

RESOLUTION NO. 2014-107

AUTHORIZING AN INTERAGENCY AGREEMENT WITH THE NORTHEAST OHIO REGIONAL SEWER DISTRICT FOR A TRANSIT WAITING ENVIRONMENT AT FAIRHILL ROAD AND MARTIN LUTHER KING JR DRIVE

WHEREAS, the Northeast Ohio Regional Sewer District ("NEORS") is designing and implementing the construction of a \$5,300,000.00 Green Infrastructure project in the vicinity of the intersection of Fairhill Road and Martin Luther King Jr Drive including storm sewer replacement and resurfacing, a bioretention basin, and a public plaza; and

WHEREAS, the GCRTA provides public transportation in Cuyahoga County and is involved in a transit area waiting enhancement program; and

WHEREAS, the public plaza occupies the same space as an existing bus stop on Fairhill Road at Martin Luther King Jr Drive currently serving GCRTA Bus Route 48/48A, which, in 2013, had the twelfth highest ridership of all GCRTA local bus routes; and

WHEREAS, the Green Infrastructure project will begin construction and funds will be expended in 2016; and

WHEREAS, the Interagency Agreement will require that GCRTA contribute funds in the not to exceed amount of Twenty Five Thousand Dollars (\$25,000.00). These funds are local funds designated to the Asset Maintenance Program for use on Transit Waiting Environment projects.

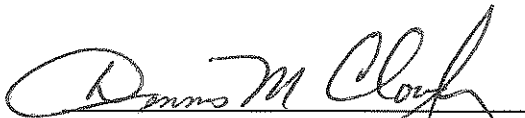
NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority, Cuyahoga County, Ohio:

Section 1. That the General Manager/Secretary-Treasurer of the Greater Cleveland Regional Transit Authority be and is hereby authorized to enter into an Interagency Agreement with the Northeast Ohio Regional Sewer District for a transit waiting environment at the northeast corner of the intersection of Fairhill Road and Martin Luther King Jr Drive.

Section 2. That the General Manager/Secretary-Treasurer is authorized to use up to Twenty Five Thousand Dollars (\$25,000.00) in local funds from the Asset Maintenance Program to reimburse the Northeast Ohio Regional Sewer District when construction is completed.

Section 3. That this resolution shall take effect immediately upon its adoption.

Adopted: October 21, 2014



President

Attested: 

CEO, General Manager/Secretary-Treasurer



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

TITLE/DESCRIPTION: CONTRACT: INTERAGENCY AGREEMENT FOR A TRANSIT WAITING ENVIRONMENT AT FAIRHILL ROAD AND MARTIN LUTHER KING JR DRIVE VENDOR: NORTHEAST OHIO REGIONAL SEWER DISTRICT AMOUNT: UP TO \$25,000 PAYABLE TO NEORSD	Resolution No.: 2014- 107
	Date: October 16, 2014
	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:** This action will allow the Authority to enter into an Interagency Agreement with the Northeast Ohio Regional Sewer District (NEORSD) for a Transit Waiting Environment (TWE) at the northeast corner of Fairhill Road and Martin Luther King Jr Drive (the "Project").

- 2.0 **DESCRIPTION/JUSTIFICATION:** NEORSD is constructing a \$5.3M Green Infrastructure project in the area surrounding the Fairhill Road and Martin Luther King Jr Drive intersection. The larger project includes storm sewer replacement and resurfacing and a large bioretention basin and public plaza in the northeast quadrant of the intersection. The public plaza occupies the same area as an existing bus stop and shelter and overlooks the bioretention basin. The TWE funds will be used toward the public plaza amenities that have been identified in GCRTA's TWE Guidebook as items that provide benefit and a comfortable waiting area for GCRTA customers. Specifically, these amenities will include pavers, benches, bike racks, trash receptacles, railings and solar lighting bollards.

 This agreement formalizes the roles and responsibilities of each party and GCRTA's financial commitment toward construction of the Project. Funds will be expended in 2016.

- 3.0 **PROCUREMENT BACKGROUND:** N/A

- 4.0 **DBE/AFFIRMATIVE ACTION BACKGROUND:** N/A

- 5.0 **POLICY IMPACT:** This project follows the recommendation of the GCRTA TWE Guidebook and supports GCRTA's existing TWE program to enhance bus stops throughout the service area.

- 6.0 **ECONOMIC IMPACT:** Up to twenty five thousand dollars (\$25,000.00) will be contributed by GCRTA for the funding of a transit waiting environment at the northeast corner of the intersection of Fairhill Road and Martin Luther King Jr Drive. The funds used are local funds designated to the Asset Maintenance Program for use on Transit Waiting Environment projects.

- 7.0 **ALTERNATIVES:** Reject the interagency agreement. Rejection of this agreement will inhibit NEORSD from being able to make these improvements that provide GCRTA customers with more a comfortable transit waiting environment.

- 8.0 RECOMMENDATION: The staff recommends that the interagency agreement be accepted and the resolution passed.
- 9.0 ATTACHMENTS: Attachment A - Form of the agreement is attached.

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

Transit Waiting Environment Grant Agreement

This Agreement is made this ____ day of _____, 2014, by and between the Greater Cleveland Regional Transit Authority (hereinafter "GCRTA"), located at 1240 West 6th Street, Cleveland, Ohio 44113 and Northeast Ohio Regional Sewer District (hereinafter "Grantee") located at 3900 Euclid Avenue, Cleveland, OH 44115, pursuant to the authority of Board of Trustees Resolution No. 121-14, adopted by the Board of Trustees on June 5, 2014.

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

WHEREAS, GCRTA has designated certain funds for enhancement of its bus stations with such enhancements (hereinafter "the Project") to be undertaken by grantees, as further described in Appendix A, attached hereto and incorporated herein by reference; 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 grantee's agreement stating a grantee's responsibilities under federal law and to assure the compliance of each grantee with federal laws, regulations, and executive orders; and

WHEREAS, this agreement and the construction of the Transit Waiting Environment will be completed within two years (2) of the executed signature date.

NOW, THEREFORE, in consideration of their mutual promises, the GCRTA and Grantee agree as follows:

1. Federal Law & Regulations. Grantee acknowledges that it is a recipient of public funds and, as such, agrees that in connection with the Project, 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 (MA20), a copy of which is attached hereto as Exhibit 1. Grantee 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. Grantee 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, Grantee agrees to be bound by and to require all of its subcontractors or subrecipients at any level to be in compliance with all mandatory federal requirements imposed upon recipients of federal funds as they may be amended including, but not limited to:

- (a) Prompt payment of subcontractors - (49 CFR Part 26)
- (b) Restrictions on lobbying - (49 CFR Part 20)
- (c) Civil Rights - (49 USC 5332; 42 USC 2000d et seq.; 49 CFR Parts 21, 25, 26, 27, 37, 38, and 609; Title VII of the Civil Rights Act of 1964, as amended; 42 USC 2000e; 41 CFR Part 60 et seq.; Executive Order 11246; 20 USC 1681 et seq.; 42

USC 6101 et seq.; 49 USC 5301(d); 29 USC 794; 42 USC 12101 et seq.; 42 USC 4151 et seq.; 36 CFR Part 1192; 28 CFR Parts 35 and 36; 41 CFR Subpart 101-19; 29 CFR Part 1630; 47 CFR Part 64, Subpart F; 36 CFR Part 1194; 21 USC 1174 et seq.; 42 USC 4581 et seq., 42 USC 290dd-3 and 290ee-3)

- (d) Access to records (49 USC 5325(a))
- (e) Patent Rights - (35 USC 200 et seq.; and 37 CFR Part 401)
- (f) Employee Protections - (40 USC 3141 et seq.; 49 USC 5333(a); 40 USC 3701 et seq.; 29 CFR Part 5; 40 USC 3704; 29 CFR Part 1926; 18 USC 874; 29 CFR Part 3; and 29 USC 201)
- (g) Environmental requirements - (42 USC 4321-4335 and 6321 et seq; Executive Order 11514; 49 USC 5324; 40 CFR Part 1500-1508; 23 CFR Part 771; and 49 CFR Part 662; 16 USC 470f; Executive Order 11593; 16 USC 470; and 16 USC 469a-469c)
- (h) Buy America – (49 USC 5323 and 49 CFR Part 661)
- (i) Fly America and Cargo Preference – (49 USC 40118 and 46 CFR Part 381)

2. No Obligation by the Federal Government. Grantee 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, Grantee, or any other party pertaining to any matter resulting from the underlying agreement. Grantee further agrees to include this clause, without modification, in any subcontract issued hereunder.

3. Indemnification

- A.** With respect to work performed by Grantee, 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 Grantee, its contractors or agents, or as a result of the performance of the Project work by Grantee, its contractors or agents, and whether or not the persons injured or whose property was damaged were third parties, employees of Grantee or employees of any authorized contractor; and Grantee 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. Grantee 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 Grantee, 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. This indemnification obligation shall include obligations incurred that result from any consent decree or settlement agreement.
- C. Notwithstanding the foregoing, Grantee shall have no obligation to indemnify the GCRTA or any of its officers, agents or employees for any liability, loss, damage or fines, penalties or findings for recovery to the extent arising from or based on any act, failure to act or non-compliance with any federal, state or local law, rule, regulation or procedure by the GCRTA or any of its officers, agents or employees. Such limitation on Grantee's indemnity obligation shall apply even if Grantee's acts, failures to act or non-compliance with any federal, state or local law, rule, regulation or procedure contributed, in part, to the liability, loss, damage or fines, penalties or findings for recovery, though not to the extent of liability arising from or based on the acts or omissions of GCRTA or its officers agents or employees.

4. Insurance

Prior to commencement of any work and until completion of its work under the contract, Grantee and each subcontractor at all tiers shall maintain the following insurance coverage, at its cost, from insurers acceptable to the GCRTA and shall comply with all provisions of this article; and Grantee shall give evidence of its and all subcontractors coverage to GCRTA prior to commencing work at the project site. Grantee shall include language in its subcontracts and require its subcontractors to include language in their subcontracts to require the subcontractors at all tiers to establish the same requirements on all levels of subcontractors. The insurance coverage required is:

- A. Commercial General Liability Insurance in the amount of **\$1 million** combined single limit each occurrence for bodily injury and/or property damage with a **\$1 million** per project annual aggregate. Said policy shall also include:
- Premises / Operations coverage
 - Personal Injury coverage
 - Liability for independent contractors
 - Products / Completed Operations liability insurance: This insurance must be maintained for a period of not less than 5 years from the completion of the work.
 - Contractual liability coverage insuring the "hold harmless" provision set forth in Article 7.
 - Liability for explosion, collapse and underground property damage
 - Said policy shall be written on an "occurrence" basis.
 - GCRTA will accept any combination of primary CGL and Excess or Umbrella policies to meet the minimum coverage requirements above.
- B. **Automobile Liability Insurance** in the amount of **\$1 million**, combined single

limit each accident for bodily injury and/or property damage. Said policy shall apply to all owned, leased, hired and non-owned vehicles used in connection with the work.

- C. **Statutory Workers' Compensation** coverage in compliance with all applicable state workers' compensation laws to cover all employees furnishing labor under the terms of this contract and under the control of **Grantee** or subcontractor. Employers' **Liability coverage** in the amount of **\$1 million per accident / \$1 million per employee** for disease will also be included, either under the Workers' Compensation policy or under the Commercial General Liability policy (Stop Gap) referenced under a. above. In Ohio: a copy of a certificate of premium payment from the Industrial Commission and Bureau of Workers' Compensation, or a copy of the Certificate of Employer's Right to Pay Compensation Directly.
- D. Property Insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial grant awarded, plus the value of subsequent contract modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained until final acceptance by GCRTA, unless otherwise specified herein. This insurance shall include the interests of the GCRTA, the Grantee, subcontractors and sub-subcontractors. The GCRTA shall be named as a loss payee as their interests may appear.

Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, debris removal including demolition occasioned by enforcement of any applicable legal requirements. This property insurance shall apply to loss or damage to work or property during the course of construction, including all machinery, materials & supplies intended to become a part of the finished work. It shall cover portions of the Project stored off the site, and also portions of the Project in transit.

Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use. The GCRTA and the Grantee shall take reasonable steps to obtain consent of the insurance company and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

- E. **Professional Liability / Errors & Omissions Insurance** in the amount of **\$1 million per claim**. The definition of wrongful acts must be applicable to the work performed hereunder. As this insurance is written on a claims-made basis, the policy must be maintained for a minimum of two years following completion of the work.
- F. General Requirements: Neither Grantee nor any subcontractor shall commence work herein until it has obtained the required insurance and has received written approval of such insurance from GCRTA. Grantee shall furnish evidence of such insurance for itself and each of its subcontractors at all tiers in the form of a certificate prior to commencement of any work. (Accord or similar form). The certificate shall provide the following:

- In the event the insurance should be materially changed or cancelled, such material change or cancellation shall not be effective until 30 days after the contracting parties have received written notice of such change or cancellation from the insurance company. Such notice shall be mailed by certified mail, return receipt requested, to the GCRTA's Director of Programming and Planning.
- Name the GCRTA, as Additional Insured for coverage required under a. and b. above, for claims arising out of operations in conjunction with the contract.
- Contain a waiver of subrogation in favor of GCRTA
- Specific reference to the subject contract.
- Specific reference to all deductibles & Self-Insured Retentions (SIR).
- Shall be primary and non-contributing to any insurance possessed or procured by GCRTA, and any insurance or self-insurance program maintained by any of the foregoing.
- An insurance company having less than an A- X rating by The A. M. Best Company will not be considered acceptable. All certificates are subject to acceptance GCRTA. GCRTA shall be entitled to receive a full copy of the insurance policy(ies) upon request and reserves the right to review financial statements and approve any deductibles or self-insured retention (SIR). Any deductible or SIR is for the account of Grantee.

G. Approval of the insurance by GCRTA shall not relieve or decrease the liability of the Grantee or subcontractors hereunder. It is to be understood that GCRTA does not in any way represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect Grantee or subcontractors' interests or liabilities. Should the required primary insurance limits of Grantee or any Subcontractor at any tier be exhausted or not available to pay a claim, Grantee shall be liable for payment of claims the insurance was intended to cover, up to the limits required above; whether it be the insurance policy of either Grantee or subcontractor that was exhausted or not available to pay the claim.

H. In the event Grantee or subcontractor neglects, refuses or fails to provide the insurance required hereunder, or if such insurance is canceled for any reason, GCRTA shall have the right but not the duty to procure the same, and the cost thereof shall be deducted from moneys then due or thereafter to become due to Grantee or subcontractor.

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

6. **Audit and Inspection.**

A. Grantee 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. The 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 Grantee.

7. **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 source of funds. Neither Grantee nor the GCRTA shall have any authority, express or implied, to bind the other party.

8. **Environmental Responsibilities.** In the administration and furtherance of the Project, if applicable, Grantee 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 Policy Act and the National Historic Preservation Act; and for securing all necessary permits and approvals from all federal, state and local regulatory agencies. Grantee shall be responsible for assuring compliance with all commitments made as part of the Project's environmental clearance and/or permits.

9. **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.

10. **Contract Administration.** Grantee shall review and/or approve all invoices prior to payment and before requesting reimbursement from GCRTA for work performed on the Project, and Grantee 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 (See Appendix B).

11. **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, 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, courts of Cuyahoga County, applicable to contracts made and to be performed wholly within the State of Ohio.
- D. ADA and ADAAG Compliance: Projects must meet all American with Disabilities Act ("ADA") guidelines for bus stops as required by the ADA and Architectural Barriers Act Accessibility ("ADAAG") Guidelines. All projects shall also comply with the most current draft version of the Access Board's Guidelines for Accessible Public Rights-of-Way unless a specific variance is granted by the GCRTA.
- E. Permits and Fees: Grantee is responsible for coordinating and obtaining all necessary permits and fees for the work.
- F. Maintenance: Grantee shall be responsible for maintaining, repairing and replacing components of the TWE site for 10 years after project completion in accordance with the maintenance plan included in Appendix A. Grantee's responsibilities include, but are not limited to, emptying trash containers, removing and replacing trash can liners, picking up trash/debris in and around the TWE, and repairing or replacing any broken or damaged components.

GCRTA shall only maintain GCRTA standard Brasco shelters, including glazing, and GCRTA signage, as applicable.

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 (GCRTA)

Northeast Ohio Regional Sewer District (Grantee)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

And: _____

Name: _____

Title: _____

Attest: _____

This Instrument Reviewed By:
Katarina K. Waag
Assistant Director of Law
Northeast Ohio Regional Sewer

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

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

APPENDIX A: PROJECT DESCRIPTION

(Include a short narrative of the portion of the project using pass-through funds)

APPENDIX B.
SCHEDULE OF COMPLETION

THE PROJECT WILL BE SUBSTANTIALLY COMPLETE AND READY FOR INSPECTION BY
RTA ON OR BEFORE OCTOBER 21, 2016.

EXHIBIT 1
FTA MASTER GRANT AGREEMENT (FORM MA20)

A copy of the Master Grant Agreement is attached hereto and incorporated herein by reference.