

RESOLUTION NO. 2012-53

AUTHORIZING THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY TO ENTER INTO A PURCHASE AGREEMENT IN THE AMOUNT OF THREE HUNDRED SIXTEEN THOUSAND TWO HUNDRED TWENTY FIVE & 00/100 DOLLARS (\$316,225.00) TO PURCHASE LAND IN FEE SIMPLE AND TO ALSO ACQUIRE A TEMPORARY CONSTRUCTION EASEMENT FROM CASE WESTERN RESERVE UNIVERSITY FOR RECONSTRUCTION OF THE UNIVERSITY CIRCLE RAPID TRANSIT STATION

WHEREAS, the Greater Cleveland Regional Transit Authority ("GCRTA") needs to acquire fee simple ownership of property for the University Circle Rapid Transit Station Reconstruction Project (the "Project"), which will include the relocation of the bus stop and station; and

WHEREAS, a temporary easement will be needed in order to establish a temporary construction staging area during the Project; and

WHEREAS, Case Western Reserve University ("CWRU") is the owner of the land and is willing to enter into a purchase agreement and a temporary easement with GCRTA to facilitate the Project; and

WHEREAS, GCRTA and CWRU negotiated a purchase price of three hundred sixteen thousand two hundred twenty-five & 00/100 dollars (\$316,225.00) which reflects the fair market value of the property, as determined by the appraisal report which was approved by an independent review appraiser; and

WHEREAS, GCRTA has requested that the Federal Transit Administration ("FTA") approve the fee simple purchase of the land at the negotiated price.

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 is hereby authorized to execute a Purchase Agreement, Temporary Easement, and all other required documents for the Project.

Section 2. That the total purchase price of three hundred sixteen thousand two hundred twenty-five & 00/100 dollars (\$316,225.00) is based upon the fair market value of the property and within the settlement authority authorized by the FTA.

Section 3. The purchase agreement shall be payable from the RTA Development Fund, Engineering & Project Development Department budget, including but not limited to proceeds received by the GCRTA from the sale of property at 6611 Euclid Avenue in an amount not to exceed three hundred sixteen thousand two hundred twenty-five & 00/100 dollars (\$316,225.00).

Section 4. That the execution of the purchase agreement, the temporary easement, and other legal documents are necessary to carry out the Project.

Section 5. That this resolution shall become effective immediately upon its adoption.

Adopted: June 18, 2012



President

Attest:



CEO, General Manager/Secretary-Treasurer



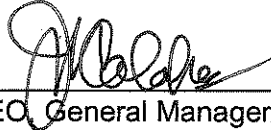
Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

| | |
|---|--|
| TITLE/DESCRIPTION: CONTRACT: PURCHASE AGREEMENT, TEMPORARY EASEMENT, AND OTHER LEGAL DOCUMENTS FOR THE UNIVERSITY CIRCLE RECONSTRUCTION PROJECT VENDOR: CASE WESTERN RESERVE UNIVERSITY AMOUNT: \$316,225.00 | Resolution No.: 2012-53 |
| | Date: June 14, 2012 |
| | Initiator: Programming and Planning |
| 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:** GCRTA needs to acquire property owned by Case Western Reserve University ("CWRU") in order to construct a new bus loop and station at the University Circle Rapid Transit Station. In addition, a temporary easement from CWRU will be needed for temporary construction staging.
- 2.0 **DESCRIPTION/JUSTIFICATION:** The project requires the fee simple acquisition of 7,270 square feet of land and a temporary construction easement over 11,509 square feet of land. FTA concurrence for the acquisition is forthcoming.
- 3.0 **PROCUREMENT BACKGROUND:** Does Not Apply.
- 4.0 **DBE/AFFIRMATIVE ACTION BACKGROUND:** Does Not Apply.
- 5.0 **POLICY IMPACT:** This is consistent with RTA's Real Estate Policy, which states that the Board must approve all fee simple acquisitions and approve all temporary easements with a value over \$25,000. It also complies with FTA Circular 5010.1D and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
- 6.0 **ECONOMIC IMPACT:** The purchase agreement shall be payable through the RTA Development Fund, Engineering & Project Development Department budget, including but not limited to proceeds received by RTA from the sale of property at 6611 Euclid Avenue in an amount not to exceed \$316,225.
- 7.0 **ALTERNATIVES:** Not approve this purchase, which will prohibit GCRTA from reconstructing the University Circle Rapid Transit Station.
- 8.0 **RECOMMENDATION:** This action was presented to the Planning and Development Committee on June 5, 2012 and recommended for approval to the Board of Trustees. Staff recommends that the Board of Trustees approve the resolution to authorize the fee simple purchase and temporary easement on this property.

- 9.0 ATTACHMENTS: Attachment A - Offer to Purchase (Draft)
Attachment B - Temporary Easement (Draft)

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



CEO, General Manager/Secretary-Treasurer

ATTACHMENT A

OFFER TO PURCHASE REAL ESTATE AND TEMPORARY EASEMENT

Parcel(s) 121-11-003

Cleveland, Ohio, _____ 2012

1. The Greater Cleveland Regional Transit Authority ("GCRTA") ("Buyer") hereby offers to buy from Case Western Reserve University, an Ohio non profit corporation ("Seller") the real estate and easement rights over, under, on, across and through that certain real property owned by Seller located at the north side of Cedar Avenue; Cleveland, Ohio, as more fully set forth in that certain Warranty Deed and that certain Temporary Right of Way and Use Easement copies of which are attached hereto and made a part hereof as **Exhibit "A"** (collectively, the "Property").
2. Buyer agrees to pay for the Property the sum of \$316,225.00 (the "Purchase Price") on the Closing Date (hereinafter defined) through the office of Surety Title Agency, Inc., 1010 Leader Building, Cleveland, Ohio (the "Title Company").
3. The Property is free and clear of all liens, encumbrances, leases, rights of possession, easements, conditions and restrictions except for (i) real estate taxes and assessments, both general and special, not yet due and payable as of the Closing Date, (ii) building and zoning ordinances and (iii) such other exceptions to title (the "Permitted Exceptions") as are set forth on **Exhibit "B"** attached hereto and made a part hereof. As a condition to Buyer's obligation to Close, the Title Company shall furnish an ALTA Owner's Policy of Title Insurance Form 2006 (with the standard title exceptions deleted) in the amount of the purchase price (the "Title Policy") as evidence or assurance that there has been conveyed to Buyer the Property required to be conveyed hereunder. If there have been improvements or construction within the period provided by law for the filing of mechanic's liens that could affect the Property, then Seller shall furnish satisfactory evidence of the payment in full of all labor and materials to the Title Company.
4. When accepted this offer shall constitute an agreement ("Agreement") for the purchase and sale of the Property. This Agreement shall serve as instructions to the Title Company and Escrow Agent. Time is of the essence.
5. The Purchase Price, Warranty Deed, and the Temporary Right of Way and Use Easement (in fully executed form) are to be deposited with the Title Company on or before the Closing Date. The Closing Date for this transaction shall be selected by the Buyer and shall be no later than 120 days after the execution of this Agreement by Buyer (the "Closing Date"). On the Closing Date, the Title Company shall cause title to the real property to be searched, and provided the Title Company will issue the Title Policy and the Title Company has received all funds and documents to be deposited hereunder, the Title Company shall cause the Warranty Deed and Temporary Right of Way and Use Easement to be filed for record and the Purchase Price disbursed in accordance with this Agreement. The Title Company shall prorate any real estate taxes and assessments to the date of transfer using the last available Tax Duplicate. The Title Company also shall timely file all forms, notices and documents required to be filed with the Internal Revenue Service in connection with this transaction.
6. Title Company shall charge Buyer with the cost of the Title Policy, the Title Company fees and the cost of recording.
7. Buyer, its agents and representatives shall have the right following the acceptance date of this Agreement by Seller to enter the Property area for purposes of undertaking inspections, tests and all other activities.
8. Seller covenants, represents and warrants to Buyer as follows:
 - (a) Except as set forth in the Permitted Exceptions, Seller has the full right and authority to convey the Property to Buyer pursuant to this Agreement and no other person or firm on behalf of Seller is a necessary party to this transaction;

- (b) Seller is not, nor is any person or firm executing this document on behalf of Seller, included on the list of Specially Designated Nationals and Blocked Persons published by the Office of Foreign Assets Control of the U.S. Department of Treasury;
- (c) Seller is duly organized and existing in good standing under the laws of the State of Ohio and, except as set forth in the Permitted Exceptions, has the exclusive right of possession of the Property;
- (d) To the best of Seller's knowledge, there is not located in, on, under or about the Property any "Hazardous Materials", in violation of any applicable laws, ordinances, governmental rules and regulations ("Laws"); and all operations and activities on, under or about the Property are in compliance with all Laws. For purposes hereof, "Hazardous Materials" means any substance, material or waste which is or becomes regulated by any local governmental authority, the State of Ohio or the United States Government, including, but not limited to, any material or substance which is deemed to be a pollutant, contaminant, hazardous material, hazardous substance, hazardous chemical, hazardous waste, extremely hazardous waste, toxic substance or material or restricted hazardous waste pursuant to Laws;
- (e) There are no gas wells or other wells (whether or not capped) nor any underground storage tanks under any part of the Property;
- (f) There is no litigation, proceeding or action pending or to Seller's best knowledge, threatened against or relating to the Property;
- (g) To the best of Seller's knowledge and except as set forth on **Exhibit "B"** there are no easements, conditions, leases, encumbrances, liens, restrictions or other agreements affecting the Property;

9. Buyer represents and warrants to Seller as follows:

- (a) Subject to approval of this Agreement and the transaction contemplated hereunder by Buyer's Board of Trustees, Buyer has the full right and authority to purchase the Property pursuant to this Agreement and no other person or firm is a necessary party on behalf of Buyer to this transaction;
- (b) Buyer is not, nor is any person executing this document on behalf of Buyer, included on the list of Specially Designated Nationals and Blocked Persons published by the Office of Foreign Assets Control of the U.S. Department of Treasury

10. Seller and Buyer each hereby represents and warrants to the other that no real estate broker or salesperson has been involved in this transaction and that no real estate broker or salesperson has initiated the sale of the Property. Seller hereby agrees to indemnify, defend and hold harmless Buyer from any claims for commissions by any broker or salesperson claiming to have dealt with Seller.

11. If Seller fails to perform any of Seller's obligations under this Agreement, then Buyer shall be entitled to (a) terminate this Agreement and receive the immediate return of all money paid hereunder, or (b) have this Agreement specifically enforced and/or (c) recover from Seller all damages, including consequential damages plus court costs. If Buyer fails to perform any of Buyer's obligations under this Agreement, then Seller may recover from Buyer all damages, including consequential damages plus court costs.

12. Each person signing this Agreement in a representative capacity warrants his or her authority to do so. The terms Buyer and Seller shall include all parties so designated and their respective heirs, personal representatives, legatees, devisees, successors and permitted assigns and wherever the singular is used it shall include the plural and wherever the masculine gender is used it shall include the neuter and feminine, as the context requires.
13. This Agreement, the Warranty Deed, and the Temporary Right of Way and Use Easement contain the entire agreement between the parties hereto and they shall not be bound by any terms, warranties or representations, oral or written, not herein contained. The warranties and representations herein shall be deemed made as of the date of acceptance hereof by Seller and again as of the Closing Date and shall survive the Closing.
14. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be delivered personally or shall be mailed by certified or registered mail, postage prepaid, return receipt requested, addressed to the parties at the following addresses, or such other or further addresses as either of the parties shall request by further written notice given in the manner herein required:

If to Buyer:

Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, Ohio 44113-1331
Attn: Senior Counsel, Contracts and Real Estate

With a copy to:

Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, Ohio 44113-1331
Attn: Property Manager

If to Seller:

Case Western Reserve University
11570 Euclid Avenue
Cleveland, OH 44106-7172
Attn: Kevin Slesh, Director, Department of Real Estate

With a copy to:

Office of the General Counsel
Case Western Reserve University
10900 Euclid Avenue
Cleveland, Ohio 44106-7020
Attn: _____

15. In the event that any provision of this Agreement or portion thereof shall be declared by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.
16. This Agreement may be executed in multiple counterparts which, when taken together, shall be deemed to be a single instrument. Upon the request of either party, the other party shall execute and deliver all documents and do all things reasonably necessary or desirable to the implementation and consummation of the purchase and sale of the Property as contemplated hereunder. Seller and Buyer shall each execute three (3) copies of this Agreement. One (1) executed copy of this Agreement shall be retained by Seller and two (2) executed copies of this Agreement shall be retained by Buyer.

BUYER:

**GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY**
1240 West 6th Street
Cleveland, Ohio 44113-1331

By: _____
Joseph A. Calabrese, CEO and
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

Date: _____ 2012

STATE OF OHIO)
) ss:
COUNTY OF CUYAHOGA)

Before me, a Notary Public, in and for said county and state, on this _____ day of _____, 2012, personally appeared GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, a political subdivision of the State of Ohio, by Joseph A. Calabrese, CEO and General Manager/Secretary-Treasurer, who acknowledged that he did sign the foregoing instrument individually and on behalf of said political subdivision.

NOTARY PUBLIC

My commission expires:

The undersigned, as Seller, hereby accepts the above offer and agrees to all terms and conditions therein stated.

SELLER:

CASE WESTERN RESERVE UNIVERSITY

By: _____
Print Name _____
Title _____

Date: _____

And

By: _____
Print Name _____
Title _____

Date: _____

STATE OF OHIO)
) ss:
COUNTY OF CUYAHOGA)

Before me, a Notary Public, in and for said county and state, on this _____ day of _____, 2012, personally appeared CASE WESTERN RESERVE UNIVERSITY, by _____, its _____, and by _____, its _____, who acknowledged that they did sign the foregoing instrument individually and on behalf of said _____.

NOTARY PUBLIC

My commission expires:

ATTACHMENT A

EXHIBIT "A"

Warranty Deed & Temporary Right of Way and Use Easement

ATTACHMENT A

GENERAL WARRANTY DEED

Case Western Reserve University, an Ohio non-profit corporation, Grantor, for Ten Dollars (\$10.00) and valuable consideration paid, grants, with general warranty covenants to The Greater Cleveland Regional Transit Authority, Grantee, whose tax mailing address is 1240 West 6th Street, Cleveland, Ohio 44113-1302 the real property described on Exhibit A, which is attached hereto and incorporated herein:

Being a part of Cuyahoga County Permanent Parcel No. 121-11-003

Prior Instrument Reference: Vol. 96-6894, Page 42 of Cuyahoga County Records.

The Grantor covenants with Grantee, its successors and assigns, that the granted premises is free from all liens, encumbrances, leases, and rights of possession, easements, conditions and restrictions except for (i) real estate taxes and assessments, both general and special, not yet due and payable (ii) building and zoning ordinances and (iii) such other exceptions to title ("Permitted Exceptions") as are set forth on Exhibit B, which is attached hereto and incorporated herein.

Executed this ____ day of _____, 2012.

**CASE WESTERN RESERVE UNIVERSITY,
an Ohio non-profit corporation**

By: _____

Print Name _____

Title _____

And by: _____

Print Name _____

Title _____

STATE OF OHIO)
) ss:
COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said County and State personally appeared before me the above named CASE WESTERN RESERVE UNIVERSITY, an Ohio non-profit corporation, by _____, its _____, and by _____, its _____, who acknowledged that they did sign the foregoing instrument and the same is the free act and deed of said corporation and their free act and deed personally and as such officers of said corporation.

In testimony whereof I have set my hand and official seal at Cleveland, Ohio, this _____ day of _____ 2012.

Notary Public

Print Name

My Commission Expires: _____

This Instrument was prepared by the GCRTA Legal Department

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
PERMITTED ENCUMBRANCES

TEMPORARY RIGHT OF WAY AND USE EASEMENT

KNOW ALL MEN BY THESE PRESENTS THAT: Case Western Reserve University, an Ohio non-profit corporation (hereinafter "Grantor"), in consideration of the sum of Ten Dollars (\$10.00) and other consideration, receipt of which is hereby acknowledged paid by the Greater Cleveland Regional Transit Authority, a political subdivision of the State of Ohio (hereinafter "Grantee") herein, does hereby grant, bargain, sell, convey and release to said Grantee, its successors and assigns forever, a temporary easement to exclusively occupy and use the following described real estate:

University-Cedar Rapid Transit Station Reconstruction Project

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE
MADE A PART HEREOF

Prior Instrument Reference: Vol. 96-6894, Page 42 of Cuyahoga County Records.

Cuyahoga County Recorder's Office, being a portion of Cuyahoga County Permanent Parcel No. 121-11-003

To have and to hold said temporary easement, for the aforesaid purposes and for the anticipated period of time described below, unto the Grantee, its successors and assigns forever.

The duration of the temporary easement herein granted to the Grantee shall have a term of twenty four (24) months commencing on the date that is the last to occur, either (a) the date that the work described herein is first commenced by the Grantee, or its duly authorized employees, agents, and contractors, or (b) the date that use and occupancy of the property subject to this temporary easement by Grantee or its duly authorized employees, agents and contractors first occurs.

All terms, conditions and covenants contained herein shall be binding upon the parties hereto and their respective successors and assigns.

Grantee, as soon as is practicable after construction of the improvements and all subsequent entries made pursuant to the rights granted herein, shall cause restoration of the described easement area(s). Such restoration shall be strictly limited to replacement or repair of damaged sidewalk/asphalt, re-seeding of damaged lawn area and returning the surface area to its former grade as nearly as is reasonably possible, but subject to Grantee's right to grade said easement area(s) so as to be aesthetically and architecturally compatible with the completed improvement anticipated hereinabove.

Grantor hereby covenants that it is the true and lawful owner of the above-described real property and is lawfully seized of the same in fee simple and has good right and full power to grant this easement.

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be delivered personally or shall be mailed by certified or registered mail,

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

Notary Public
My Commission Expires: _____

This Instrument Was Prepared By the GCRTA Legal Department

EXHIBIT "A"

Legal Description

EXHIBIT "B"

PERMITTED TITLE EXCEPTIONS

ATTACHMENT B

TEMPORARY RIGHT OF WAY AND USE EASEMENT

KNOW ALL MEN BY THESE PRESENTS THAT: Case Western Reserve University, an Ohio non-profit corporation (hereinafter "Grantor"), in consideration of the sum of Ten Dollars (\$10.00) and other consideration, receipt of which is hereby acknowledged paid by the Greater Cleveland Regional Transit Authority, a political subdivision of the State of Ohio (hereinafter "Grantee") herein, does hereby grant, bargain, sell, convey and release to said Grantee, its successors and assigns forever, a temporary easement to exclusively occupy and use the following described real estate:

University-Cedar Rapid Transit Station Reconstruction Project

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE
MADE A PART HEREOF

Prior Instrument Reference: Vol. 96-6894, Page 42 of Cuyahoga County Records.

Cuyahoga County Recorder's Office, being a portion of Cuyahoga County Permanent Parcel No.
121-11-003

To have and to hold said temporary easement, for the aforesaid purposes and for the anticipated period of time described below, unto the Grantee, its successors and assigns forever.

The duration of the temporary easement herein granted to the Grantee shall have a term of twenty four (24) months commencing on the date that is the last to occur, either (a) the date that the work described herein is first commenced by the Grantee, or its duly authorized employees, agents, and contractors, or (b) the date that use and occupancy of the property subject to this temporary easement by Grantee or its duly authorized employees, agents and contractors first occurs.

All terms, conditions and covenants contained herein shall be binding upon the parties hereto and their respective successors and assigns.

Grantee, as soon as is practicable after construction of the improvements and all subsequent entries made pursuant to the rights granted herein, shall cause restoration of the described easement area(s). Such restoration shall be strictly limited to replacement or repair of damaged sidewalk/asphalt, re-seeding of damaged lawn area and returning the surface area to its former grade as nearly as is reasonably possible, but subject to Grantee's right to grade said easement area(s) so as to be aesthetically and architecturally compatible with the completed improvement anticipated hereinabove.

Grantor hereby covenants that it is the true and lawful owner of the above-described real property and is lawfully seized of the same in fee simple and has good right and full power to grant this easement.

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be delivered personally or shall be mailed by certified or registered mail, postage prepaid, return receipt requested, addressed to the parties at the following addresses, or such other or further addresses as either of the parties shall request by further written notice given in the manner herein required:

If to Grantee:

Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, Ohio 44113-1331
Attn: Senior Counsel, Contracts and Real Estate

With a copy to:

Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, Ohio 44113-1331
Attn: Real Estate Manager

If to Grantor:

Case Western Reserve University
11570 Euclid Avenue
Cleveland, Ohio 44106-7172
ATTN: Kevin Slesh, Director
Department of Real Estate

IN WITNESS WHEREOF Case Western Reserve University, an Ohio non-profit corporation, by _____, its _____, has caused this instrument to be executed and subscribed this _____ day of _____, 2012.

Name: _____
Title: _____

State of Ohio)
)ss
County of Cuyahoga)

BE IT REMEMBERED, that on this _____ day of _____, 2012, before me the subscriber, a Notary Public in and for said state and county, personally came the above named Case Western Reserve University, an Ohio non-profit corporation, by _____, its _____, who signed or acknowledged the signing of the foregoing instrument to be his voluntary act and deed and the free act and deed

of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

Notary Public
My Commission Expires: _____

This Instrument Was Prepared By the GCRTA Legal Department

ATTACHMENT B

EXHIBIT "A"

Legal Description
