



CUY-90-14.90

PID 77332/85531

APPENDIX RR-03

**GCRTA Railroad Agreement
(Reference Document)**

State of Ohio
Department of Transportation
Jolene M. Molitoris, Director

**Innerbelt Bridge
Construction Contract Group 1 (CCG1)**

IN THE MATTER OF THE DESIGN AND
CONSTRUCTION OF NEW GRADE
SEPARATION STRUCTURES CARRYING
INTERSTATE ROUTE 90 AND COMMERCIAL
ROAD OVER THE TRACKS OF THE GREATER
CLEVELAND REGIONAL TRANSIT AUTHORITY
IN THE CITY OF CLEVELAND, CUYAHOGA
COUNTY, OHIO.

AGREEMENT NO.: 23245

PID: 77332
(Preliminary Design/ROW)
PID 85531
(Final Design/Construction)

AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 20__ between the **State of Ohio**, acting by and through the Director of Transportation of the State of Ohio, as First Party, hereinafter referred to as the STATE, and the **Greater Cleveland Regional Transit Authority**, as the Second Party, hereinafter referred to as the AUTHORITY.

WITNESSETH:

WHEREAS, Interstate Route 90 crosses over the AUTHORITY's tracks by an existing grade separation structure, and the STATE has determined that a new grade separation structure needs to be constructed to the north of and adjacent to the existing structure to handle increased vehicular traffic, and

WHEREAS, the STATE proposes to utilize a Design-Build contractor to design and construct a new grade separation structure to carry the westbound lanes of Interstate Route 90, and a new grade separation structure to carry Commercial Road over the tracks of the AUTHORITY to the north of the existing Innerbelt bridge in the City of Cleveland, Cuyahoga County, Ohio, and

WHEREAS, said work requires the design and construction of two (2) new grade separation structures that separates the grade of the track of the AUTHORITY and the roadways described at the point hereinbefore mentioned. Said design and the resulting structures and necessary approaches thereto are hereinafter referred to as the PROJECT; and

WHEREAS, no existing AUTHORITY grade crossing will be eliminated as a result of the proposed construction; and

WHEREAS, under such conditions, Chapter 5523 of the Revised Code of Ohio and other grade crossing elimination laws of the State of Ohio do not apply to the PROJECT herein considered; and

WHEREAS, the Director of Transportation of the State of Ohio is empowered generally by Chapter 5501 of the Revised Code of Ohio to carry forward highway improvements of the type herein contemplated; and

WHEREAS, the Federal-Aid Highway Act of 1956, as amended, and Section 5531.03 of the Revised Code of Ohio have become effective, providing funds for the construction costs of projects such as is contemplated herein; and

WHEREAS, it is desired by the parties hereto to carry out and accomplish the design and construction of the PROJECT over the tracks of the AUTHORITY at the point hereinbefore mentioned and to determine and agree upon the manner of doing said work and the portion of said work to be done by each of said parties respectively, and the proportion of costs and expenses to be paid by each of said parties, and the mode and time of payment therefore.

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter stipulated to be kept and performed, it is agreed between the parties as follows:

SECTION 1

The plans of the STATE for the said improvement are anticipated to be identified by title as follows:

"State of Ohio, Department of Transportation, CUY-90-14.90 (Design-Build Westbound bridge), City of Cleveland, Cuyahoga County, Ohio".

In order for this agreement to remain in force and effect, future plans shall meet the approval of the parties hereto, and upon such approval shall become a part of this agreement by reference.

SECTION 2

The work to be done under this agreement and to be shown on future plans, which will be attached hereto by future Addendum and incorporated herein as if fully rewritten described under SECTION 1 of this agreement, consists of the design and construction of a new grade separation structure carrying the westbound lanes of Interstate Route 90 over the tracks of the AUTHORITY, and the design and construction of a new grade separation structure carrying Commercial Road over the tracks of the AUTHORITY and the necessary approaches thereto

Said work for the new grade separation structures is anticipated to consist of installation of new underground piles; construction of new concrete substructure; new concrete piers and concrete or steel superstructure.

SECTION 3

Responsibility for the several necessary items of work shall be as follows:

- a. The following items shall be let in contract by the STATE after competitive procurement as provided by law, at PROJECT expense, subject to the provisions of this agreement:
 1. Procurement of a Design-Build contractor to complete the design and construction of two (2) new proposed grade separation structures.
 2. Acquisition and payment for all necessary temporary and permanent Right-of-Way.

3. Said Design-Build contractor will complete remaining design phases of the project, including but not limited to, overall substructure and superstructure design; coordination of necessary utility and railroad interface, and construction of new proposed grade separation structures, including all grading, substructures, superstructure, roadway deck and lighting fixtures, drainage structures, approaches and all other elements deemed necessary for completion of the PROJECT.
 4. Said Design-Build contractor will provide and pay for certification of, and placement of on-site flagmen to promote safety and insure continuity of train operations as may be necessary in connection with the work performed by the STATE's Design-Build contractor.
- b. The following items shall be done or caused to be done by the AUTHORITY with its own forces, at PROJECT expense, subject to the provisions of this agreement.
1. Changes in communication and signal lines, interlocking and signal apparatus
 2. Timely coordination and cooperation with the STATE's Design-Build contractor throughout the design and construction of the project, including reviewing and returning engineering comments within thirty (30) days from date of receipt at the office of AUTHORITY's designated representative to time of response back to the Design-Build contractor.

SECTION 4

Any work not specifically provided for in SECTION 3 shall be done by one of the parties hereto as may be mutually agreed upon from time to time during progress of the work, as provided for by the rules and regulations of the Federal Highway Administration as then in effect.

SECTION 5

All work to be done by the AUTHORITY under the provisions of this agreement shall be done in accordance with the plans described in SECTION 1, and in accordance with good engineering practice. All work to be done by the STATE and its' Design-Build contractor shall be done in accordance with said plans and under the standard and supplemental specifications of the Department of Transportation in force on the date of the award of the contract, together with such special provisions as may be agreed upon by the parties hereto.

The STATE will require its' Design-Build contractor to utilize flagman protective personnel to protect railroad traffic made necessary or occasioned by his operations, as set forth in GCRTA Standard Section 01450 (attached).

The AUTHORITY agrees to furnish the STATE's Design-Build contractor at PROJECT expense, and the STATE shall require its contractor to use any additional and necessary protective personnel, services and devices, other than engineering personnel, as in the opinion of the AUTHORITY that are required to promote the safety and insure continuity of railroad traffic during the contractor's operations.

The AUTHORITY agrees to bill the STATE as a part of its regular force account work the actual cost for such additional and necessary protective services and devices, including the actual rate of pay, plus the amount paid for overtime, insurance, railroad retirement, vacation allowance, holidays, health and welfare, transportation, deadhead and turn around time, accounting and billing.

The STATE agrees to ensure timely payment to the AUTHORITY for said protective services and devices as a part of its regular force account work as set forth in this agreement.

SECTION 6

The STATE and the Design-Build contractor shall have general charge of the engineering work on the PROJECT, and the AUTHORITY shall provide such engineering services as the STATE's Design-Build contractor may require. Nothing herein shall deny the AUTHORITY the right to place inspectors on work being done on its property or facilities. Preliminary engineering costs incurred by the AUTHORITY subsequent to February 28, 2006 may be charged against the PROJECT.

Construction engineering and inspection costs incurred by the AUTHORITY subsequent to the award of the Design-Build contractor by the STATE may be charged against the PROJECT.

SECTION 7

It is understood that the construction costs of the PROJECT herein contemplated are to be financed from funds provided by the STATE expended in accordance with Federal regulations, that all plans, specifications, estimates of costs, awards of contracts, acceptance of work and procedure in general will at all times conform to all Federal laws, rules, regulations, orders and approvals applying to a Federal-Aid Project, and the STATE shall reimburse the AUTHORITY for construction costs and for preliminary and construction engineering costs in accordance with Federal-Aid Policy Guide 140(I) of the Federal Highway Administration or any subsequent amendments thereto, in such amounts and forms as are proper and eligible for payment from Federal-Aid highway funds. The AUTHORITY shall render its billings to the STATE within 90 days of project completion, in accordance with said rules and regulations, and further agrees to provide and furnish such itemized records of and substantiating data for such costs as may be necessary.

In the event that delays or difficulties arise in securing necessary approvals or in securing necessary rights of way or settling damages or damage claims which, in the opinion of the STATE, render it impracticable to utilize funds from the current appropriation for the construction of the PROJECT, the STATE may serve formal notice of cancellation upon the AUTHORITY and this agreement shall, with the exception of the obligations set forth in the following sentence, become null and void.

The STATE shall reimburse the AUTHORITY for all costs and expenses incurred by it at the request of the STATE or the Design-Build contractor, on account of the PROJECT prior to such cancellation, and shall restore the AUTHORITY's property to the condition existing prior to the initiation of the PROJECT construction.

SECTION 8

The AUTHORITY may bill the STATE monthly or periodically for its force account when costs exceed \$1,000. Progressive invoices may be submitted for work done during the previous month or period showing the portion of estimated cost completed. A final bill covering actual cost of work and showing all details shall be submitted to the STATE within ninety (90) days after completion of said work. The STATE shall pay all bills that have been approved within sixty (60) days after receipt thereof.

The STATE may hold a retainer on all bills not to exceed eight percent (8%) until final payment. Final payment for all amounts due the AUTHORITY shall be paid by the STATE within sixty (60) days after the final audit has been made and approved.

SECTION 9

The STATE or the Design-Build contractor shall acquire or settle all property, property rights and all damages to property affected by the PROJECT. The cost of said property, property rights and damages to property shall be included as a part of the PROJECT expense.

The AUTHORITY, insofar as it has the legal right to do so, shall permit the STATE and/or its Design-Build contractor to enter upon lands owned or operated by the AUTHORITY to construct and occupy said highway facilities across its property with sufficient width to permit construction and maintenance of the PROJECT. The STATE and AUTHORITY shall enter into good faith negotiations for a price to be consistent with the property interest determined by the Director of Transportation to be needed for the proposed improvement.

However, the price to be paid by the STATE to the AUTHORITY for said conveyances (representing the fair market value thereof plus damages, if any, to the residue) shall be as mutually agreed upon within nine (9) months from the date of occupancy by the STATE, and if agreement as to price is reached, an additional period of ninety (90) days shall be allowed for settlement, it being agreed however, that if no agreement as to price is reached within the aforesaid nine (9) month period, the STATE will within ninety (90) days thereafter institute an eminent domain proceeding authorized by law for the determination of the value of same. The provisions of this agreement shall survive the institution of such eminent domain proceeding.

The STATE, through the Design-Build contractor, shall furnish the plans and descriptions for any such conveyance. It is understood however, that the foregoing right of entry is a permissive use only, and this Section is not intended to convey or obligate the AUTHORITY to convey any interest in its land.

In case any action involving said improvement is brought by or against any party hereto, said party shall promptly notify the other parties of the pendency of such action.

SECTION 10

Each party hereto waives, but only against the others, any and all damages or right to claim damages to any of its property growing out of or in any way connected with the improvement herein contemplated, except as otherwise provided for in this agreement.

The STATE shall require of its Design-Build contractor a bond, conditioned according to Section 5525.16 of the Revised Code of Ohio, in favor of the STATE, and shall further require its Design-Build contractor to take out before work is commenced, and keep in effect until work is completed and accepted, a policy of Railroad Protective Liability Insurance from an insurance company authorized to do business in the State of Ohio, to protect the AUTHORITY against loss or damage to property and injury to or death of persons, and against all claims, demands, expenses, suits or judgments arising because of, or resulting from the operations of the Design-Build contractor, his subcontractor, agents or employees, such policy of insurance

Required insurance provisions are more specifically set forth in the "Special Clauses in the Proposal" which are included in this agreement by reference.

SECTION 11

The work provided for in this agreement shall be commenced by the parties hereto upon the date on which the AUTHORITY has been notified by the STATE and/or the Design-Build contractor to proceed or the date on which all funds necessary therefore on the part of the STATE have been properly certified and made available; and it shall be completed within a reasonable time thereafter, or as agreed upon by the parties.

All obligations of the STATE provided for in this agreement which require the expenditure of funds by the STATE shall terminate at the end of the present biennium, being June 30, 2011. If construction covered under said agreement is not complete by June 30, 2011, it is the expressed intention of the parties to renew said obligations for one successive biennium period; with the renewal period beginning July 1, 2011 and ending no later than June 30, 2013; until such time as construction covered under said agreement is complete. Said renewal is conditioned upon the STATE determining future appropriations will permit the STATE to renew said obligations.

All financial obligations of the STATE as provided for in this agreement are subject to the provisions of Section 126.07 of the Ohio Revised Code.

SECTION 12

Upon completion of the PROJECT herein contemplated the STATE shall at its own cost and expense, maintain, repair and renew, or by agreement with others provide for the maintenance, repair and renewal of the bridge structure and surfaces, approach grades and all other highway facilities constructed or changed under the terms of this agreement.

The AUTHORITY will permit access onto its property to perform said maintenance and shall at its own cost and expense, maintain, repair and renew all of its facilities constructed or changed under the terms of this agreement. The AUTHORITY will not be vested with any rights of ownership of the bridge structure, and will not have a duty to maintain the bridge structure, and will not, if the structure ceases to be a part of the highway system, have a duty to remove the facility from the AUTHORITY right of way.

The AUTHORITY shall have the right to attach to the portion of said structure, where it crosses the property of the AUTHORITY, such signal, electric and communication wires as may be requisite or useful in the operation of the AUTHORITY; any such attachments which are not a part of the PROJECT shall be made and maintained by the AUTHORITY at its own expense. No such attachments shall be made without the approval by the STATE of the AUTHORITY's detailed plans.

SECTION 13

This agreement shall be for the benefit of the parties hereto only and no person, firm or corporation shall acquire any rights whatsoever by virtue of this agreement, except the STATE and AUTHORITY and the successors and assigns of the AUTHORITY and the STATE.

SECTION 14

The Federal Highway Administration's Federal-Aid Policy Guide 646(B) classifies this PROJECT in Classification No. 2 resulting in no ascertainable benefits to the AUTHORITY. The Parties signatory to this agreement accept this classification as applicable in this instance. The AUTHORITY's contribution shall be zero dollars.

SECTION 15

The AUTHORITY agrees to adhere to the requirements of Ohio Ethics law as provided by Section 102.04 of the Ohio Revised Code (ORC). Design-Build contractor affirms that, as applicable to it, no party listed in division (i) or (j) of section 3517.13 of the ORC or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the governor or to his campaign committees.

SECTION 16

The AUTHORITY agrees that it is in compliance with the requirements of Ohio Revised Code section 125.111.

SECTION 17

The AUTHORITY agrees to comply with all applicable state and federal laws regarding drug-free workplace. AUTHORITY shall make a good faith effort to ensure that all AUTHORITY employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

IN WITNESS WHEREOF, the parties hereunto have caused this agreement to be duly executed in duplicate as of the day and year first above written.

THE STATE OF OHIO

By Jolene M. Molitoris
Jolene M. Molitoris
Director

GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

By _____
Print Name _____
Title _____