

RESOLUTION NO. 2015-34

SUPPORTING THE GRANT APPLICATION TO THE CITY OF CLEVELAND  
FOR AN URBAN DEVELOPMENT ACTION GRANT REPAYMENTS GRANT  
FOR THE CLIFTON BOULEVARD TRANSIT ENHANCEMENT PROJECT

WHEREAS, Pursuant to Resolution Nos. 2009-094, 2010-069, 2013-079 and 2014-43, the Greater Cleveland Regional Transit Authority entered into agreements with various parties for the funding, design and construction of the Clifton Boulevard Transit Enhancement Project; and

WHEREAS, during the course of construction of the Clifton Boulevard Transit Enhancement Project, the City of Cleveland ("City") requested that the Authority relocate a bus station to accommodate the City's economic development initiatives on Clifton Boulevard; and

WHEREAS, the Greater Cleveland Regional Transit Authority relocated the bus station at the request of the City of Cleveland and incurred additional costs to do so; and

WHEREAS, the City of Cleveland offered to reimburse the Greater Cleveland Regional Transit Authority for a portion of the additional costs with an Urban Development Action Grant Repayments Grant; and

WHEREAS, the Greater Cleveland Regional Transit Authority has completed construction of the Clifton Boulevard Transit Enhancement Project.

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

Section 1. That the General Manager/Secretary-Treasurer is hereby authorized to submit an application and execute an Urban Development Action Grant Repayments Grant Agreement with the City of Cleveland on behalf of the Greater Cleveland Regional Transit Authority for the Clifton Boulevard Transportation Enhancement Project.

Section 2. That the General Manager/Secretary-Treasurer is authorized to furnish such additional information as the City of Cleveland may require in connection with this application.


Section 3. That the General Manager/Secretary-Treasurer of the Greater Cleveland Regional Transit Authority is authorized to accept the funds resulting from the Urban Development Action Grant Repayments Grant from the City of Cleveland.

Section 4. That, in the absence of the General Manager/Secretary-Treasurer, the Acting General Manager/Secretary-Treasurer of the Greater Cleveland Regional Transit Authority is hereby authorized to perform any and all of the above-described functions.

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

Adopted: March 24, 2015

  
\_\_\_\_\_  
President

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



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

TITLE/DESCRIPTION: CONTRACT: SUPPORTING THE GRANT APPLICATION TO THE CITY OF CLEVELAND FOR AN URBAN DEVELOPMENT ACTION GRANT REPAYMENTS GRANT FOR THE CLIFTON BOULEVARD TRANSIT ENHANCEMENT PROJECT  VENDOR: CITY OF CLEVELAND  AMOUNT: \$42,061.17	Resolution No.: 2015-34
	Date: March 19, 2015
	Initiator: Engineering & Project Management
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 action will allow the Authority to submit an application and supporting documentation, execute a grant agreement and accept the proceeds of an Urban Development Action Grant Repayments Grant with the City of Cleveland for the Clifton Boulevard Transportation Enhancement Project.
- 2.0 DESCRIPTION/JUSTIFICATION: GCRTA has undertaken the design and construction of the Clifton Boulevard Transit Enhancement Project. During the course of construction, the City of Cleveland ("City") requested that GCRTA relocate a bus station to accommodate the City's economic development initiatives. GCRTA relocated the bus station and incurred additional costs to do so. The City has offered to reimburse GCRTA for a portion of the additional costs with an Urban Development Action Grant Repayments Grant.
- 3.0 PROCUREMENT BACKGROUND: Does not apply.
- 4.0 DBE/AFFIRMATIVE ACTION BACKGROUND: Does not apply.
- 5.0 POLICY IMPACT: Does not apply.
- 6.0 ECONOMIC IMPACT: The grant would provide \$42,061.17 towards the total cost of \$63,091.75 incurred by GCRTA to relocate the bus station.
- 7.0 ALTERNATIVES: Do not submit grant application. This would preclude GCRTA from obtaining funding to offset the cost of relocating the bus station.
- 8.0 RECOMMENDATION: It is recommended that the resolution authorizing the Urban Development Action Grant Repayments Grant with the City of Cleveland be approved.
- 9.0 ATTACHMENTS: Draft Urban Development Action Grant Repayments Grant Agreement.

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

General Manager/Secretary-Treasurer



CONTRACT NUMBER \_\_\_\_\_

**URBAN DEVELOPMENT ACTION GRANT REPAYMENTS**

**GRANT AGREEMENT**

**between the**

**CITY OF CLEVELAND**

**And**

**GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY**

This **URBAN DEVELOPMENT ACTION GRANT ("UDAG") REPAYMENTS** Grant ("Agreement"), is made and entered into at Cleveland, Ohio as of \_\_\_\_\_, 2015, ("Effective Date") by, and between the **CITY OF CLEVELAND** ("City" or "Grantor"), an Ohio municipal corporation and political subdivision duly organized and validly existing under the Constitution and laws of the State of Ohio, by and through its Director of Economic Development under the authority of Ordinance No. 90-10, passed February 8, 2010, attached as Exhibit A-1, and **GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY** ("Grantee"), a political subdivision of the State of Ohio.

**RECITALS:**

**A.** Grantee has applied for UDAG Repayments Grant ("Grant") to finance the demolition and construction of a bus station on the northern sidewalk of Clifton Boulevard between West 116<sup>th</sup> Street and West 117<sup>th</sup> Street (the "Project Site");

**B.** The City's administration, Cleveland Citywide Development Corporation (Exhibit A-2), and Cleveland City Council in a letter of support (Exhibit A-3), have determined that Project, as defined in Section 1.01, is in the public interest and that Grantee's performance of the Project activities will promote health, recreation and wellness of Cleveland commuters, and improve the economic vitality of the City, all of which are positive factors and in the best interest of the City; and

**C.** The City desires to make the Grant to Grantee so that Grantee can carry out its plans, subject to the terms and conditions set forth below.

**NOW, THEREFORE,** in consideration of the mutual covenants and agreements contained herein, the City and the Grantee agree as follows:

**ARTICLE I**

**UDAG PROJECT**

**SECTION 1.01 UDAG PROJECT**

The Grantee shall undertake, or cause to be undertaken, the demolition of a partially constructed bus station located on the northern sidewalk of Clifton Boulevard between West 116<sup>th</sup> Street and West 117<sup>th</sup> Street and the subsequent construction of a new bus station in the same geography at the location specified in the revised plan (attached as Exhibit E) to accommodate retail development on adjacent land, at the Project Site as more fully described in this Agreement and in Grantee's application for the Grant (collectively referred to as the "Project").

**SECTION 1.02 SOURCES AND USES OF FUNDS FOR THE PROJECT**

The total cost of the UDAG Project shall be approximately \$63,091.75 and shall be financed from the following sources as shown on the Sources and Uses of Funds attached as **Exhibit C**:

- A. The City shall award up to \$42,061.17 to Grantee in accordance with Article II and other provisions of this Agreement ("Funds");
- B. Grantee shall provide the balance of Project costs.

The use of Funds shall be in accordance with the terms of this Agreement, and as shown on the Sources and Uses for the Project – Exhibit C of this agreement.

**SECTION 1.03 JOB REQUIREMENTS**

Intentionally Deleted

**SECTION 1.04 TIMETABLE FOR PROJECT ACTIVITIES**

Grantee shall perform the Project in accordance with the following schedule:

<b><u>Activity</u></b> <b>(List Project Activities per Exhibit C)</b>	<b><u>Commencement Date</u></b>	<b><u>Completion Date (On or Before)</u></b>
Bus station demolition and construction	June 16, 2014	May 31, 2015

**SECTION 1.05     PROJECT COMPLETION**

Grantee will complete the Project in accordance with Section 1.04, Timetable for Project Activities. To accomplish complete and timely execution of the Project, Grantee shall make payment for any cost overruns.

**SECTION 1.06     CLOSING REQUIREMENTS**

(A) At least 3 business days prior to the date of execution by Grantee ("Closing Date"), in order for the parties to reach a mutual consent, Grantee must provide the applicable documentation listed below marked with a "check".

- An updated Certificate of Good Standing from the Secretary of State dated within 30 days of the Closing Date;
- City Vendor Forms and IRS Form W-9;
- Certificate or certificates of insurance, such other portions of the policy or policies as the City deems necessary and the endorsement naming the City as an additional insured.
- Any other certificates, documents and instruments required by the City in the forms satisfactory to the City's attorneys that are reasonably necessary to support this transaction; and

(B) Documents to be executed and items to be provided at Closing are marked with a "check":

- This Agreement (and three duplicate originals) executed by Grantee and Director of Economic Development, authorizing the Grant to Grantee;
- Application fee of \$25.00 payable to the City of Cleveland.

**ARTICLE II**

**THE GRANT**

**SECTION 2.01     THE GRANT**

Subject to the terms and conditions of this Agreement, the City agrees to grant the Funds (\$42,061.17 UDAG Grant) to Grantee based upon the appropriate evidence submitted for disbursement as set forth in Section 2.03, Disbursement of Fees.

**SECTION 2.02     PAYMENT OF FEES**

As applicable, Grantee shall pay any and all fees related to this Agreement, including but not limited to all third party fees, expenses and charges such as the fees and out-of-pocket expenses of counsel employed by the City, title examinations, title commitment, title insurance, survey costs, recording and filing fees, escrow fees, documentary stamps, and any other taxes, fees and expenses payable in connection with this transaction and with the enforcement of this Agreement and any other documents executed in connection with this Agreement.

**SECTION 2.03     DISBURSEMENT OF FUNDS**

After receipt of the documents set forth in Section 1.06, completed Disbursement Request Forms (attached as **Exhibit B-1 and B-2**), and any other requirements set for by this Agreement or the City, the City shall disburse the Funds, on a percentage of completion basis per leverageable costs shown on **Exhibit C**.

The Disbursement Request Forms must be submitted to:

City of Cleveland  
Department of Economic Development  
City Hall, 601 Lakeside Avenue Room 210  
Cleveland, Ohio 44114  
Attn: Charles Slife

Upon receipt of the above information that documents up to \$63,091.75 of costs and any other requirement set forth by the Agreement, the City shall disburse (\$42,061.17). Within three business days of receipt, Grantee shall forward City funds to vendors or subcontractors and provide documentation of the transaction to the City. All invoices and cancelled checks for eligible project costs submitted by the Grantee shall be subject to verification and approval by the City.

Any and all liability established by independent audits, special purpose reviews and/or internal audits or reviews conducted by the City or Grantee based upon the Grantee's failure to disburse the UDAG funds within three days of receipt shall presumptively establish Grantee debt to the City equal to total costs disallowed, including any assessment of interest costs related to any excess cash balance maintained by Grantee.

**SECTION 2.04     POST CLOSING REQUIREMENTS:**

INTENTIONALLY DELETED

## **ARTICLE III**

### **REPRESENTATIONS AND WARRANTIES**

Grantee represents and warrants to the City as of the Closing Date and throughout the term of this Agreement each of the representations and warranties set forth in Article III.

#### **SECTION 3.01 ORGANIZATION**

Grantee certifies that it is a validly existing entity in good standing under the laws of the State of Ohio, and has the power to carry on its business as it is presently being conducted, to enter into and observe the provisions of this Agreement. Grantee certifies that the City may conclusively rely upon the Organization Documents submitted and that the person executing this Agreement was duly elected to the office of the Company.

#### **SECTION 3.02 AUTHORIZATION**

Grantee's entering into and performance of this Agreement has been duly authorized by all necessary action and will not violate any law, rule, regulation, order, writ, judgment, decree, determination or award presently in effect and having applicability to Grantee or any provision of Grantee's Organizational Documents, or result in a breach of or constitute a default under any indenture, bank Grant, credit agreement, lease or any other agreement or instrument that the Grantee is a party to or that it or its property may be bound.

#### **SECTION 3.03 ENFORCEABILITY**

When this Agreement is executed by both Grantee and the City, certified by the City's Director of Finance and approved by the City's Director of Law, and when the Grant Documents are executed and delivered by Grantee for value, each such instrument shall constitute the legal, valid, and binding obligation of the parties in accordance with its terms.

#### **SECTION 3.04 LITIGATION**

There are no legal actions, suits, or proceedings pending, or, to the knowledge of Grantee, threatened against Grantee before any court or arbitrator, or administrative agency, that, if determined adversely to Grantee, would have an adverse effect on the financial condition or businesses of Grantee that have not been disclosed to the City.

#### **SECTION 3.05 GOVERNMENTAL CONSENTS**

No authorization, consent or approval, or any formal exception of any

governmental body, regulatory authorities (federal, state or local) or mortgagor, creditor or third party is or was necessary to the valid execution and delivery by Grantee of this Agreement.

**SECTION 3.06 ABSENCE OF DEFAULT**

Grantee is not in default of any obligation, covenant, or condition contained in any bond, debenture, note, or other evidence of indebtedness or any mortgage or collateral instrument securing the same. Grantee certifies that there shall exist as of the Closing Date no event or condition that constitutes an Event of Default as defined in Article VII, or that, after notice or lapse of time or both, would constitute such an Event of Default.

**SECTION 3.07 TAX RETURNS AND PAYMENTS**

Grantee has filed all required tax returns and has paid or made provision for the payment of all taxes that have or may become due under said returns or under any assessments levied against Grantee or its personal or real property by any federal, state or local taxing agency. The Internal Revenue Service or any other taxing agency, (federal, state or local), has not asserted any tax liability against Grantee for taxes materially in excess of those already provided for, and Grantee knows of no basis for any such deficiency assessment.

**SECTION 3.08 NO ADVERSE CHANGE**

Since the date of application for the Grant, there has been no adverse change in the financial condition, organization, operation, business prospects, fixed assets or personnel of Grantee.

**SECTION 3.09 MATERIAL FACTS**

No representation or warranty contained or made in this Agreement and no certificate, schedule or other document furnished or to be furnished in connection with this Agreement contains or will contain a misstatement of material fact or omits or will omit to state a material fact required to be stated.

**SECTION 3.10 PROHIBITION OF CONFLICT OF INTEREST**

No person who is an employee, officer, agent, or consultant of the City or an elected public official or member of the City Council or appointed public official of the City who exercises or has exercised any functions or responsibilities with respect to the UDAG Project or who is in a position to participate in a decision-making process or gain inside information with regard to the UDAG Project may obtain a personal or financial interest or benefit from the UDAG Project, or have an interest in any contract, subcontract, or agreement with respect thereto, or in the proceeds, either for



themselves or those with whom they have family or business ties. The above restrictions shall apply to all activities comprising the UDAG Project, and shall cover any such interest or benefit during, or at any time after, such person's tenure.

No shareholder, director, officer, trustee or employee of the Grantee is related to a member of the Congress of the United States and no member of Congress has any financial interest in the Grantee or in any of its property.

**SECTION 3.11 PERFORMANCE ON OTHER CONTRACTS WITH THE CITY**

Grantee and its subsidiaries shall perform all other contracts with the City in a timely and workmanlike manner.

**SECTION 3.12 ENVIRONMENTAL CONDITIONS**

Grantee, its employees, contractors, or agents shall not use or occupy or permit the site of the UDAG Project to be occupied, nor do or permit anything to be done in or on the Project, in whole or in part which will cause or be apt to cause structural damage to the Project, or will constitute a public or private nuisance or will cause pollution or contamination of the air, water and/or ground or will violate any applicable state or federal environmental or other governmental regulation or hazardous waste legislation now or hereafter in force, with respect to the project. The Grantee shall permit no waste, damage or injury to the project, nor shall any toxic or hazardous waste, substance or material of any kind or nature, including without limitation, asbestos and radon, be stored at, disposed of, emitted or released from, or be located, leaked or spilled in, upon, over or through the Project Site.

**SECTION 3.13 LEASE PROVISIONS**

INTENTIONALLY DELETED.

**SECTION 3.14 FULL UNDERSTANDING AND VOLUNTARY ACCEPTANCE**

Grantee represents that it had reasonable opportunity in the negotiation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party on the basis that the party was the drafter.

In entering this Agreement, Grantee represents that it relied upon the advice of its attorneys, who are attorneys of their own choice and that the terms of this Agreement and attached Exhibits have been completely read and explained to it by its attorneys, and that those terms are fully understood and voluntarily accepted by it, or had a reasonable opportunity to completely read and ask questions to the City of the terms of this Agreement and exhibits and that those terms are fully understood and voluntarily accepted by it.

**SECTION 3.15     INDEMNIFICATION**

The liability of the City and Grantee is governed by the provisions of Ohio Revised Code Chapter 2744 and other laws of Ohio. In accordance with those laws, Grantee will be liable to the City only for its own negligence and the City will be liable to Grantee only for its own negligence. With respect to injury to third parties, the City and Grantee shall each bear the cost of its own negligence and neither party shall indemnify the other. Both the City and Grantee are self-insured.

**SECTION 3.16     LEAD-BASED PAINT**

Grantee shall comply with the provisions of 24 CFR 570.608 regarding the uses of lead-based paint. The use of lead-based paint is prohibited.

**ARTICLE IV**

**SECTION 4.01     COMPLIANCE WITH LAWS, RULES AND REGULATIONS**

The Grantee, its members, agents, employees and any other persons over whom the Grantee has control shall comply with all applicable present and future laws and ordinances of the City, Federal, State and other local governmental bodies, applicable to or affecting directly or indirectly the Grantee or its operations and activities on or in connection with the Project, including but not limited to:

**A.     The Cleveland Area Business Code Requirement**

Compliance with the City of Cleveland Area Business Code Requirement is required if total City assistance to the Project exceeds \$50,000.

If applicable as determined by the Director of Office of Equal Opportunity ("OEO"), Grantee acknowledges that the City has a policy that Cleveland Area Small Businesses (CSB) and businesses which are owned and operated by minority persons (MBE) and females (FBE), as those terms are defined in Section 187.01 of the Codified Ordinances of Cleveland, Ohio, 1976, shall have every practicable opportunity to participate in the performance of contracts awarded by the City to Grantee and its subcontractors. Grantee shall use good faith efforts to achieve the following CSB, MBE, and FBE subcontractor participation goals established by the City's Office of Equal Opportunity (OEO). For vertical construction projects, OEO has established a subcontractor participation goal of 15% MBE participation, 7% FBE participation and 8% CSB participation. For professional services 10% CSB participation.

The City may assess a penalty of up to 10% at its discretion of the total grant amount disbursed by the City on the Grant.

The above-determined penalty will be applied to the outstanding Grant balance upon completion of all Project activities as set forth in Section 1.04, Timetable for Project Activities, and upon the submission of all documentation required to determine compliance with the subcontractor participation goals. The City's collection of this penalty shall not preclude the City's rights to exercise any other remedies specified in this Agreement.

**B. Fannie M. Lewis Cleveland Resident Employment Law ("Resident-Employment Law")**

Compliance with the City of Cleveland Resident Employment Law is required if total City assistance to the Project exceeds \$100,000.

**C. Employment Discrimination Prohibited**

The Grantee agrees that this Agreement is subject to the Equal Employment Opportunity Ordinance, Section 187, of the Codified Ordinances of the City of Cleveland, in pertinent part set forth hereafter:

- (i) Grantee shall not discriminate against any employee or Grantee for employment because of race, religion, color, sex, sexual orientation, gender identity or expression, national origin, age, disability, ethnic group or Vietnam-era or disabled veteran status. Grantee shall take affirmative action to insure that Grantees are employed and that employees are treated during employment without regard to race, religion, color, sex, sexual orientation, gender identity or expression, national origin, age, disability, ethnic group, or Vietnam-era or disabled veteran status. As used in this chapter, "treated" means and includes without limitation the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship, promoted, upgraded, demoted, downgraded, transferred, laid off and terminated. Grantee agrees to and shall post in conspicuous places, available to employees and Grantees for employment, notices to be provided by the hiring representatives of the Grantee setting forth the provisions of this nondiscrimination clause.
- (ii) Grantee will, in all solicitations or advertisements for employees placed by or on behalf of the Grantee, state that the Grantee is an equal opportunity employer.

- (iii) Grantee shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract, or understanding, a notice advising the labor union or worker's representative of the Grantee's commitments under the equal opportunity clause, and shall post copies of the notice in conspicuous places available to employees and Grantees for employment.
- (iv) It is the policy of the City that local businesses, minority-owned businesses and female-owned businesses shall have every practicable opportunity to participate in the performance of contracts awarded by the City subject to the applicable provisions of the Cleveland Area Business Code.

Furthermore, the Grantee shall, as applicable, comply with the requirements of the following Executive Orders:

- (i) Executive Order 11246, as amended by Executive Orders 11375, 12086, 12107, 13279, 13665, and 13672, regarding equal employment opportunity, and the implementing regulations at 41 CFR Chapter 60;
- (ii) Executive Orders 11625 and 12432 concerning Minority Business Enterprise; and
- (iii) Executive Order 12138, as amended by Executive Order 12608 concerning Women's Business Enterprise.

**D. Verification of Compliance of the City**

Grantee shall permit access by the Director of the OEO or her designated representative to any relevant and pertinent reports and documents to verify compliance with the Equal Opportunity Clause and the regulations of the City's Equal Opportunity Office. If applicable, Grantee shall maintain copies of its annual EEO-1 report, which contain records of its employment opportunity together with changes, if any, made in its affirmative action plan. Grantee shall make this report available to the City upon the City's request. All such materials provided to the OEO Director or her designated representative by Grantee shall be confidential under Chapter 149 of the Ohio Revised Code and under applicable federal law.

Grantee shall not obstruct or hinder the Director of OEO or her representative in the fulfillment of the duties and responsibilities imposed by the Equal Opportunity Clause, and the regulations of the City's Equal Opportunity Office. The City will not conduct any inspection or investigation of Grantee's

equal opportunity or affirmative action reports or documents except to verify compliance with the Equal Opportunity Clause, the regulations of the City's Equal Opportunity Office and the prohibitions against discrimination.

**E. Cleveland Fair Wage Law**

Compliance with the City of Cleveland Fair Employment Wage is required if Grantee is a recipient of Assistance (as defined in Chapter 189 of the Codified Ordinances) from the City that has an aggregate value of at least \$75,000 and has at least 20 full time employees if a for-profit or at least 50 employees if a non-for profit, as of the Effective Date of this Agreement.

If applicable as determined by the Director of OEO, the City of Cleveland Fair Wage Law requires, among other things, that unless specific exemptions apply, Covered Employers, as defined, under contracts with the City and recipients of City financial assistance, as defined, shall provide payment of a minimum level of compensation to employees. Failure to comply with that Chapter and/or any implementing regulations may result in termination of the contract or debarment from future contracts or financial assistance. The requirements and obligations that must be met by the Grantee under the Fair Wage Law include wage levels, record keeping, notices, and other requirements and obligations.

**ARTICLE V**

**EVENTS OF DEFAULT**

**SECTION 5.01 EVENTS OF DEFAULT**

The entire Grant shall be repaid to the City upon the written demand of the City, without any other notice or demand of any kind of presentment or protest, if any one of the following events (an "Event of Default") occurs and is continuing at the time of such demand, whether it is voluntarily or involuntarily or, without limitation, occurring or brought about by operation of law or under or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body:

- i. **Incorrect Representation or Warranties.** A representation or warranty contained in or made in connection with the execution and delivery of this Agreement or in any certificate furnished pursuant hereto shall prove to have been incorrect or untrue in any material respect when made;
- ii. **Default in Covenants.** Grantee defaults in the performance of

any other term, covenant or agreement contained in the Agreement and such default shall continue unremedied for 30 days after the earlier of either: (i) the default becomes known to an executive officer of Grantee; or (ii) written notice thereof was given to Grantee by the City;

- iii. **Transfer of business site.** Grantee relocates outside of Cleveland or closes operation within three years after entering into this Agreement;
- iv. **Grantee Violates Rules.** Grantee fails to obtain and/or comply with City rules, regulations and permits.

## **SECTION 5.02    REMEDIES**

If the Grantee defaults and fails to cure within thirty days, then the City shall have the right to exercise concurrently or successively any one or more of the following rights or remedies:

- A.** Recover the total amount of the Grant previously paid to the Grantee;
- B.** Wholly or partially terminate this Agreement and the rights given to the Grantee in it;
- C.** Temporarily or permanently withhold or reduce Grant funds not yet paid to the Grantee;
- D.** Disallow all or part of the cost of a noncompliant activity;
- E.** Wholly or partially suspend the Agreement; and
- F.** Exercise any and all additional rights the City may have in law or equity.

Termination under clause (A) above shall be effective five days after the date the City has given written notice to the Grantee of such termination. If City chooses any of the other remedies outlined, that remedy is effective immediately upon default of any of the obligations under the Agreement. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps models, photographs, and reports prepared by the Grantee under this Agreement, at the option of the City, shall become the property of the City and Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents; provided, however, that such compensation may be reduced in the event the City determines that any money owed the City by the Grantee has not been paid.

## **ARTICLE VI**

### **MISCELLANEOUS**

#### **SECTION 6.01 ENTIRE AGREEMENT, AMENDMENTS, WAIVERS**

All of the terms and conditions of the Agreement between the parties are stated in this Agreement. This Agreement may be amended only after written approval by the City's Director of Economic Development and the Grantee's General Manager.

This Agreement embodies the entire agreement and understanding between the City and the Grantee and supersedes all prior agreements and understandings relating to the subject matter hereof. The Grantee and the City expressly reserve all rights to amend any provision of this Agreement; that all such amendments be in writing and executed by the City and the Grantee.

#### **SECTION 6.02 NOTICES**

All notices, consents, requests, demands and other communications shall be in writing and shall be deemed to have been duly given to a party if mailed by certified mail, prepaid, to the City at its address set forth at the end of this Agreement, and to the Grantee at the address set forth at the end of this Agreement or at such other addresses as any party may have designated in writing to any other party.

#### **SECTION 6.03 SURVIVAL OF REPRESENTATIONS AND WARRANTIES**

All agreements, representations, and warranties made by the Grantee in connection with this Agreement or in any other document or certificate delivered to the City in connection with the transactions contemplated by this Agreement shall survive the delivery of this Agreement and shall continue in full force and effect until the Project is completed.

#### **SECTION 6.04 SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and shall inure to the benefit of the Grantee and the City. The terms "Grantee" and "the City" shall include any successors and assigns.

#### **SECTION 6.05 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

#### **SECTION 6.06 ARTICLE AND SECTION HEADINGS**

Article and section headings used herein are for convenience only and shall not affect the interpretation of this Agreement.

**SECTION 6.07     PROHIBITION AGAINST ASSIGNS**

The Grantee shall not assign or transfer any or all of its rights or obligations under this Agreement without obtaining the prior written approval of the City; provided, however, that if the City approves such assignment or transfer, the Grantee and the permitted assigns shall be bound by the terms and conditions of this Agreement.

**SECTION 6.08     CITY APPROVALS**

Any provision of this Agreement requiring the approval or consent of the City shall be interpreted as requiring written action by the Director of Economic Development of the City granting, authorizing or expressing such approval or consent, unless such provision expressly provides otherwise.

**SECTION 6.09     DISCLOSURE OF DOCUMENTS**

Disclosure of documents which are in the possession of the City shall be governed by the applicable federal, state and local laws.

**SECTION 6.10     ABSENCE OF RELATIONSHIPS**

The execution and delivery of the Agreement, the receipt by Grantee of the Grant, and the performance by Grantee of its obligations under the Agreement shall not be deemed to create any relationship between Grantee and the City as a third-party beneficiary, partner, joint venture, shareholder, agent, principal or otherwise. The City is in no way lending its aid and credit to Grantee.

**SECTION 6.11     SEVERABILITY**

In the event that any provision of the Agreement or the application thereof is declared null and void, invalid or illegal, or is held for any reason to be unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect and shall not be in any way affected, impaired or invalidated by those provisions. All covenants conditions and agreements contained in the Agreement are deemed and agreed to be separate.

**SECTION 6.12     CHOICE OF LAW**

This agreement shall be deemed to have been executed and delivered within the State of Ohio, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of Ohio without



regard to principles of conflicts of laws.

**Signature Page To Follow**

**AFTER DUE AUTHORIZATION**, the parties have each caused this Agreement to be duly executed as of the date first written above.

**CITY OF CLEVELAND**

Department of Economic Development  
601 Lakeside Avenue, Room 210  
Cleveland, OH 44114  
Phone: (216) 664-3611  
Tnichols2@city.cleveland.oh.us

By: \_\_\_\_\_

**TRACEY A. NICHOLS**  
DIRECTOR

Date: \_\_\_\_\_

**GREATER CLEVELAND REGIONAL  
TRANSIT AUTHORITY**

1240 West Sixth Street  
Cleveland, Ohio 44113  
EIN#:  
Phone: 216-566-5100  
Email: jcalabrese@gcrta.org

By: \_\_\_\_\_

**JOSEPH A. CALABRESE, CEO**  
GENERAL MANAGER/SECRETARY-

TREASURER

Date: \_\_\_\_\_

The legal form and correctness  
of this instrument is approved.

**BARBARA A. LANGHENRY**

Director of Law

By: \_\_\_\_\_

George E. Peters IV  
Assistant Director of Law

Date: \_\_\_\_\_

The Legal form and correctness of the  
within Instrument are hereby approved.

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General Counsel, Deputy General Manager  
For Legal Affairs

**EXHIBIT A-1**  
**Ordinance No. 90-10**

ment, and each, or any combination, of the trades or components may be the subject of a separate contract for a gross price. On request of the Director the contractor shall furnish a correct schedule of unit prices, including profit and overhead, for all items constituting units of the Improvement.

**Section 3.** That the Director of Public Service is authorized to apply and pay for permits, licenses, or other authorizations required by any regulatory agency or public authority to permit performance of the work authorized by this ordinance.

**Section 4.** That the Director of Public Service is authorized to employ by contract or contracts one or more consultants or one or more firms of consultants for the purpose of supplementing the regularly employed staff of the several departments of the City of Cleveland in order to provide professional services necessary to design the Improvement.

The selection of the consultants for the services shall be made by the Board of Control on the nomination of the Director of Public Service from a list of qualified consultants available for employment as may be determined after a full and complete canvass by the Director of Public Service for the purpose of compiling a list. The compensation to be paid for the services shall be fixed by the Board of Control. The contract or contracts authorized shall be prepared by the Director of Law, approved by the Director of Public Service, and certified by the Director of Finance.

**Section 5.** That the cost of the contracts and other expenditures authorized shall be paid from Fund Nos. 20 SF 381, 20 SF 391, 20 SF 503, 20 SF 509, 20 SF 517, and 20 SF 524, Request No. 186911.

**Section 6.** That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed February 8, 2010.  
Effective February 12, 2010.

**Ord. No. 1755-09.**

By Council Members Conwell, Dow and Sweeney (by departmental request).

An emergency ordinance to repeal Section 135.13 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 372-53, passed March 9, 1953, relating to working hours for the Division of Police.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

**Section 1.** That Section 135.13 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 372-53, passed March 9, 1953, is repealed.

**Section 2.** That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force

immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed February 8, 2010.  
Effective February 12, 2010.

**Ord. No. 90-10.**

By Council Members Brancatelli and Sweeney (by departmental request).

An emergency ordinance authorizing the Director of Economic Development to enter into various types of loan and grant agreements for economic development financial assistance and forgivable loan agreements under the Vacant Property Initiative both in amounts not to exceed \$250,000.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

**Section 1.** That the Director of Economic Development is authorized to enter into various types of loans, forgivable loans, conditional loans, and grant agreements for economic development financial assistance in amounts not to exceed \$250,000.

**Section 2.** That the Director of Economic Development is authorized to enter into forgivable loan agreements under the Vacant Property Initiative in amounts not to exceed \$250,000.

**Section 3.** That any loan, forgivable loan, conditional loan, and grant agreement entered into under this ordinance shall be authorized when approved by the Cleveland Citywide Development Corporation and the Mayor, and the Council Member in whose ward the project is being given assistance shall submit a letter of support for the project. The Director of Economic Development shall notify the Council Member in whose ward the project will occur before it has been approved by the Cleveland Citywide Development Corporation.

**Section 4.** That the loan, forgivable loan, conditional loan, and grant agreements shall be paid from Fund Nos. 17 SF 008 (UDAG Repayments), 10 SF 501 (NDIF Repayments), 17 SF 003 (SBRLL), and 12 SF 954 (EDA).

**Section 5.** That repayments of loans shall be deposited in Fund Nos. 17 SF 006, 10 SF 502, 17 SF 005, and 12 SF 958, and are appropriated for the purposes of the respective program.

**Section 6.** That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed February 8, 2010.  
Effective February 12, 2010.

**Ord. No. 128-10.**

By Council Member Brady.  
An emergency ordinance designating McKinley Elementary School as a Cleveland Landmark.

Whereas, under Chapter 161 of the Codified Ordinances of Cleveland, Ohio, 1976, the Cleveland Landmarks Commission (the "Commission"), has proposed to designate McKinley Elementary School as a landmark; and

Whereas, a public hearing under division (b)(2) of Section 161.04 was held on December 10, 2009 to discuss the proposed designation of McKinley Elementary School as a landmark; and

Whereas, the Commission has recommended designation of McKinley Elementary School as a landmark and has set forth certain findings of fact constituting the basis for its decision; and

Whereas, this ordinance constitutes an emergency measure providing for the immediate preservation of the public peace, property, health, and safety in that the immediate protection of the historic landmark is necessary to safeguard the special historical, community, or aesthetic interest or value in the landmark; now, therefore,

Be it ordained by the Council of the City of Cleveland:

**Section 1.** That McKinley Elementary School, whose street address in the City of Cleveland is 3349 West 125th Street, Cuyahoga County Auditor's Permanent Parcel Number is 021-24-075, and is also known as the following described property:

Situated in the City of Cleveland, County of Cuyahoga, and State of Ohio, and known as being Sublot Numbers 193 through 207 both inclusive and Sublot Numbers 232 through 246 both inclusive in the Lenox Park Allotment as shown by the recorded plat in Volume 23 Page 11 of Cuyahoga County Map Records be the same more or less but subject to all legal highways.

Description approved by Greg Esber, Section Chief Plats, Surveys and House Number Section Division of Engineering & Construction

which in its entirety is a property having special character or special historical or aesthetic value as part of the development, heritage, or cultural characteristics of the City, State, or the United States, is designated a landmark under Chapter 161 of the Codified Ordinances of Cleveland, Ohio, 1976.

**Section 2.** That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed February 8, 2010.  
Effective February 12, 2010, without the signature of the Mayor.

**Ord. No. 129-10.**

By Council Member Brady.  
An emergency ordinance designating Mount Calvary Evangelical Lutheran Church and School as a Cleveland Landmark.

Whereas, under Chapter 161 of the Codified Ordinances of Cleveland, Ohio, 1976, the Cleveland Landmarks Commission (the "Commission"), has proposed to designate Mount Calvary Evangelical Lutheran Church and School as a landmark; and

Whereas, a public hearing under division (b)(2) of Section 161.04 was

**EXHIBIT A-2  
CCDC RESOLUTION**

# Cleveland Citywide Development Corporation

601 Lakeside Avenue, Room 210

Cleveland, Ohio 44114

(216) 664-2406

## Board of Trustees Meeting Minutes

Thursday June 19, 2014

The meeting of the Cleveland Citywide Development Corporation Board of Trustees called to order pursuant to a notice properly given for Thursday June 19, 2014 at 1:30 a.m. 601 Lakeside Avenue, Room 210, Cuyahoga County, State of Ohio, 44114.

Members Present: Anthony Brancatelli, Colleen Gilson, Stefan Holmes, Patricia Ramsey, William Reidy, Anthony Thornton, and. Proxies – Randy Horst, Gerald Meyer, Tracey Nichols, Henry West

Staff Attendees: Michael Elliott, David Lukas, Gregory Perryman, Charles Slife, Will, Warren

Chairman Report: Stefan Holmes presided as Chairman, Michael Elliott recorded the minutes. Board of Trustee meeting minutes of May 15, 2014 approved as presented.

Move Into Executive Session: 1:40 p.m..

Motion by William Reidy and seconded By Anthony Thornton

### Resolution:

Resolution 2014-06-01 The Board of Trustees of the Cleveland Citywide Development Corporation is hereby asked to approve the Board of Trustees Minutes of June 19, 2014.

Be It Resolved That: The Cleveland Citywide Development Corporations Board of Trustees approve the minutes for April 17, 2014, as mailed.

Approved Motion to approve by William Reidy seconded by Anthony Thornton.

Resolution 2014-06-02 The Cleveland Citywide Development Corporations Board of Trustees is hereby asked to approve a \$49,000 UDAG grant to the Greater Cleveland Regional Transit Authority in order to demolish and reconstruct the Clifton Bus Shelter located on W. 117<sup>th</sup>

Be It Resolved That: The Cleveland Citywide Development Corporations Board of Trustees approve a \$49,000 UDAG grant to the Greater Cleveland Regional Transit Authority in order to demolish and reconstruct the Clifton Bus Shelter located on W. 117<sup>th</sup>

Approved Motion to approve by William Reidy seconded by Anthony Brancatelli

Resolution 2014-05-03 The Cleveland Citywide Development Corporations Board of Trustees is hereby asked to approve a Steelyard TIF grant in the amount of \$99,000 to Cudell Improvement, Inc. or designee in order to construct a public parking lot on four vacant parcels along Lorain Avenue.

Be It Resolved That: The Cleveland Citywide Development Corporations Board of Trustees approve the Steelyard TIF grant in the amount of \$99,000 to Cudell Improvement, Inc. or designee in order to construct a public parking lot on four vacant parcels along Lorain Avenue.

Approved Motion to approve by Anthony Brancatelli seconded by Patricia Ramsey

Resolution 2014-06-04 The Board of Trustees of the Cleveland Citywide Development Corporation is hereby asked to approve a Steelyard TIF grant in the amount of \$25,445 to Old Brooklyn Community Development Corporation in order to hire Downtown Cleveland Alliance to run its own Clean and Safe Program.

Be It Resolved That: The Cleveland Citywide Development Corporations Board of approve a Steelyard TIF grant in the amount of \$25,445 to Old Brooklyn Community Development Corporation in order to hire Downtown Cleveland Alliance to run its own Clean and Safe Program.

Approved Motion to approve by Anthony Brancatelli seconded by Anthony Thornton.

**EXHIBIT A-3  
COUNCILPERSON LETTER OF SUPPORT**





CITY OF CLEVELAND  
**Office of the Council**

[www.clevelandcitycouncil.org](http://www.clevelandcitycouncil.org)

**Matt Zone** COUNCIL MEMBER, WARD 15

COMMITTEES: Safety - Chair • Workforce & Community Benefits - Vice Chair  
Development, Planning & Sustainability • Finance • Operations

July 23, 2014

Tracey A. Nichols, Director  
Department of Economic Development  
City of Cleveland  
601 Lakeside Ave., Room 210  
Cleveland, Ohio 44114

Re: Support for UDAG Grant – Greater Cleveland Regional Transit Authority

Dear Director Nichols:

As the Cleveland City Councilman for Ward 15, I am committed to supporting neighborhood development that improves the quality of life of neighbors and attracts new residents. Two major projects in Ward 15 are the Enhance Clifton project – a reconstruction of Clifton Boulevard and its transformation into a bus rapid transit corridor – and the Shoppes on Clifton – a grocery-anchored retail development that will see new commercial development on Cleveland’s western boundary and the reinvention of a historic retail district. To ensure the success of these two projects, I support Economic Development awarding a \$49,000 UDAG grant to the Greater Cleveland Regional Transit Authority.

RTA’s construction of a westbound bus rapid transit station on Clifton Boulevard between West 116th Street and West 117th Street conflicts with the planned retail development it would serve. Failure to relocate the bus stop to a new location on the block jeopardizes the retail developer’s ability to secure a lease from its major tenant, Giant Eagle. A thorough community engagement process has led to a proposed holistic development of the block through commercial and residential development and the exit of Giant Eagle from the process would undermine the community engagement process and would cause blight to the community through the retention of the condemned Fifth Church of Christ, Scientist. To underscore the importance of this station’s relocation, I have also agreed to provide RTA with funding for this work.

I am eager to work with your staff and RTA to ensure completion of this project and I appreciate your efforts to support economic development along Clifton Boulevard.

Respectfully,

Matt Zone  
Fifteenth Ward Council Member

**EXHIBIT B-1**

**GRANT DISBURSEMENT REQUEST FORM**

Under the Agreement by and between the CITY OF CLEVELAND, OHIO ("City") and GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY ("Grantee"), the undersigned hereby requests, \$\_\_\_\_\_ from the Grant (as defined in the Agreement), that amount shall be applied to the total cost of the Project as defined in the Agreement.

In connection with the foregoing request, the undersigned hereby certifies on behalf of Grantee that:

Grantee has expended and/or incurred costs after \_\_\_\_\_ in the aggregate amount of (\$\_\_\_\_\_) on the Project, as evidenced by copies of the invoices and canceled checks (or other documentation acceptable to the City) attached hereto. Grantee requests disbursement of (\$\_\_\_\_\_) of funds.

**Greater Cleveland Regional Transit Authority**

1240 West Sixth Street  
Cleveland, Ohio 44113

EIN#:

Phone: 216-566-5100

Email: jcalabrese@gcrta.org

By: \_\_\_\_\_

**JOSEPH CALABRESE**  
CHIEF EXECUTIVE OFFICER

Date: \_\_\_\_\_



**EXHIBIT C**  
**Sources and Uses of Funds**

**EXHIBIT C - UDAG GRANT**  
**SOURCES AND USES OF FUNDS FOR PROJECT**

Grantee Name: Greater Cleveland Regional Transit Authority

Participating Bank: N/A

Project Manager: Charles Slife

Date: 1/15/2015

Based upon project costs submitted by Applicant, the following are N/A (not applicable)

OEO - 0/10 N/A  
 OEO - 15% MBE, 7% FBE, 8% CSB N/A  
 Fannie M. Lewis Cleveland Resident Employment Law N/A  
 Living Wage Law N/A  
 Prevailing Wage N/A

USES	SOURCES	1	2	3	4	TOTAL SOURCES
		City UDAG Loan	Equity		Other	
I. Use of Funds						
RTA Bus Shelter Relocation	\$ 42,061.17	\$ 21,030.58			\$ -	\$ 63,091.75
<b>TOTAL USES</b>	<b>\$ 42,061.17</b>	<b>\$ 21,030.58</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 63,091.75</b>
(-) Non-Leveragable Costs	\$ -	\$ 21,030.58	\$ -	\$ -	\$ -	\$ 21,030.58
(=) Leveragable Costs	\$ 42,061.17	\$ -	\$ -	\$ -	\$ -	\$ 42,061.17

**EXHIBIT D**

**Collateral**

**Intentionally Deleted**

**EXHIBIT E**

**SITE PLAN**

