

RESOLUTION NO. 2016-105

AUTHORIZING A MEMORANDUM OF UNDERSTANDING WITH UNIVERSITY CIRCLE, INC. FOR IMPROVEMENTS TO THE CEDAR/MLK INTERSECTION AT THE CEDAR – UNIVERSITY RAPID STATION

WHEREAS, GCRTA wishes to enter into an agreement with University Circle, Inc. (UCI) for the implementation of improvements to the Cedar/MLK intersection at the Cedar-University Station; and

WHEREAS, UCI will be responsible for the final design of the improvements and has obtained a green infrastructure grant from the Northeast Ohio Regional Sewer District in an amount up to \$127,900.00 that will be used for the proposed improvements to the Cedar/MLK intersection; and

WHEREAS, GCRTA will be responsible for the bidding and construction of the improvements and has received permission from the Federal Transit Administration to apply unused TIGER II grant funding for this project; and

WHEREAS, GCRTA will apply the TIGER II funds toward the proposed improvements to the roadway, curbs, crosswalk, sidewalks and appurtenances on the north side of the Cedar/MLK intersection; and

WHEREAS, GCRTA will be responsible for the maintenance of the green infrastructure components of the project for up to 20 years.

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

Section 1. That the CEO, General Manager/Secretary-Treasurer of the Greater Cleveland Regional Transit Authority be and is hereby authorized to enter into a Memorandum of Understanding with University Circle, Inc. for the purpose of improving the Cedar/MLK intersection.

Section 2. GCRTA will fund its portion of the proposed improvements including roadway, curbs, sidewalks, and appurtenances on the north side of the Cedar/MLK intersection from unused TIGER II grant OH-79-0001 funds and will be reimbursed by UCI for up to \$127,900.00 for the green infrastructure elements of the proposed improvements.

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

Adopted: November 15, 2016



President

Attested: 

CEO General Manager/Secretary-Treasurer



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

TITLE/DESCRIPTION: CONTRACT: MEMORANDUM OF UNDERSTANDING WITH UNIVERSITY CIRCLE, INC. FOR IMPROVEMENTS TO THE CEDAR/MLK INTERSECTION AT THE CEDAR – UNIVERSITY RAPID STATION VENDOR: UNIVERSITY CIRCLE, INC. AMOUNT: N/A	Resolution No.: 2016-105
	Date: November 10, 2016
	Initiator: Engineering and Project Development
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 GCRTA to enter into Memorandum of Understanding (“MOU”) with University Circle, Inc. (“UCI”) for improvements to the Cedar/MLK intersection.

- 2.0 **DESCRIPTION/JUSTIFICATION:** GCRTA was approached by UCI to participate in the construction of improvements to the Cedar/MLK intersection shortly after our Cedar-University Station had opened and the new John Hay High School Campus reopened. Pedestrian flow between the two facilities was not occurring as anticipated and, as a safety measure, temporary barriers were placed in the intersection to protect pedestrians and decrease the length of the crosswalk on the north side of the intersection.

The proposed project will make the temporary solution permanent and incorporate green infrastructure into the intersection. UCI has obtained grant funding from the Northeast Ohio Regional Sewer District for the green infrastructure and is completing the final design. GCRTA has received permission to apply unused TIGER II funds for the intersection improvements and will manage the bidding and construction phases of the project. The MOU documents the arrangement between GCRTA and UCI to implement the proposed project.

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

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

- 5.0 **POLICY IMPACT:** Entering into this agreement supports GCRTA in working with local communities and agencies to provide an improved customer and pedestrian environment at our station areas. The project is consistent with GCRTA’s strategic plan, mission, vision, and values.

- 6.0 **ECONOMIC IMPACT:** GCRTA will be reimbursed up to \$127,900.00 of funding that UCI has obtained for the green infrastructure components of the proposed Cedar/MLK intersection improvements. GCRTA’s costs for the proposed project will be funded by unused TIGER II grant funding.

- 7.0 ALTERNATIVES: The rejection of the MOU will prevent the improvements to the Cedar/MLK intersection from occurring.
- 8.0 RECOMMENDATION: It is recommended that the MOU be authorized and the resolution passed.
- 9.0 ATTACHMENT: Attachment A – Draft MOU

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



CEO, General Manager/Secretary-Treasurer

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “MOU”) is made and entered into as of the ___ day of _____, 2016 (the “**Effective Date**”), by and between University Circle Incorporated, a 501(C)(3) non-profit organization of the State of Ohio, (“UCI”), having a mailing address at 10831 Magnolia Drive, Cleveland, Ohio 44106, and The Greater Cleveland Regional Transit Authority (“GCRTA”), a political subdivision of the State of Ohio, having a mailing address at 1240 W. 6th Street, Cleveland, Ohio 44113.

RECITALS:

WHEREAS, UCI (as “**Sub-Grantee**” thereunder) has entered into that certain Sub-Grant Agreement dated as of _____, 2016 (the “**Sub-Grant Agreement**”) with the Northeast Ohio Regional Sewer District (the “**District**”), a regional sewer district organized and existing as a political subdivision of the State of Ohio under Chapter 6119 of the Ohio Revised Code (which Sub-Grant Agreement is attached hereto as **Attachment A**);

WHEREAS, the Sub-Grant Agreement has been made in furtherance of the District’s Green Infrastructure Grants Program (“**GIG Program**”), which promotes the implementation of water resource projects through the construction of green infrastructure (“**GI**”) in the District’s combined sewer area to remove stormwater from the combined sewer system and reduce the release of combined sewage into the environment; and

WHEREAS, the District and the City of Cleveland (the “**City**”), pursuant to an application made by the City to the District, entered into that certain City of Cleveland Grant Agreement (the “**Grant Agreement**” as attached to the Sub-Grant Agreement) whereby the District has agreed to provide a GIG Program grant to in the total amount of One Million Eight Hundred Ninety-One Thousand Nine Hundred Forty-Nine Dollars (\$1,891,949.00) to perform various GI Projects located within the City; and

WHEREAS, under the Grant Agreement, the District and City agreed to permit the implementation of the GI Projects through Sub-Grant agreements between the District and various entities performing the GI Projects on the City's behalf; and

WHEREAS, the Sub-Grantee was awarded a grant, on a reimbursement basis, in the amount of One Hundred Twenty-Seven Thousand Nine Hundred Dollars (\$127,900.00) (the "Grant") to perform that certain MLK – Carnegie Green Infrastructure Project (the "Project", as further described in Exhibit D attached to the Sub-Grant Agreement); and

WHEREAS, in connection with and pursuant to the Sub-Grant Agreement, the District and UCI agreed that UCI may enter into certain further agreement(s), subject to the prior approval of the District, with a Designated Site Partner, for the construction and maintenance of the Project subject to the terms and conditions of the Sub-Grant Agreement.

WHEREAS, UCI has identified GCRTA as its initial "Designated Site Partner" as such term is defined in the Sub-Grant Agreement and desires to enter into this MOU; and

WHEREAS, GCRTA has agreed to become the initial Designated Site Partner and to construct and maintain the Project under the terms and conditions of the Sub-Grant Agreement.

NOW, THEREFORE, the parties hereto understand and agree as follows:

1. **CONSTRUCTION AND INSTALLATION OF THE PROJECT.**

GCRTA agrees it will implement, construct, employ and contract, as may be necessary with such third-parties, in its own name, and not as agent for UCI, the City, or the District, to construct and install the Project in accordance with the terms and conditions of the Sub-Grant Agreement, at its sole cost and expense, subject to the assignment of payments as provided herein.

2. **COSTS OF CONSTRUCTION AND INSTALLATION OF THE PROJECT.** GCRTA and UCI acknowledges and agrees that the initial costs associated with the construction and installation of the Project shall be borne by GCRTA; the Grant shall be made available to GCRTA; and they each acknowledge and agree that the Grant is estimated to cover

the full cost and expense of the construction and installation of the Project by GCRTA.. Notwithstanding the foregoing, provided, however, UCI hereby authorizes and assigns to GCRTA its rights to apply for and receive the Grant funds. GCRTA shall be solely responsible for all reimbursement requests to the District, which requests shall be made solely in conformance with the form(s) prescribed by the District, and including supporting information as required in the Sub-Grant Agreement and under the Green Infrastructure Grant Program Reimbursement Policy, attached to the Sub-Grant Agreement as Exhibit “E” thereto. To the extent that the actual cost of the construction and installation of the Project exceeds the actual Grant proceeds, UCI and GCRTA agree to work collaboratively to identify and source necessary additional funds.

3. **TIME IS OF THE ESSENCE.** GCRTA acknowledges and agrees that time is of the essence to construct and install the Project and agrees to use timely, reasonable efforts promptly construct and install the Project.

4. **TERM.** The initial term of this MOU shall be for an initial period of at least twenty (20) years after the completion of the initial work to install the Project (the “Term”), subject to extension by the mutual agreement of the parties for such longer period of time thereafter to facilitate the continued maintenance of the Project by GCRTA, provided the Project has continued as of such time to remain viable.

5. **ON-GOING DUTIES DURING TERM.** During the Term, GCRTA hereby agrees to fully and faithfully perform and assume all responsibilities and duties of UCI under **Article 3** of the Sub-Grant Agreement. During the Term, GCRTA agrees it will implement such responsibilities and duties under this MOU in a manner that will not disrepute UCI or the District or that will otherwise impair, tarnish, or diminish the value of or otherwise create waste of the Project and Grant.

6. **ASSIGNMENT.** The only entity to which UCI is designating is GCRTA. GCRTA acknowledges and agrees that it may not assign, sublicense, or delegate any of its rights

or obligations under this MOU without the prior written consent of UCI and the District, which consent may be withheld in their respective sole discretion.

7. **INDEPENDENT CONTRACTOR.** In all matters, GCRTA is and will be a designated site partner of UCI. Neither UCI nor GCRTA nor any officer or employee of each will be deemed to be an employee or agent of the other.

8. **INSURANCE.** During the term of this MOU, GCRTA, at its own expense, will self-insure for Commercial General Liability and Automobile Liability up to \$5 Million per claim. GCRTA has insurance for any claims in excess thereof. GCRTA will furnish to UCI and the District, upon request, a letter of self-insurance and BWC Right to Self-Insure.

9. **TERMINATION.** This MOU may be terminated as follows: (a) by UCI (or the District) upon the breach or default by GCRTA in the performance of any provision hereof, upon written notice of the breach or default in question. GCRTA will have thirty (30) days to cure the same, after receiving written notice setting forth with particularity the facts underlying the purported breach or default from the non-breaching party. If the default is not cured within the thirty (30) day cure period, this MOU may, at the election of UCI (or the District) be terminated automatically; or (b) by any party, upon the bankruptcy, insolvency, dissolution, merger of, appointment of a receiver against, or assignment for the benefit of creditors by, any other party.

10. **GOVERNING LAW; NOTICES.** This MOU is intended by the parties to comply with all applicable laws. Any provision which is prohibited by law is non-enforceable and will be severed from this MOU. This MOU will be governed by and interpreted in accordance with the laws of the State of Ohio, including all matters of construction, validity, performance and enforcement, but without giving effect to principles of conflict of laws. The State and Federal Courts in Cleveland, Ohio will have exclusive jurisdiction and venue over any dispute arising hereunder or related hereto.

11. **NOTICES.** All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this MOU will be in writing and will be deemed to have been properly given if to:

UCI

University Circle Incorporated
Attn: Elise Yablonsky
University Circle Incorporated
10831 Magnolia Drive
Cleveland, OH 44106
eyablonsky@universitycircle.org

GCRTA

The Greater Cleveland Regional Transit Authority
Attn: Michael J. Schipper,
DGM, Engineering & Project Management
Greater Cleveland Regional Transit Authority
1240 W. 6th Street
Cleveland, Ohio 44113
mschipper@gcrta.org

with a copy to:

DISTRICT
Northeast Ohio Regional Sewer District
Attn: Linda Mayer or Successor
Watershed Funding Administrator
3900 Euclid Avenue
Cleveland, OH 44115
mayerl@neorsd.org

12. **RECITALS/TITLES.** The Recitals to this MOU are an integral part of this MOU and are incorporated herein by reference. The titles used in this MOU are used for convenience only and are not to be considered in construing or interpreting this MOU.

13. **NO THIRD PARTY BENEFICIARIES.** Nothing in this MOU entitles any person other than the UCI or GCRTA or their permitted assignees and licensees to any claim, cause of action, remedy, or right of any kind.

14. **FULLY INTEGRATED MOU.** This MOU contains the entire understanding of the parties with respect to the subject matter hereof. Nothing other than this MOU will be relevant or admissible to explain, supplement, vary, or contradict any of the terms and provisions hereof. No representations, undertakings, understandings, or agreements have been made or relied upon by the parties in entering into this MOU other than those specifically set forth herein. This MOU may not be altered, modified, or otherwise changed in any respect except by written agreement duly executed by each of the parties signing below. Any purported alteration, modification, or other change, which fails to comply with these requirements, will be null and void.

15. **NON-CIRCUMVENTION.** No party may, in any manner, directly or indirectly, circumvent or attempt to circumvent this MOU, including without limitation, forming or in any way or participating in any corporation, partnership, limited liability company, syndicate, or other firm, entity, or group (or otherwise acting in concert with any person, firm, or entity) for the purpose of taking any action in circumvention of this MOU, or which is restricted or prohibited under this MOU.

16. **FURTHER ASSURANCES.** The parties hereby agree to perform all further acts and to execute and deliver all further documents reasonably necessary to or in furtherance of the intent and purposes of this MOU without demand for further consideration.

17. **COUNTERPARTS.** This MOU may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any such counterpart, to the extent delivered by means of a facsimile machine or by .pdf, .tif, .gif, .jpeg or similar attachment to electronic mail will be treated in all manner and respects as an original executed counterpart and will be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

18. **DELAYS OR OMISSIONS.** No delay or omission to exercise any right, power or remedy accruing to any party under this MOU, upon any breach or default of any other party under this MOU, will impair any such right, power or remedy of such non-breaching or non-defaulting party, nor will it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach or default thereafter occurring; nor will any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this MOU, or any waiver on the part of any party of any provisions or conditions of this MOU, must be in writing and will be effective only to the extent specifically set forth in such writing. All remedies, either under this MOU or by law or otherwise afforded to any party, will be cumulative and not alternative.

19. **POWER AND AUTHORITY.** The parties and their signatories to this MOU represent and warrant that they have the right, power, and authority to enter into this MOU; that entering into this MOU does not violate any agreement between them and any third parties; and that they will not enter into any agreement with any third party that is inconsistent with any provisions of this MOU.

20. **TRANSACTION EXPENSES.** Each Party will pay its own legal fees and expenses related to the negotiation, execution and performance of this MOU.

IN WITNESS WHEREOF, the parties hereto have signed multiple counterparts of this MOU as of the dates set forth below their names, but effective as of the day and year first-above written.

**UNIVERSITY CIRCLE
INCORPORATED**

By: _____

Its: _____

SIGNED ON: _____, 2016

**THE GREATER CLEVELAND
REGIONAL TRANSIT AUTHORITY**

APPROVED AS TO LEGAL FORM AND
CORRECTNESS:

By: _____
Joseph A. Calabrese

Its: CEO, General Manager/Secretary-
Treasurer

SIGNED ON: _____, 2016

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