

RESOLUTION NO. 2024-109

FIRST AMENDMENT TO LEASE AGREEMENT FOR CONSTRUCTION ACCESS TO THE TRACK AND PLATFORM BRIDGES OVER WEST 117TH STREET IN AN AMOUNT NOT TO EXCEED \$20,000.00 (RTA DEVELOPMENT FUND - ENGINEERING & PROJECT DEVELOPMENT DEPARTMENT BUDGET)

WHEREAS, the Greater Cleveland Regional Transit Authority ("Authority") has undertaken a major construction project to rehabilitate the track and platform bridges over West 117th Street ("Project 62A") located in Cleveland and Lakewood, Ohio; and

WHEREAS, Norfolk Southern Railway Company ("NS") owns a parcel of real estate adjacent to the construction site and located at approximately NS Milepost CD-185.84 in the City of Lakewood, Ohio ("NS Property") which provides a connection from Madison Avenue to the Authority's rail right of way and the construction site for Project 62A; and

WHEREAS, the Authority entered into a Lease Agreement with NS in 2023 for access to the construction site across the NS Property; and

WHEREAS, the Lease Agreement with NS expires on December 31, 2024; and

WHEREAS, the Authority and NS wish to enter into a First Amendment to Lease Agreement for an additional term commencing January 1, 2025 and ending December 31, 2025 at a cost of \$20,000, for a total lease amount of \$38,000.

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, Chief Executive Officer be and she is hereby authorized to enter into a First Amendment to Lease Agreement with NS for Project 62A for the period commencing January 1, 2025 and ending December 31, 2025.

Section 2. The cost for the First Amendment to the Lease Agreement with NS shall be payable through the RTA Development Fund, Engineering & Project Development Department budget, including but not limited to, Capital Grants OH-2018-024, for a total amount not to exceed \$20,000.00 (\$16,000.00 in federal funds, which represents 80% of total cost).

Section 3. That this resolution shall become effective immediately upon its adoption.

Adopted: December 17, 2024



President

Attest:



Secretary-Treasurer



TITLE/DESCRIPTION:		Resolution No.: 2024-109
CONTRACT:	FIRST AMENDMENT TO LEASE AGREEMENT FOR CONSTRUCTION ACCESS TO THE TRACK AND PLATFORM BRIDGES OVER WEST 117 TH STREET	Date: December 12, 2024
VENDOR:	NORFOLK SOUTHERN RAILWAY COMPANY	Initiator: Engineering & Project Management
AMOUNT:	\$20,000.00	
TERM:	JANUARY 1, 2025 THROUGH DECEMBER 31, 2025	
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: To enter into a First Amendment to Lease Agreement ("First Amendment") with Norfolk Southern Railway Company ("NS") granting the Greater Cleveland Regional Transit Authority ("Authority") and its contractors access across NS property adjacent to the construction site for Project 62A – Rehabilitation of Track/Platform Bridges Over West 117th Street during the period from January 1, 2025 through December 31, 2025.

- 2.0 DESCRIPTION/JUSTIFICATION: The Authority has undertaken a major multi-year construction project to rehabilitate the track and platform bridges over West 117th Street located in Cleveland and Lakewood, Ohio. There is no alternative access to the bridges sufficient for the construction work that will take place. The Authority entered into a Lease Agreement with NS on June 8, 2023 at a cost of \$18,000 for a term which will expire on December 31, 2024, providing the Authority and its contractors with access to the construction site along the parallel NS right-of-way from approximately NS Milepost CD-185.84 to the construction site.

 The term of the proposed First Amendment to the lease will extend access from January 1, 2025 through December 31, 2025 at a cost of \$20,000, for a total lease amount of \$38,000.

- 3.0 PROCUREMENT BACKGROUND: Does not apply.

- 4.0 AFFIRMATIVE ACTION/DBE BACKGROUND: Does not apply.

- 5.0 POLICY IMPACT: Pursuant to Real Estate Policy 470.03 in the Authority's Code Book, Board authorization for this First Amendment is required because the total cost of the lease will now exceed \$25,000.

- 6.0 ECONOMIC IMPACT: The cost for the First Amendment to the Lease Agreement with NS shall be payable through the RTA Development Fund, Engineering & Project Development Department budget, including but not limited to, Capital Grants OH-2018-024, for a total amount not to exceed \$20,000.00 (\$16,000.00 in federal funds, which represents 80% of total cost).

- 7.0 ALTERNATIVES: Reject this lease amendment. Access through the NS property is the only practical way to access the construction site for Project 62A. Without access rights through the NS property, the project will be substantially delayed.

8.0 RECOMMENDATION: It is recommended that this resolution be adopted and the First Amendment to the lease agreement approved.

9.0 ATTACHMENTS:

- A. Proposed First Amendment to the Lease Agreement between Norfolk Southern Railway Company and the Authority

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



General Manager, Chief Executive Officer



Activity Number: 1325832

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "**Amendment**"), effective date of which shall be the date last executed, below, by and between **Norfolk Southern Railway Company**, a(n) **VA** corporation (the "**Landlord**") and **GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY**, a political subdivision of the State of Ohio (the "**Tenant**").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into that certain Lease Agreement dated as last amended on June 8, 2023, (as amended, the "**Lease**"), for real property located at Milepost CD-185.84 in CLEVELAND, CUYAHOGA County, OHIO, having an area of 0.68 acres/square feet, more or less (the "**Premises**");

WHEREAS, Landlord and Tenant desire to execute this Amendment to modify the rental payable by Tenant under the Lease and to make certain other changes to the Lease as hereinafter stated, with the Lease and the Amendment.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lease is hereby amended, and the parties hereto do agree as follows:

1. Adjustment of Base Rental. Commencing on January 1, 2025 (the "**Commencement Date**"), Tenant shall pay unto Landlord, without offset, abatement or demand, base rental in the amount of Twenty Thousand and 00/100 DOLLARS (\$20,000.00) in advance.

2. Renewal of Term. To renew said Lease for an additional year (1) year term, beginning January 1, 2025, the effective date hereof, and ending December 31, 2025.

3. Insurance. The insurance requirements remain as stated in the Lease. Updated insurance certificates will be provided. All insurance certificates should be delivered to Landlord's Risk Management Department, 650 W Peachtree St NW, Atlanta, GA 30308, simultaneously with the execution of this Lease by Tenant. The minimum limits of insurance provided for hereunder are not intended to be a limitation on the liability of Tenant hereunder and shall not waive Landlord's right to seek a full recovery from Tenant.

4. Notice. Any notice given pursuant to the Lease shall be in writing and sent by certified mail, return receipt requested, by hand delivery or by reputable overnight courier to:

(a) Landlord: c/o Director Real Estate, Norfolk Southern Corporation, 650 W Peachtree St NW, Atlanta, GA 30308 or at such other address as Landlord may designate in writing to Tenant.

(b) Tenant: GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, Attn: India L. Birdsong Terry, General Manager, CEO, 1240 WEST 6TH STREET, CLEVELAND, OH 44113, cc: Janet E. Burney, General Counsel, NO P.O. BOXES, or at such other address as Tenant may designate in writing to Landlord.



Any notice sent in the manner set forth above shall be deemed delivered three (3) days after said notice is deposited in the mail if sent by certified mail (return receipt requested), or upon receipt if sent by hand delivery or reputable overnight courier. Any change of notice address by either party shall be delivered to the other party by the manner of notice required hereby.

5. Ratification; Successors and Assigns. Landlord and Tenant acknowledge and agree that the Lease, as amended by this Amendment, is hereby ratified and confirmed and in full force and effect. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

6. Signature. The parties agree that if an authorized officer of a party fully signs this Agreement in the appropriate location(s) below and then returns that signature to the other party via electronic means with a pdf or similar scanned copy of that signature, then that scanned signature shall serve as that party's signature for the Agreement, and, upon full execution of the Agreement by all parties, shall create a legally binding Agreement.

[Remainder of Page Intentionally Left Blank]



IN WITNESS WHEREOF, the parties hereto have executed this Amendment in duplicate, each part being an original, as of the date last executed below.

Witness As To Landlord:

Name:

LANDLORD:
Norfolk Southern Railway Company
a(n) VA corporation

Signature: _____

Name: _____
Title: _____
Date of Landlord Signature: _____

Witness As To Landlord:

Name:

[SEAL]

Witness As To Tenant:

Name:

TENANT:
**GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY**
a political subdivision of the State of Ohio

Signature: _____

Name: India L. Birdsong Terry
Title: General Manager, Chief
Executive Officer

Date of Tenant Signature: _____

Witness As To Tenant:

Name:

Approved as to legal form & correctness:

Janet E. Burney, General Counsel
Deputy General Manager, Legal Affairs