

RESOLUTION NO. 2015-72

AUTHORIZING A TWO (2) YEAR INTERGOVERNMENTAL AGREEMENT  
WITH CUYAHOGA COUNTY FOR THE PURCHASE OF SUPPLEMENTARY  
UNLEADED 87 OCTANE FUEL FROM THE AUTHORITY

WHEREAS, Cuyahoga County ("County"), located at 2079 East 9th Street, 5<sup>th</sup> Floor, Cleveland, Ohio 444115, desires to purchase from the Authority unleaded 87 octane fuel to supplement the fueling of County vehicles; and

WHEREAS, the proposed intergovernmental agreement between the Authority and the County, for the purchase of a minimum of 70,000 gallons, would have a two (2) year term, with a 90 day trial period; and

WHEREAS, the price per gallon to be paid by the County will be determined by the Authority based on the current purchase price the Authority paid for the fuel based on the Oil Price Information Service index; and

WHEREAS, the Authority's Paratransit Facility, located at 4600 Chester Avenue, Cleveland, Ohio 44013, is able to provide this supplemental fuel; and

WHEREAS, the General Manager/Secretary-Treasurer deems the Intergovernmental Agreement for the sale of supplementary fuel by the Authority to the County, to be in the best interest of the Authority and recommends acceptance thereof by the Board of Trustees.

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 Authority be and the same is hereby authorized to enter into an intergovernmental agreement with Cuyahoga County for the sale of supplementary unleaded 87 octane fuel, for a term of two (2) years, with a 90 day trial period.

Section 2. That the General Manager/Secretary-Treasurer of the Authority be and he is hereby authorized to accept funds from Cuyahoga County from the sale of fuel and to deposit those funds into the General Fund.

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

Adopted: July 28, 2015

  
\_\_\_\_\_  
President

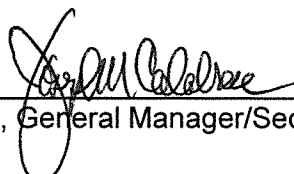
Attest:   
\_\_\_\_\_  
CEO, General Manager/Secretary-Treasurer



<b>TITLE/DESCRIPTION:</b> INTERGOVERNMENTAL AGREEMENT WITH CUYAHOGA COUNTY FOR THE PURCHASE OF SUPPLEMENTARY UNLEADED 87 OCTANE FUEL FROM THE AUTHORITY	<b>Resolution No.:</b> 2015-72
	<b>Date:</b> July 23, 2015
	<b>Initiator:</b> Executive
<b>ACTION REQUEST:</b> <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 a two (2) year Intergovernmental Agreement ("Agreement") with Cuyahoga County to allow for the sale of supplementary fuel.
- 2.0 **DESCRIPTION/JUSTIFICATION:** Cuyahoga County desires to purchase supplementary unleaded 87 octane fuel from the Authority's Paratransit facility for County vehicles. Under the proposed Agreement, for a period of two (2) years, the Authority would sell to the County a minimum of 70,000 gallons of unleaded 87 octane fuel. The price per gallon to be paid by the County will be determined by the Authority based on the current purchase price the Authority paid for the fuel based on the Oil Price Information Service index. The Authority has sufficient fuel stores to sell this fuel, as needed, to the County. There will be a 90 day trial period for this transaction. A draft of the proposed Agreement is attached hereto.
- 3.0 **PROCUREMENT BACKGROUND:** Does not apply.
- 4.0 **AFFIRMATIVE ACTION/DBE BACKGROUND:** Does not apply.
- 5.0 **POLICY IMPACT:** Does not apply.
- 6.0 **ECONOMIC IMPACT:** GCRTA General Fund will be reimbursed in an amount not to exceed \$400,000.00 for the two (2) year term.
- 7.0 **ALTERNATIVES:** Does not apply.
- 8.0 **RECOMMENDATION:** It is recommended that the resolution be passed authorizing the General Manager/Secretary-Treasurer to enter into this Intergovernmental Agreement with Cuyahoga County.
- 9.0 **ATTACHMENTS:** Intergovernmental Agreement between County of Cuyahoga, Ohio and Greater Cleveland Regional Transit Authority.

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

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

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
COUNTY OF CUYAHOGA, OHIO  
AND  
GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY**

This Intergovernmental Agreement is made this 1<sup>st</sup> day of August 1, 2015 (“Effective Date”), by and between Greater Cleveland Regional Transit Authority, a political subdivision of the State of Ohio (hereinafter “GCRTA” or “Vendor”), and the County of Cuyahoga, Ohio, a body corporate and politic and a political subdivision of the State of Ohio organized and existing under the Charter of Cuyahoga County effective January 1, 2010, as same may have been amended, modified, and supplemented to the date hereof, through and on behalf of the Department of Public Works (hereinafter the “County”). As used herein, each of the County and the Vendor are individually a “Party” and are collectively the “Parties.”

**WITNESSETH:**

**WHEREAS**, GCRTA has the capacity to sell to the County supplementary fuel; and

**WHEREAS**, the County is an end user of fuel that requires a dependable and high quality fuel source; and

**WHEREAS**, GCRTA is competent to sell its fuel and desires to supply fuel to the County; and

**WHEREAS**, GCRTA agrees to sell and the County desires to purchase fuel according to the terms and conditions of this Intergovernmental Agreement.

**NOW THEREFORE**, in consideration of the mutual promises and obligations herein to be observed and performed by the parties hereto, the County and GCRTA hereby agree as follows:

**ARTICLE I**  
**GENERAL TERMS**

**1.1 Scope of Services**

The Vendor shall sell gasoline fuel to the County at the Vendor’s Paratransit facility located at 4600 Chester Avenue in Cleveland, Ohio 44103 (“Premises”), subject to the terms and conditions of this Intergovernmental Agreement. The Vendor agrees to sell to the County a minimum quantity of 70,000 gallons of unleaded 87 octane fuel during the Term of the Intergovernmental Agreement.

**1.2 Access to Premises**

Subject to the terms of this Intergovernmental Agreement, Vendor grants the County the right to access the Premises 24 hours per day, 7 days per week, except during the hours of 4:30 pm through 6:00 pm, Monday through Friday, during the Term for the purpose of fueling County vehicles.

Vendor agrees to keep the Premises free of materials, equipment, vehicles, trees, shrubbery, and any other obstructions which would interfere with County's access to the Premises to obtain fuel. The County agrees to comply with the reasonable rules and regulations established from time to time at the Premises by Vendor, which will not unreasonably interfere with County's use of the Premises under this Intergovernmental Agreement.

Vendor shall provide the County with access cards to access the Premises. County agrees to supply to Vendor a complete and accurate written list of all vehicles, employees and agents of the County who have been provided the access cards to the Premises.

County agrees to pay \$25.00 per each access card issued to it, and a fee of \$25.00 will be assessed to issue a replacement access card for any access card that is lost, destroyed or damaged.

County agrees to enter and exit the Premises via Chester Avenue. County further agrees to fuel its vehicles in Fuel Lane 1 of the Premises.

County agrees to replace and/or repair any damage to the Premises and its appurtenances directly caused by the County's entry onto the Premises.

### 1.3 **Intergovernmental Agreement Amount**

The County shall pay Vendor for the fuel purchased during the Term an amount not to exceed \$400,000.00.

### 1.4 **Invoicing**

The County shall pay Vendor after submission to and approval by the Cuyahoga County Director of Public Works a monthly invoice itemizing the actual quantity and the type of fuel used by the County to the date of the invoice. All invoices are to clearly state the octane rating of fuel being purchased. The price per gallon will be determined by the Vendor based on the current purchase price Vendor paid for the fuel based on the Oil Price Information Service ("OPIS") index. Pursuant to ORC §5736.02(D) Vendor's supplier of motor fuel invoices Vendor for Ohio's Petroleum Activity Tax. County will be responsible for the Petroleum Activity Tax on the gallons of fuel it purchases from Vendor. County also agrees to be responsible for any and all associated State and Federal fuel taxes related to the purchase of the subject fuel. If Vendor incurs increased delivery costs due to the amount of fuel purchased by the County, those costs will be borne in full by the County. If the invoice is not acceptable, the County shall inform Vendor as to the reasons and the corrective actions necessary, if any, to qualify the invoice for approval.

1.5 **Liability and Insurance**

- A. Each Party agrees to have self-insurance sufficient to cover its participation under this Intergovernmental Agreement. The County's statement of self-insurance is attached hereto as Exhibit A. The Vendor's statement of self-insurance is attached hereto as Exhibit B.

In the event a Party discontinues its policy of self-insurance, that Party agrees to acquire and maintain insurance with respect to the services provided under this Intergovernmental Agreement for which the Party is no longer self-insured and provide the other Party a certificate of insurance evidencing its acquisition of such insurance coverage.

- B. Each Party assumes responsibility for its own acts, omissions, negligence and intentional acts that may cause damage or injury.

**ARTICLE II**  
**INTERGOVERNMENTAL AGREEMENT TERM AND TERMINATION**

2.1 **Term**

The Term of this Intergovernmental Agreement shall begin with a 90 day trial period commencing on August 1, 2015 and continuing, unless canceled or terminated under the provisions of this Intergovernmental Agreement, until October 30, 2015. At the conclusion of the trial period, GCRTA in its sole discretion, shall determine whether to continue this Intergovernmental Agreement beyond the initial trial period. If GCRTA should determine to continue this Intergovernmental Agreement, the Term of this Intergovernmental Agreement shall continue, unless canceled or terminated under the provisions of this Intergovernmental Agreement, until July 31, 2017.

2.2 **Termination**

- A. *For Cause.* If either Party breaches any term of this Intergovernmental Agreement, the non-breaching Party reserves the right to immediately suspend performance and supply written notice of an intent to terminate to the breaching party. The breaching Party shall have thirty (30) calendar days to cure the breach from the date of its receipt of the notice of breach. If the breaching Party cures the breach to the satisfaction of the other party, the Intergovernmental Agreement shall not terminate and the non-breaching party will resume performance. If the breaching Party fails to cure the breach within thirty calendar days the Intergovernmental Agreement shall immediately and automatically terminate for cause.
- B. *For Convenience.* Each party shall have the right to terminate this Intergovernmental Agreement at any time during the trial period, the base term or

any extension with thirty (30) calendar days advance written notice to the other.

**ARTICLE III**  
**COMPLIANCE WITH LAW**

**3.1 Compliance with Law in the Course of Performance**

The Parties agree to comply with all Federal, State, County, and municipal laws, ordinances, resolutions, and policies applicable to the purchases to be made under this Intergovernmental Agreement.

**3.2 Licenses, Permits, and/or other Clearances**

Each party shall obtain all Federal, State, County, and local licenses, permits, and clearances necessary to fulfill its obligations under this Intergovernmental Agreement.

**ARTICLE IV**  
**STANDARD COUNTY REQUIREMENTS**

**4.1 Applicable County Ordinances**

All contracts with the County, including this Intergovernmental Agreement, are subject to Cuyahoga County Code and all applicable laws, ordinances, resolutions, regulations, rules and policies of the County, including but not limited to Title 4: Ethics Ordinance and Title 5: Contracts and Purchasing. Copies of the Cuyahoga County Code and all County ordinances are available on the County's website at <http://code.cuyahogacounty.us/> and <http://council.cuyahogacounty.us/>

**4.2 Ethics Requirements**

The Vendor agrees to remain in compliance with all County Ethics requirements including, as applicable, Vendor Ethics Registration, Vendor Ethics Training, and Registration of all Lobbyists retained by the Vendor. The Vendor shall consult the Cuyahoga County Office of Inspector General to ensure it is in full compliance with all County Ethics requirements. The Inspector General's website may be found at: <http://inspectorgeneral.cuyahogacounty.us/>.

**4.3 Public Records Law**

This Intergovernmental Agreement shall be considered a public record under the Ohio Public Records Act Ohio Revised Code §149.43, et seq. and shall be available for inspection and copying by the public.

**4.4 Findings for Recovery**

Vendor represents and warrants that it is not subject to an “unresolved” finding for recovery under Ohio Revised Code §9.24.

**4.5 No Apparent Authority**

Vendor recognizes and agrees that no public official, officer, director, or employee of the County may be deemed to have apparent authority to bind the County to any contractual obligations not properly authorized pursuant to the County’s Contracting and Purchasing Procedures Ordinance. County recognizes and agrees that no public official, officer, director, or employee of the Vendor may be deemed to have apparent authority to bind the Vendor to any contractual obligations not properly authorized.

**4.6 No Indemnification by County and Vendor**

Vendor and County acknowledge that as Ohio political subdivisions, the Parties do not indemnify any person or entity. Vendor and County agree that no provision of this Intergovernmental Agreement or any other contract or agreement between Vendor and the County may be interpreted to obligate the Vendor and County to indemnify or defend one another or any other party.

**4.7 County Tax Status**

The County shall not assume responsibility for the payment of any personal property taxes for any materials not owned by the County, nor shall the County pay any insurance premiums for any coverage of any property not owned by the County. No conditions shall alter this statement. The County is a tax exempt No. 29 political subdivision of the State of Ohio. Necessary tax exemption blanks will be furnished to the Vendor when the contract becomes effective.

**ARTICLE V**  
**EMPLOYMENT PRACTICES**

**5.1 Anti-Discrimination**

Vendor agrees that in its employment of labor, skilled or unskilled, there shall be no discrimination exercised against any person because of race, color, religion, national origin, sex, gender, ancestry, age, disability, sexual orientation, sexual identity, genetic information, military status, or veteran status, and a violation of this term shall be deemed a material breach of this Intergovernmental Agreement.

It shall be the policy of Vendor to provide equal opportunity to all business persons seeking to contract, or otherwise interested in contracting with Vendor, including various eligible Small Business Enterprises.

**ARTICLE VI**  
**NOTICE**

6.1 Every notice, demand, consent, request, approval, report, offer, acceptance, certificate, or other communication which may be, or is required to be, given or delivered under or with respect to this Intergovernmental Agreement shall be in writing and sent postage prepaid by United States registered or certified mail, return receipt requested, and directed to the other party at its address set forth below, or at such other address within the continental United States as any party may hereafter designate by similar notice to the other.

<b>To County:</b> (Enter Issuing Department/Agency/ Office/Court Address)	<u>The County of Cuyahoga, Ohio</u> <u>Attn: Director of Department of Public</u> <u>Works</u> <u>Department of Public Works</u> <u>2079 East 9<sup>th</sup> Street, 5<sup>th</sup> Floor</u> <u>Cleveland, Ohio 44115</u>
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With respect to any legal claims or disputes, and/or issues of liability, a simultaneous copy must be sent to:	The County of Cuyahoga, Ohio Attn: Cuyahoga County Director of Law Cuyahoga County Department of Law 2079 East 9 <sup>th</sup> Street, 7 <sup>th</sup> Floor Cleveland, Ohio 44115
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<b>To Vendor:</b> (Enter Vendor Address)	<u>The Greater Cleveland Regional Transit</u> <u>Authority</u> <u>CEO, General Manager/Secretary-Treasurer</u> <u>1240 West 6<sup>th</sup> Street</u> <u>Cleveland, Ohio 44113-1302</u>
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With a copy to:

The Greater Cleveland Regional Transit  
Authority  
Director of Procurement  
1240 West 6<sup>th</sup> Street  
Cleveland, Ohio 44113-1302



**ARTICLE VII**  
**MISCELLANEOUS**

**7.1 Governing Law/Jurisdiction**

This Intergovernmental Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Ohio. The parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Intergovernmental Agreement, and each party consents to the exclusive jurisdiction of such courts. The parties hereby agree not to challenge this Governing Law and Jurisdiction provision, and further agree not to attempt to remove any legal action outside of Cuyahoga County for any reason.

**7.2 Vendor's Certifications**

Vendor certifies that the fuel to be supplied under this Intergovernmental Agreement shall be supplied to the County free and clear from any covenants, restrictions, liens or any other encumbrances of any nature whatsoever, except those contained in this Intergovernmental Agreement.

**7.3 Entire Intergovernmental Agreement**

This Intergovernmental Agreement constitutes the entire agreement of the parties. No prior agreements or understandings, or oral modifications or representations are enforceable hereunder unless reduced to written form, signed by both parties, and incorporated herein by amendment prior to performance of the affected Services.

**7.4 Intergovernmental Agreement Interpretation and Construction**

In the event an ambiguity or question of intent or interpretation arises, this Intergovernmental Agreement shall be construed as though drafted by both parties, and no presumption or burden of proof shall arise favoring or disfavoring one party by virtue of the authorship of any of the provisions of this Intergovernmental Agreement.

**7.5 Authority**

Each signatory hereto certifies that he or she is duly authorized and empowered to sign and deliver this Intergovernmental Agreement on behalf of all entities named below on whose behalf he or she has so acted.

**7.6 Prohibition on Assignment**

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Intergovernmental Agreement without prior written consent from the other party.

**7.7 Successors and Assigns**

All terms, covenants, conditions and provisions of this Intergovernmental Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, devisees, executors, administrators, legal representatives, and permitted successors in interest and assigns.

**7.8 Paragraph Headings; Gender and Number**

The headings inserted at the beginning of each paragraph of this Intergovernmental Agreement are for convenience and reference only and shall not define, limit, describe, or otherwise affect or be used in the construction of any of the terms or provisions hereof. The use of any one gender shall include all others. The plural number shall include the singular, and the singular number the plural, wherever the context so admits.

**7.9 Herein/Including**

The terms “herein,” “hereof,” “hereunder” or words of similar import shall be deemed to refer to this Intergovernmental Agreement in its entirety unless otherwise specifically stated. Whenever the word “including,” “includes” or any variation thereof is used herein, such term shall be construed as a term of illustration and not a term of limitation. For example, the term “including” shall be deemed to mean “including, without limitation”, and the term “includes” shall be deemed to mean “includes, without limitation”.

**7.10 Amendment**

No alteration, amendment or modification hereof shall be valid unless executed by an instrument in writing by the parties hereto with the same formality as this Intergovernmental Agreement.

**7.11 Counterparts**

This Intergovernmental Agreement may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, and all of which shall together constitute one and the same document, and shall be binding on the signatories; and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

In the event that any signature is delivered by facsimile transmission, by email delivery of a “.pdf” format data file, or by uploading of a “.pdf” format data file on the County’s website, such signatures shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

**7.12 Survival**

Notwithstanding anything to the contrary, any provision of this Intergovernmental Agreement that, by its terms, survives any termination or expiration of this Intergovernmental Agreement shall survive and shall be enforceable after any termination or expiration of this Intergovernmental Agreement.

**7.13 Severability**

If any provision of this Intergovernmental Agreement is invalid or unenforceable for any reason, this Intergovernmental Agreement shall be divisible as to such provisions and the remainder of this Intergovernmental Agreement shall be and remain valid and binding as though such provision was not included.

**7.14 Non-Exclusivity**

Nothing herein is intended, nor shall be construed, as creating any exclusive arrangement with the Vendor. The County reserves the right to acquire similar, equal, or like goods, services, and/or other deliverables from other entities or sources.

Nothing herein is intended, nor shall be construed, as creating any exclusive arrangement with the County. The Vendor reserves the right to sell excess fuel to other entities.

**7.15 Non-Waiver**

The County's failure to require performance of any provision of this Intergovernmental Agreement, or if it requires performance and does not follow through, shall not affect the County's right to require performance at any time thereafter. Additionally, the County's waiver of any breach or default of this Intergovernmental Agreement shall not constitute a waiver of any subsequent breach or default or a waiver of the provision itself or any other provision.

**7.16 No Warranties**

The County accepts the fuel purchased from Vendor "as is" without warranties by Vendor of any kind or nature, express or implied.

**7.17 Independent Contractor**

The Vendor shall be and remain an independent contractor with respect to all services performed herein and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Local, State or Federal Law which are measured by the wages, salaries, or

other remuneration paid to persons employed by the Vendor for work performed under the terms of this Intergovernmental Agreement and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by any duly authorized State or Federal officials.

**ARTICLE VIII**  
**ELECTRONIC SIGNATURE**

**THE VENDOR AGREES ON BEHALF OF THE SUBMITTING BUSINESS ENTITY, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, THAT ALL CONTRACT DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY THE COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. THE VENDOR ALSO AGREES ON BEHALF OF THE AFOREMENTIONED ENTITY AND PERSONS, TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF CUYAHOGA COUNTY.**

IN WITNESS WHEREOF, the Parties have each caused their duly authorized representatives to execute this Intergovernmental Agreement, effective as of the Effective Date.

**GREATER CLEVELAND REGIONAL  
TRANSIT AUTHORITY**

By: \_\_\_\_\_  
Joseph A. Calabrese CEO  
General Manager/Secretary-Treas.

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

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

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

**COUNTY OF CUYAHOGA, OHIO**

By: \_\_\_\_\_  
Armond Budish, County Executive

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