

RESOLUTION NO. 2024-32

LICENSE AGREEMENT FOR ACCESS AND LAYDOWN AREAS TO SUPPORT THE WEST 117<sup>TH</sup> BRIDGE REHABILITATION PROJECT (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 West 117<sup>th</sup> Bridge ("Construction Site") located in Cleveland and Lakewood, Ohio; and

WHEREAS, NeoGraf Solutions, LLC ("NeoGraf") owns a parcel of real estate adjacent to the construction site and located at 11709 Madison Avenue, Lakewood, Ohio, 44107 ("NeoGraf Property") which provides a connection from Madison Avenue to GCRTA's rail right of way and the Construction Site; and

WHEREAS, the Authority has proposed a License Agreement with NeoGraf for access to the Construction Site and for laydown areas on the NeoGraf Property to ensure access to the Construction Site for the Authority and its contractor, Suburban Maintenance and Constructions, Inc.; and

WHEREAS, the Authority and NeoGraf wish to enter into a License Agreement for a term commencing May 18, 2024 and ending December 31, 2025 at a rate of \$3,000.00 per month for a total amount not to exceed \$58,400.00.

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 license agreement with NeoGraf for access to the Construction Site and for laydown areas on the NeoGraf Property for the period commencing May 18, 2024 and ending December 31, 2025.

Section 2. That the fees owed under the License Agreement shall be payable from the RTA Development Fund, Engineering & Project Development Department budget, including but not limited to Capital Grant OH-2021-050-337, in an amount not to exceed \$58,400.00 (\$46,720.00 in federal funds, which represents 80% of total cost).

Section 3. That said agreement shall be binding upon and an obligation of the Authority contingent upon appropriation of funds and upon compliance by NeoGraf with the terms and conditions of the agreement, bonding and insurance requirements, and all applicable laws relating to contractual obligations of the Authority.

Section 4. That this resolution shall become effective immediately upon its adoption.

Adopted: April 16, 2024



President

Attest:



Secretary-Treasurer



TITLE/DESCRIPTION:		Resolution No.: 2024-32
CONTRACT:	LICENSE AGREEMENT FOR ACCESS AND LAYDOWN AREAS TO SUPPORT THE WEST 117 <sup>TH</sup> BRIDGE REHABILITATION PROJECT	Date: April 11, 2024
VENDOR:	NEOGRAF SOLUTIONS, LLC	Initiator: Engineering & Project Management
AMOUNT:	\$3,000.00 PER MONTH; NOT TO EXCEED \$58,400.00	
TERM:	MAY 18, 2024 THROUGH DECEMBER 31, 2025, SUBJECT TO EARLY TERMINATION BY GCRTA	
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 License Agreement with NeoGraf Solutions, LLC (“NeoGraf”) to give the Greater Cleveland Regional Transit Authority (“Authority”) and its contractor, Suburban Maintenance and Construction, Inc., access to the construction site and for laydown areas on NeoGraf’s adjacent property in conjunction with the West 117<sup>th</sup> Bridge Rehabilitation Project.
  
- 2.0 DESCRIPTION/JUSTIFICATION: The Authority has undertaken a major multi-year construction project to rehabilitate the West 117<sup>th</sup> Bridge located in Cleveland and Lakewood, Ohio. There is no existing access to the bridge sufficient for the construction work that will take place. This License Agreement will allow the Authority and its contractors to access the construction site through the NeoGraf property and to store construction materials and equipment.  
  
 The term of the License Agreement shall be from May 18, 2024 through December 31, 2025, at a monthly rate of \$3,000.00 per month. The License Agreement is subject to early termination by the Authority upon completion of the project and restoration of the access and laydown areas.
  
- 3.0 PROCUREMENT BACKGROUND: Does not apply.
  
- 4.0 AFFIRMATIVE ACTION/DBE BACKGROUND: Does not apply.
  
- 5.0 POLICY IMPACT: This action is consistent with the Authority’s Policies and Procedures governing the acquisition of interests in real estate.
  
- 6.0 ECONOMIC IMPACT: This agreement will be funded through the RTA Development Fund, Engineering & Project Development Department budget, including but not limited to Capital Grant OH-2021-050-337, in an amount not to exceed \$58,400.00 (\$46,720.00 in federal funds, which represents 80% of total cost).
  
- 7.0 ALTERNATIVES: Reject this offer. Access through the NeoGraf property is the only practical way to access the construction site and provide for the laydown of materials and equipment for the project. Without access rights through the NeoGraf property, the project will be substantially delayed.

- 8.0 RECOMMENDATION: This matter was discussed at the April 2, 2024 Operational Planning & Infrastructure Committee meeting and recommended for consideration by the full Board of Trustees. It is recommended that this resolution be adopted.
- 9.0 ATTACHMENT: Draft License Agreement

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

  
\_\_\_\_\_  
General Manager, Chief Executive Officer

<b>LICENSE AGREEMENT</b>
--------------------------

This License Agreement (“**Agreement**”) is made and entered into on the dates specified below, by and between **NeoGraf Solutions LLC (“NEO”)**, a Delaware limited liability company with a mailing address of 11709 Madison Avenue, Lakewood, OH 44107 (“**Licensor**”), and the **Greater Cleveland Regional Transit Authority (“GCRTA”)**, a political subdivision of the State of Ohio with a mailing address of 1240 West 6<sup>th</sup> Street, Cleveland, Ohio 44113-1302, (“**Licensee**”).

**WHEREAS**, Licensor is the owner of the realty specified below; and,

**WHEREAS**, it is to the mutual benefit of the parties for Licensee to use certain areas of Licensor’s realty for access to a construction site for the renovation of an existing railroad bridge on the Licensee’s property (**the “Project”**); and,

**WHEREAS**, GCRTA will oversee and manage the Project; and,

**WHEREAS**, the Project will be performed by an independent contractor, Suburban Maintenance and Construction, Inc., which is hired and managed by GCRTA, and which independent contractor and its subcontractors will also be authorized and licensed to use the Licensor’s realty pursuant to this agreement; and,

**WHEREAS**, use of the Licensor’s realty by the Licensee for the Project will not limit the Licensor’s current use of the realty or current operations; and,

**WHEREAS**, the Project will result in improved public transit service adding value and accessibility to the Licensor’s realty.

**NOW, THEREFORE**, in consideration of the mutual benefits received by each party, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### **I. GRANT OF LICENSE**

Licensor hereby grants to Licensee a license coupled with an interest to use, subject to the terms and conditions of this Agreement, those portions of Licensor’s premises, together with rights of ingress and egress, as described on Attachment “A” and depicted on Exhibit “A” and made a part hereof (**the “Licensed Premises”**). Licensee’s contractor(s) and subcontractors are also licensed to use the Licensed Premises pursuant to this Agreement.

### **II. LIMITATION TO DESCRIBED PURPOSE**

Licensee may use the Licensed Premises for ingress and egress to the Project site, for laydown areas for construction equipment and material, and for incidental purposes related to such purposes, during the term of this Agreement. The Licensee accepts the property in its present condition and agrees to return the Licensed Premises in a condition like when accepted with normal wear and tear excepted.

### **III. CONSIDERATION**

Licensor and Licensee acknowledge that they will mutually benefit from the agreement. Such mutual benefits and expense constitute the consideration for this Agreement.

In addition, and to perform the Project, Licensee shall compensate the Licensor for use of the Premises during the term of this Agreement in the amount of Three Thousand Dollars (\$3,000.00) per month. The initial payment shall be due on June 1, 2024 in the amount of \$4,400 which constitutes the *pro rata* license fee of \$1,400 for the days May 18 through May 31, 2024 plus the full \$3,000 license fee for the month of June. Each subsequent monthly license fee of \$3,000 is due on the 1<sup>st</sup> business day of the month, starting with July 1, 2024.

### **IV. TERM**

The parties agree that the term of this license agreement for access to the Licensed Premises shall be on a month-to-month basis and that the Licensed Premises will be available to Licensee throughout the period from May 18, 2024 through December 31, 2025 (the "Term"). Once Licensee has completed the Project, removed itself from the Licensed Premises and notified Licensor that its use of the Licensed Premises has ended, then the obligation to pay license fees will end.

### **V. INDEMNIFICATION**

Licensee's liability is governed by the provisions of the Ohio Revised Code, Chapter 2744 and other laws of Ohio. In accordance with those laws, the Licensee shall defend and hold harmless Licensor for Licensee's negligent use or intentional misconduct of the Licensed Premises that may result in damage, liability or expense caused to the Licensed Premises by the Licensee's negligence or intentional misconduct and for injury to persons or property caused by the Licensee's negligent use or intentional misconduct of the Licensed Premises. Licensor agrees that the Licensee shall not be liable to it for normal wear and tear caused to the Licensed Premises as a result of the Licensee's use thereof, and Licensor agrees to indemnify and hold the Licensee harmless from and against any and all damage, liability, or expense to persons or property caused by Licensor's maintenance of the Licensed Premises. With respect to injury to third parties, Licensor and Licensee shall each bear the cost of its own negligence and neither party shall indemnify the other.

Licensee agrees to maintain insurance suitable to cover the liabilities assumed in the foregoing indemnification clause including commercial general liability and auto liability insurance as well as Workers' Compensation insurance coverage for its employees. Self-insurance is permitted.

### **VI. GOVERNING LAW**

It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Ohio.

### **VII. NOTICES**

Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to:

NeoGraf Solutions, LLC  
11709 Madison Avenue  
Lakewood, OH 44117

Greater Cleveland Regional Transit Authority  
1240 West 6<sup>th</sup> Street  
Cleveland, OH 44113-1302  
Attn: James Reed, Property Manager

**VIII. ENTIRE AGREEMENT**

This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party, except that the prior license agreement between the parties for the two months that began March 18, 2024 shall continue to May 18, 2024, when this new License Agreement begins.

**IX. MODIFICATION OF AGREEMENT**

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing, signed by each party.

**IN WITNESS WHEREOF**, the parties hereto have set their hands this \_\_\_\_ day of \_\_\_\_\_, 2024, as to Licensor, and this \_\_\_\_ day of \_\_\_\_\_, 2024 as to Licensee.

**LICENSOR:**

**NeoGraf Solutions LLC,**  
A Delaware limited liability company

By: \_\_\_\_\_  
[Print Name:] \_\_\_\_\_  
[Title:] \_\_\_\_\_  
Date: \_\_\_\_\_

**LICENSEE:**

**Greater Cleveland Regional Transit Authority,**  
A political subdivision of the State of Ohio

By: \_\_\_\_\_  
India L. Birdsong Terry  
General Manager / Chief Executive Officer  
Date: \_\_\_\_\_

Approved As To Legal Form

\_\_\_\_\_  
Janet E. Burney, General Counsel  
Deputy General Manager for Legal Affairs

**Attachment "A"**

Subject Realty: Certain portions of Licensor's property at 11709 Madison Avenue, Lakewood, Ohio 44107 as depicted on the attached graphic labeled Exhibit "A".

GCRTA will enter and exit the Project site through a temporary access drive west of the asphalt pavement surface as depicted on the attached graphic.

The location of temporary laydown and material storage areas to be used for the Project are also depicted on this attachment. Use of those laydown and material storage areas by GCRTA or its independent contractor and its subcontractors is authorized by this agreement.

**EXHIBIT A (1 of 2)**  
**REVISED 12/27/23**



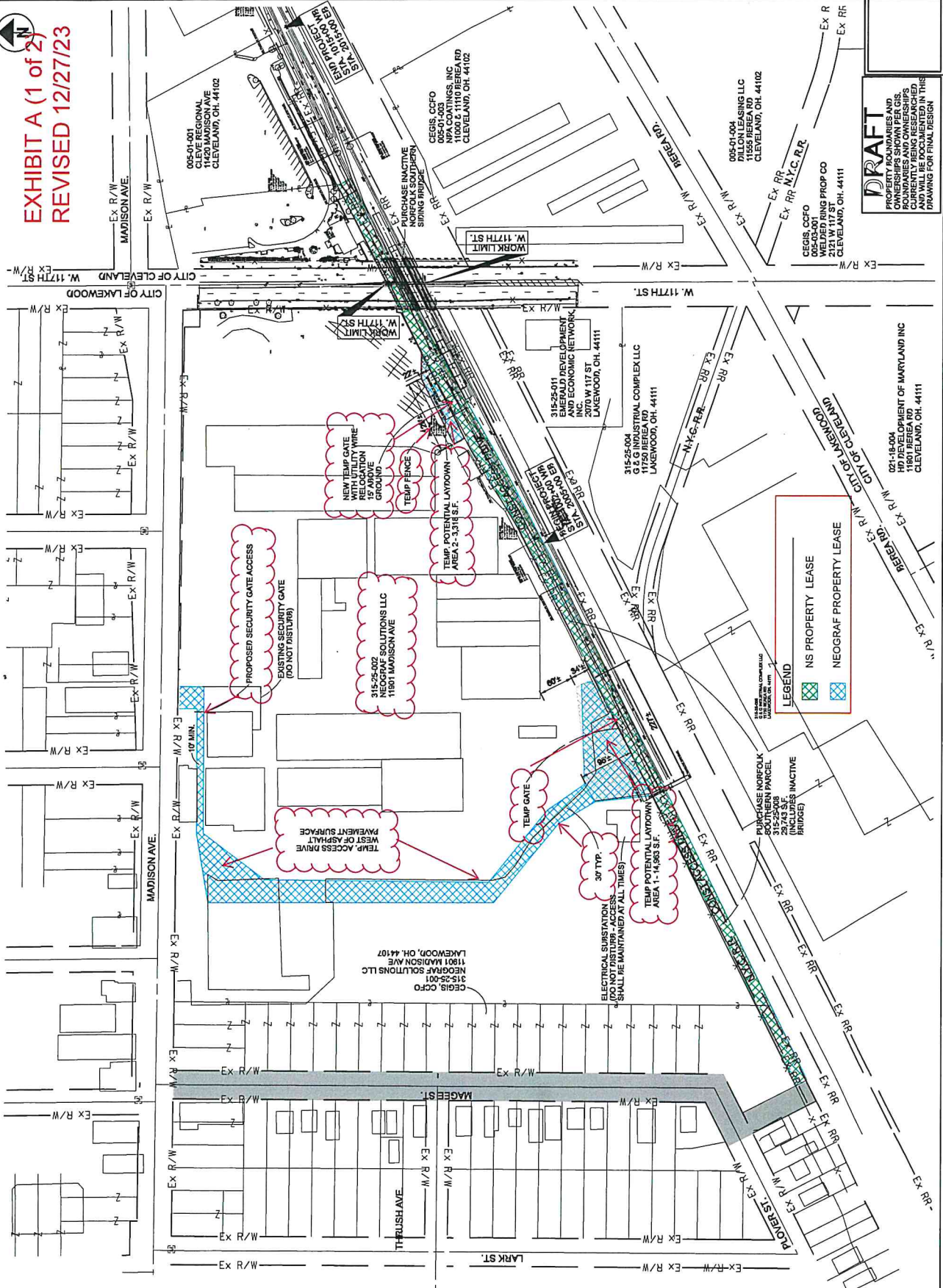
**PROJECT:** BRIDGES OVER W. 117TH STREET  
**SHEET NAME:** ACCESS OPTIONS  
**SECTION:** CHEMATTI - RIGHT OF WAY  
**SCALE:** AS SHOWN  
**SHEET NO.:** 02A  
**DWG. NO.:** SRM001

**DRAFT**  
 PROPERTY BOUNDARIES AND  
 OWNERSHIP SHOWN PER GIS.  
 PROPERTY OWNERSHIP IS  
 CURRENTLY BEING RESEARCHED  
 AND WILL BE DOCUMENTED IN THE  
 DRAWING FOR FINAL DESIGN

**2LMN**  
**INTERNATIONAL**  
**ARCHITECTS**  
 1111 SUPERIOR AVE. E  
 CLEVELAND, OH 44111  
 (216) 521-1200  
 183074

**RTM**  
**GREATER CLEVELAND**  
**REGIONAL TRANSIT**  
**AUTHORITY**  
 2475 SUPERIOR AVE. N.E.  
 CLEVELAND, OH 44115  
 (216) 851-1547  
 WWW.RTM.ORG

**SECTIONS**  
 SECTION 1: CHEMATTI - RTM  
 SECTION 2: RTM - SOUTH LAKESWOOD  
 SECTION 3: SOUTH LAKESWOOD - CLEVELAND



**LEGEND**  
 NS PROPERTY LEASE  
 NEOGRAF PROPERTY LEASE  
 ACCESS PATH  
 LAYOUT AREA

**REVISIONS:**

NO.	DATE	DESCRIPTION
01	11-24-2021	ISSUED FOR PERMITS
02	11-24-2021	ISSUED FOR PERMITS

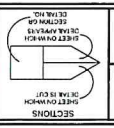


NO.	DATE	BY	REVISIONS

1115 SPRINGFIELD AVE  
 CLEVELAND, OH 44111  
 315-5601  
 MICHAEL BAKER  
 INTERNATIONAL

2121 W 117TH ST  
 CLEVELAND, OH 44111  
 315-5601  
 MICHAEL BAKER  
 INTERNATIONAL

GREATER CLEVELAND  
 REGIONAL TRANSIT  
 AUTHORITY



SHEET NAME: SCHEMATIC - RIGHT OF WAY ACCESS OPTIONS  
 BRIDGES OVER W. 117TH STREET  
 CLEVELAND, OHIO

SHEET NO. 62A  
 PROJECT 62A  
 SHEET C2

