

WHEREAS, as a recipient of FTA Funds, the GCRTA, is bound by the Contract, federal law, regulations and the terms of a Master Grant Agreement with the FTA; and

WHEREAS, the Contract, federal law, regulations and the Master Grant Agreement require GCRTA to state in the SubRecipient agreement with the City the City of Cleveland's responsibilities under federal law including assurance of compliance of each subrecipient at any tier with federal laws, regulations, and executive orders; and

WHEREAS, the Contract will impose certain obligations upon the GCRTA, including the provision by it of the local share of Project costs; and

WHEREAS, the City will be responsible for the local share of the Project costs; and

WHEREAS, the City may require assistance on the Project beyond the Contract Administration provided for in the SubRecipient Agreement; and

WHEREAS, the GCRTA and the City may enter into an Interagency Agreement to define this assistance for implementation of the Project.

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 Greater Cleveland Regional Transit Authority ("Board") hereby authorizes the General Manager/Secretary Treasurer to submit applications and receive FTA Funds on behalf of the City.

Section 2. That the Board hereby authorizes the General Manager/Secretary-Treasurer to enter into a SubRecipient Agreement with the City substantially in the form of the agreement attached hereto as Exhibit "A" to pass-through the federal funds and to agree to any remaining terms of said Agreement negotiated by the parties, that are permitted by state and federal law, this Board's Policies and all other regulations governing the conduct of the GCRTA.

Section 3. That the Board hereby authorizes the General Manager/Secretary Treasurer to enter into an Interagency Agreement with the City to define the GCRTA assistance for implementation of the Project as is agreed to by the parties, as is permitted by state and federal law, this Board's policies and all other regulations governing the conduct of the GCRTA.

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

Attachment: Draft SubRecipient Agreement.

Adopted: June 22, 2010



President

Attest:



CEO, General Manager/Secretary-Treasurer

Federal Funds SubRecipient Agreement

This Agreement is made this _____ day of _____, 2010, by and between the Greater Cleveland Regional Transit Authority (hereinafter "GCRTA"), located at 1240 West 6th Street, Cleveland, Ohio 44113 and The City of Cleveland (hereinafter "City") located at 601 Lakeside Avenue, Cleveland, Ohio 44114.

WHEREAS, the GCRTA, a political subdivision of the State of Ohio, is a designated recipient for federal funds for the Cleveland Urbanized Area from grants issued by the Federal Government and, in particular, the Federal Transit Administration (hereafter "FTA"); and

WHEREAS, the GCRTA will act as the recipient of federal funds for and on behalf of City, permitting the pass through of federal funds for an intermodal transportation facility at the Lakefront near dock 32, SAFETEA-LU Project No. 179 (the "Project"); and

WHEREAS, the contracts for financial assistance will impose certain obligations upon the GCRTA, including the provision of the local share of Project costs; and

WHEREAS, as a recipient of FTA funds, the GCRTA is bound by federal law, regulations and the terms of a Master Grant Agreement with the Federal Transit Administration; and

WHEREAS, federal law, regulations and the Master Grant Agreement require the GCRTA to include appropriate clauses in each subagreement stating a subrecipient's responsibilities under federal law and to assure the compliance of each subrecipient at any tier with federal laws, regulations, and executive orders,

NOW THEREFORE, in consideration of their mutual promises and the receipt of federal monies, the GCRTA and the City agree as follows:

1. Federal Law and Regulations. City acknowledges that it is a subrecipient of federal funds and, as such subrecipient, agrees that in connection with the Project and its receipt of the federal funds, it shall be subject to all federal laws, rules, regulations and executive orders governing federal grantees as they may be amended from time to time during the course of this contract, including the FTA Master Grant Agreement 16, a copy of which is attached hereto as Exhibit 1. City shall be responsible for local match requirements, if applicable. All FTA-mandated terms shall be deemed to control this Agreement in the event of a conflict with other provisions contained herein. City shall not perform any act, fail to perform any act, or refuse to comply with any GCRTA request related to the subject matter of this Agreement that would cause GCRTA to be in violation of FTA terms and conditions, federal law or federal regulations. For purposes of the Project, City agrees to be bound by and be in compliance with all mandatory federal requirements imposed upon recipients of federal funds as they may be amended.

2. No Obligation by the Federal Government. City 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 Agreement and shall not be subject to any obligations or liabilities to the GCRTA, City or any other party pertaining to

any matter resulting from the underlying agreement. City further agrees to include this clause, without modification, in any contract issued hereunder.

3. Indemnification.

- A. With respect to work performed by City, its contractors or agents, in furtherance of the Project, it shall indemnify, keep and save harmless the GCRTA and its 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 the Project work by City, its contractors or agents, or as a result of the performance of the Project work by City, its contractors or agents, and whether or not the persons injured or whose property was damaged were third parties, employees of City or employees of any authorized contractor; and City shall at its own expense defend GCRTA 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 its own expense, satisfy and cause to be discharged such judgments as may be obtained against the GCRTA, or any of its officers, agents or employees. The foregoing 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.
- B. City shall indemnify, keep and save harmless the GCRTA and its respective officers, agents and employees against any fines, penalties, all findings for recovery ordered or issued by any state or federal entity, and damages of any type due to the failure of the City, or its contractors or agents to comply with any federal or state law, rule, regulation, and or procedure in the course of the performance of the Project work by the City, its contractors or agents. This indemnification obligation shall include obligations incurred that result from any consent decree or settlement agreement.

4. Named additional insured. On every policy of insurance required by City of its subcontractors and subrecipients for the Project, the GCRTA shall be named as an additional insured.

5. Audit and Inspection.

- A. City will keep records and documents relevant to this Agreement and the Project for three (3) years following the performance of this contract or the completion of the Project, whichever occurs later. Such records and documents will be made available at reasonable times and places for inspection and copying by the GCRTA and/or the U.S. Department of Transportation, the Federal Transit Administration, the Ohio Department of Transportation and/or by any authorized representative thereof and will be submitted upon request, together with any other compliance information which may be reasonably required.
- B. GCRTA, its representatives and permittees, which include without limitation, representatives of Federal Transit Administration, Ohio Department of Transportation, and any local governmental entity having jurisdiction over the site or the work shall have reasonable access to the Project site(s) during the term of this Agreement Or until the completion of the Project, whichever is later, for the limited purpose of inspecting the Project and related materials and shall have the right to inspect all work, records, drawings and data relevant to

the Project kept at the site or any office of the City.

6. **No agent or contractor relationship.** It is the intention of the parties that the GCRTA obligations under this Agreement shall be to act as a pass through of federal funds. Neither City nor the GCRTA shall have any authority, express or implied, to bind the other party.
7. **Environmental Responsibilities.** In the administration and furtherance of the Project, City shall be responsible for planning, coordinating and conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing any applicable Environment Impact Statement, Environmental Assessment or Categorical exclusion for the Project pursuant to the National Environmental Act and the National Historic Preservation Act; and for securing all necessary permits and approvals from all federal, state and local regulatory agencies. City shall be responsible for assuring compliance with all commitments made as part of the Project's environmental clearance and/or permits.
8. **Procurement.** All goods and services for the Project shall be procured on a competitive basis and in compliance with Federal guidelines, including FTA Circular 4220.1F.
9. **Contract Administration.** City shall review and/or approve all invoices prior to payment and before requesting reimbursement from GCRTA for work performed on the Project, and City shall use its best efforts to ensure that invoices are accurate in all material respects in both amount and in relation to the progress made on the Project. All invoices submitted to GCRTA shall include a clear statement of work performed in support of reimbursement, including milestones or percentage of work complete. GCRTA may impose a Project administration fee with respect to services performed in connection with this Agreement. The amount of such fee shall be 1% of funds received.
10. **Miscellaneous.**
 - A. **Entire Agreement.** This Agreement, including the Master Grant Agreement and the documents expressly referred to in the Master Grant Agreement or required by the Master Grant Agreement in connection with the award of federal funds, together with all documents evidencing so-called "pre-award authority" and letter of no prejudice relating to the Project, collectively constitute the entire agreement between the parties relating to the Project and supersede all prior understandings and agreements, whether written or oral, that may relate to the Project.
 - B. **Severability.** Should any provision of this Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall be deemed modified to the extent necessary (consistent with the intent of the parties) to eliminate the illegal, invalid or unenforceable effect or to delete such provision if modification is not feasible, and the remaining terms shall continue in full force and effect.

- C. Governing Law. This Agreement shall be governed by federal law to the extent applicable to contracts for the award of federal funds and otherwise by the laws of the State of Ohio applicable to contracts made and to be performed wholly within the State of Ohio.

11. **Availability of Funds.** This Agreement is subject to the availability of appropriated funds and City's continued performance under the terms and conditions of this Agreement. The City hereby commits and certifies that it will provide funds or require its sub-recipients to provide funds in an amount sufficient, together with the Federal contribution, to assure timely and full payment of the Project costs as necessary to complete the Project. The City hereby commits and certifies that the local share of its financing will be provided from funding sources other than the Federal contribution or receipts or revenues from the Project.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed and delivered this Agreement as of the day and year first set forth above.

**GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY**

CITY OF CLEVELAND

By: _____

By: _____

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

Name: _____

Title: _____

APPROVED AS TO LEGAL FORM AND
CORRECTNESS

By: _____
Sheryl King Benford, General Counsel
Deputy General Manager for Legal Affairs



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

TITLE/DESCRIPTION: A SUBRECIPIENT AND INTERAGENCY AGREEMENT WITH THE CITY OF CLEVELAND FOR THE PLANNING/DESIGN OF AN INTERMODAL TRANSPORTATION FACILITY AT THE LAKEFRONT NEAR DOCK 32	Resolution No.: 2010-42
	Date: June 22, 2010
	Initiator: Programming and Planning Department
ACTION REQUEST: <input type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____	

- 1.0 **PURPOSE/SCOPE:** This resolution authorizes the General Manager/Secretary-Treasurer to execute a SubRecipient Agreement with the City of Cleveland to pass-through federal funds to allow the City of Cleveland to fund the planning of a connected Intermodal Facility at the Lakefront near Dock 32. This resolution also authorizes the General Manager/Secretary Treasurer to enter into an InterAgency Agreement with the City, if necessary, to provide for GCRTA assistance to the City for implementation of the city project.

- 2.0 **DESCRIPTION/JUSTIFICATION:** The Federal Transportation Bill, SAFETEA-LU, originally provided earmark funds in the amount of \$718,900 over a five-year period to the City of Cleveland to fund the construction of an Intermodal Facility. The City of Cleveland asked GCRTA to act as the Grantee for this project with FTA concurring and to enter into a SubRecipient Agreement with the City for this purpose. The SubRecipient Agreement will pass-through all of the FTA federal requirements to the City. GCRTA will be the legal conduit for the funds and as such collect a 1% administrative fee of the Earmark for the contract administration work required. This agreement puts the burden of responsibility to carry out all grant funded activities – on the City of Cleveland. The City has asked GCRTA to provide assistance on the City’s project over and above the contract administration to be provided under the SubRecipient Agreement and this will require the parties to enter into an Inter-Agency Agreement. The Inter-Agency Agreement will define the roles of both the City of Cleveland and GCRTA in the implementation of the grant.

- 3.0 **PROCUREMENT BACKGROUND:** Does Not Apply.

- 4.0 **DBE/AFFIRMATIVE ACTION BACKGROUND:** Does Not Apply.

- 5.0 **POLICY IMPACT:** The project is being added to the region’s Transportation Improvement Plan and the State Plan. It is consistent with the GCRTA’s Long Range Plan.

- 6.0 **ECONOMIC IMPACT:** The required 20% local match will be contributed by the City of Cleveland. GCRTA will receive an administrative fee of 1% of the total grant to cover costs associated with the grant processing and administration.

- 7.0 ALTERNATIVES: If this is not approved, GCRTA would not be able to act as the Designated Federal Recipient and pass-through federal funds earmarked to the City of Cleveland. Thus, the funds will lapse and not be captured by the City of Cleveland for the intended transportation purpose.
- 8.0 RECOMMENDATION: Staff recommends that the Board of Trustees authorize the General Manager/Secretary-Treasurer to enter into a SubRecipient agreement with the City of Cleveland System for pass-through of Federal funds.
- 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