

RESOLUTION 2019-91

AUTHORIZING THE DONATION OF OBSOLETE TRACTION MOTORS TO THE NORTHERN OHIO RAILWAY MUSEUM AND AUTHORIZING THE INTERIM CEO, GENERAL MANAGER/SECRETARY-TREASURER TO EXECUTE ALL DOCUMENTS NECESSARY FOR SUCH TRANSFER

WHEREAS, pursuant to the Ohio Revised Code Section 306.43(L)(6), a regional transit authority may dispose of property by gift to a non-profit entity having the general welfare or education of the public as one of its principal objectives; and

WHEREAS, the Northern Ohio Railway Museum is a non-profit entity under Section 501(c)(3) of the Internal Revenue Code and is preserving the rail transit history of Cleveland and Northern Ohio on a demonstration railroad on over 30 acres of land in Medina County; and

WHEREAS, the Northern Ohio Railway Museum has requested that the Greater Cleveland Regional Transit Authority donate two historic Westinghouse 50 hp traction motors; and

WHEREAS, the traction motors requested have exceeded their useful life and are scheduled for disposition by the Greater Cleveland Regional Transit Authority; and

WHEREAS, the Interim CEO, General Manager/Secretary-Treasurer deems the transfer of these motors to the Northern Ohio Railway Museum to be in the best interest of the Authority and recommends authorization thereof by the Board of Trustees.

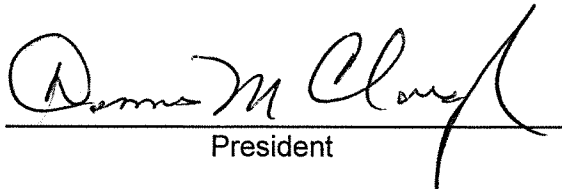
NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority, Cuyahoga County, Ohio:

Section 1. That the Interim CEO, General Manager/Secretary-Treasurer is hereby authorized and directed to transfer title and ownership of two Westinghouse 50 hp traction motors to the Northern Ohio Railway Museum, P.O. Box 458, Chippewa Lake, OH 44215-0458, on such terms and conditions as he deems appropriate to protect the interest of the Authority.

Section 2. That the Interim CEO, General Manager/Secretary-Treasurer is hereby authorized to execute all documents necessary for such transfer of traction motors.

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

Adopted: August 20, 2019


President

Attest: 
Interim CEO, General Manager/Secretary-Treasurer



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

TITLE/DESCRIPTION: CONTRACT: DONATION OF OBSOLETE TRACTION MOTORS VENDOR: THE NORTHERN OHIO RAILWAY MUSEUM AMOUNT: \$0.00	Resolution No.: 2019-91
	Date: August 15, 2019
	Initiator: Engineering & 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 the Authority to donate two Westinghouse 50 hp traction motors to the Northern Ohio Railway Museum.
- 2.0 DESCRIPTION/JUSTIFICATION: The motors have exceeded the useful life criteria established by the Authority's Policy and FTA regulations. Donation of the motors to the Northern Ohio Railway Museum will preserve a period of this area's transit history and educate the public on the role public transportation has played in the development of Cuyahoga County.
- 3.0 PROCUREMENT BACKGROUND: The transfer of material or equipment to a non-profit corporation is an approved method of asset disposition. Pursuant to Ohio Revised Code Section 306.43(L)(6), the disposal of property by gift to a non-profit entity having the general welfare or education of the public as one of its principal objectives is exempt from the competitive procurement process.
- 4.0 DBE/AFFIRMATIVE ACTION BACKGROUND: Does not apply.
- 5.0 POLICY IMPACT: This disposal is consistent with the Greater Cleveland Regional Transit Authority's Procurement Policy.
- 6.0 ECONOMIC IMPACT: No funds will be generated from this donation.
- 7.0 ALTERNATIVES: Reject the request from Northern Ohio Railway Museum. Rejection of the request would have a minimal effect to the Authority, but the Authority would lose the educational benefits and goodwill resulting from this donation. If rejected, the Authority could attempt to sell or scrap the motors.
- 8.0 RECOMMENDATION: It is recommended that the donation of the motors to the Northern Ohio Railway Museum be authorized by the Board of Trustees and the resolution authorizing the Interim CEO, General Manager/Secretary-Treasurer to execute the donation be adopted.
- 9.0 ATTACHMENTS: A. Draft Property Transfer Agreement.
B. Letter dated July 19, 2019 from the Northern Ohio Railway Museum.

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

Interim CEO, General Manager/Secretary-Treasurer

DRAFT

Attachment A

Property Transfer Agreement

This property transfer agreement (the "Agreement") is entered into by and between Greater Cleveland Regional Transit Authority, with offices located at 1240 West 6th Street, Cleveland, Ohio 44113 ("Transferor") and The Northern Ohio Railway Museum, Inc. with offices located at 5515 Buffham Road, Seville, Ohio 44273 ("Transferee"), and is effective as of the date last signed by both parties below ("Effective Date").

1. **Purpose**. Transferor wishes to transfer, and Transferee accepts, the title and interest of certain assets of Transferor (the "Property"). By Resolution No. _____, the Board of Trustees for the Transferor authorized the donation of two antique trolley motors to Transferee. Transferee is a non-profit entity under 501(C) (3) of the Internal Revenue Code and is committed to preserving the rail transit history of Cleveland and Northern Ohio. A listing of all property covered in this Agreement is included in Attachment A.
2. **Transfer of Property**. Transferor hereby agrees to assign, transfer, convey and deliver to Transferee all rights, title and interest of Transferor in and to the Property, free and clear of any security interest, lien, charge, option, restriction on transfer, claim or other encumbrance (a "Lien"), as of the date of delivery of the Property to Transferee (the "Transfer Date"). All Property is transferred "as is" without any representations or warranties whatsoever, express or implied, other than the warranties of title set forth herein.

The Transfer Date shall occur upon completion of all activities by Transferor necessary for the physical removal of the Property from its present location including any and all physical restraints, and in any event prior to the physical removal of the Property for transport by Transferee.

3. **Responsibilities of Transferor**. Transferor makes no representations or warranties, express or implied, with respect to any services provided by Transferor in relation to the Property. As it pertains to transfer of the Property by Transferor, Transferor shall have no liability with respect to said transport of the Property. Transferee agrees to hold harmless Transferor from any liabilities or losses that arise as a result of or in connection with transport of the Property by Transferee.
4. **Responsibilities of Transferee**. Transferee shall, within thirty (30) days following the Transfer Date, complete the necessary actions to transport the Property from its present location to a location designated by Transferee.
5. **Disclaimer of Warranty**. TRANSFEEE ACKNOWLEDGES AND AGREES THAT TRANSFEROR MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS, IMPLIED (EXCEPT TITLE), STATUTORY, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE PROPERTY TRANSFERRED HEREUNDER. TRANSFEEE ACKNOWLEDGES THAT IT ALONE HAS DETERMINED THAT THE PROPERTY TRANSFERRED HEREUNDER WILL SUITABLY MEET THE REQUIREMENTS OF ITS INTENDED USE. ALL OF THE FOREGOING WARRANTIES EXPRESSLY AND EXPLICITLY DO NOT EXTEND TO THE FUTURE PERFORMANCE OF THE

PROPERTY DESCRIBED HEREIN. NO EMPLOYEE, REPRESENTATIVE, OR AGENT OF EITHER PARTY IS AUTHORIZED TO ALTER OR MODIFY ANY PROVISION OF THIS SECTION 5 OR TO MAKE ANY GUARANTEE, WARRANTY, OR REPRESENTATION, EXPRESS OR IMPLIED, ORALLY OR IN WRITING, WHICH IS IN ADDITION OR CONTRARY TO THE FOREGOING.

6. **Limitation of Liability.** TRANSFEREE ACKNOWLEDGES AND AGREES THAT TRANSFEROR SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, PUNITIVE, INCIDENTAL OR SPECIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, AND WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES CAUSED BY TRANSFEREE, INCLUDING BUT NOT LIMITED TO LOST GOODWILL OR PROFITS, LOSS OF DATA OR INTERRUPTION IN ITS USE OR AVAILABILITY, WORK STOPPAGE, IMPAIRMENT OF ASSETS OR ATTORNEYS FEES, ARISING OUT OF BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, MISREPRESENTATION, STRICT LIABILITY IN TORT OR OTHERWISE, AND WHETHER BASED ON ANY TERM IN ANY CONTRACT DOCUMENT.
7. **Miscellaneous.**
 - 7.1 **Assignability; Binding Effect.** This Agreement shall not be assignable by either party except with the written consent of the other, provided such consent is not unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, and assigns.
 - 7.2 **Headings.** The subject headings used in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.
 - 7.3 **Amendments; Waivers.** This Agreement may not be amended or modified, nor may compliance with any condition or covenant set forth herein be waived, except by a writing duly and validly executed by both parties, or, in the case of a waiver, the party or parties waiving compliance. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any such right, power or privilege, or any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof, or the exercise of any other such right, power or privilege.
 - 7.4 **Entire Agreement.** This Agreement, together with Attachment A, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and cancels any and all prior or contemporaneous arrangements, understandings and agreements between them relating to the subject matter of.
 - 7.5 **Severability.** In the event that any provision or any portion of any provision of this Agreement shall be held to be void or unenforceable, then the remaining provisions of this Agreement (and the remaining portion of any provision held to be void or unenforceable in part only) shall continue in full force and effect.

- 7.6 **Governing Law.** This Agreement and the transactions contemplated hereby shall be governed and construed by and enforced in accordance with the laws of the State of Ohio without regard to conflict of laws principles.
- 7.7 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall constitute the same instrument.
- 7.8 **Expenses.** Each party shall pay its own expenses incident to the negotiation, preparation and performance of this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties have duly executed this Agreement and the effective date of this Agreement is on the day and year last written below.

Greater Cleveland Regional Transit Authority

By: _____

Name: Floun'say R. Caver, PhD.

Title: Interim CEO, General
Manager/Secretary Treasurer

Date: _____

Northern Ohio Railway Museum, Inc.

By: _____

Name: Walter Stoner

Title: President

Date: _____

APPROVED AS TO LEGAL FORM (for GCRTA):

BY: _____

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

Transferred Property – Attachment A-1

One antique Westinghouse 340 trolley motor



Transferred Property – Attachment A-2

One Antique Trolley Motor





NORTHERN OHIO RAILWAY MUSEUM

P. O. BOX 458 CHIPPEWA LAKE, OHIO 44215-0458
330-769-5501
<http://www.northernohiorailwaymuseum.org>

July 19, 2019

ATTACHMENT B

Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, Ohio 44113

Gentlemen,

Northern Ohio Railway Museum requests that the Westinghouse 340 motors recently discovered at Brookpark Yard be donated to our museum. Our museum owns five of the former Shaker Rapid 1200 series cars and the motors would help the museum in its efforts to restore one more of these cars.

In past years, the GCRTA has made other donations under the state's provision for transferring assets between non-profit organizations. These donations have included track and equipment from the former Windermere Yard; track from the former Conrail interchange track at Kingsbury; and most recently three historic rapid transit cars (12, 109 and 024).

Northern Ohio Railway Museum is a non-profit, educational organization. It was established in 1965, granted 501(c)(3) status by the Internal Revenue Service in 1966 and incorporated under the laws of the State of Ohio in 1976. Its mission is to collect, preserve, restore, display, and operate streetcars and other electric railway equipment for the education and enjoyment of the public. The Museum owns sixty acres of land in southern Medina County, which includes two miles of the former Cleveland and Southwestern Railway electric interurban railroad. At this site, the Museum has built over a mile of track and three large buildings to house its collection of historic trolleys, streetcars and interurbans, most from the northern Ohio area. The membership is comprised of approximately 160 dedicated electric railway devotees who reside throughout the United States and Canada.

We ask that you give favorable consideration to our request.

Sincerely,

Walt Stoner
President