

RESOLUTION NO. 2019-94

APPOINTING INDIA L. BIRDSONG AS GENERAL MANAGER, CHIEF  
EXECUTIVE OFFICER OF THE GREATER CLEVELAND REGIONAL TRANSIT  
AUTHORITY AND AUTHORIZING THE EXECUTION OF AN EMPLOYMENT  
CONTRACT

WHEREAS, the Board of Trustees ("Board") of the Greater Cleveland Regional Transit Authority conducted a nationwide search for candidates for the permanent position of General Manager, Chief Executive Officer of the Greater Cleveland Regional Transit Authority; and

WHEREAS, the aforesaid search resulted in the selection of India L. Birdsong as the successful candidate for the position of General Manager, Chief Executive Officer of the Greater Cleveland Regional Transit Authority; and

WHEREAS, by Resolution No. 2019-70, adopted July 3, 2019, the Board authorized the President of the Board to enter into negotiations with India L. Birdsong to develop an employment contract for the position of General Manager, Chief Executive Officer; and

WHEREAS, negotiations have been conducted and the Board declares its intent to enter into an employment contract with India L. Birdsong, upon mutually acceptable terms.

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

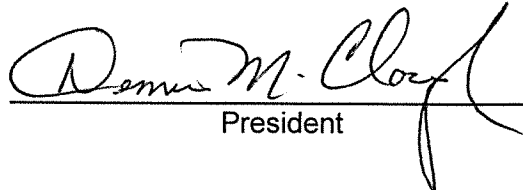
Section 1. That the Board of Trustees of the Greater Cleveland Regional Transit Authority appoints India L. Birdsong to the position of General Manager, Chief Executive Officer of the Greater Cleveland Regional Transit Authority, effective September 16, 2019.

Section 2. That the President of the Board of Trustees is hereby authorized to execute an employment contract, in the form attached hereto, with India L. Birdsong, on behalf of the Greater Cleveland Regional Transit Authority.

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

Attachment: Employment Agreement of the General Manager for the Greater Cleveland Regional Transit Authority.

Adopted: August 20, 2019

  
President

Attest:   
Interim CEO, General Manager/Secretary-Treasurer

**EMPLOYMENT AGREEMENT  
OF THE  
GENERAL MANAGER  
FOR THE  
GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY**

This is an Employment Agreement (“Agreement”) by and between the Greater Cleveland Regional Transit Authority (“Authority”) located at 1240 West 6th Street, Cleveland, Ohio 44113, and India L. Birdsong, a person qualified by training and experience to perform the duties and responsibilities of General Manager and Chief Executive Officer of the Authority (“General Manager”) pursuant to the authorization contained in a resolution of the Authority’s Board of Trustees (“Board”) duly adopted on August 20, 2019, in accordance with the provisions of Ohio Revised Code Section 306.34 and the Bylaws of the Authority.

WHEREAS, the Authority desires to enter into this Agreement with India L. Birdsong as General Manager, and India L. Birdsong desires to accept employment by the Authority as its General Manager for five (5) years, effective as of September 16, 2019.

WITNESSETH:

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. **Term of Agreement.** The Authority desires to hereby employ the General Manager as an officer of the Authority under the relevant provisions of Ohio law and the Authority’s Bylaws, Policies and Procedures for a term of five (5) years commencing on September 16, 2019 (the “Commencement Date”), and expiring on September 16, 2024 (the “Expiration Date”). The General Manager does hereby accept said employment and agrees to perform the duties of General Manager on behalf of the Authority throughout the duration of this

Agreement as prescribed by the laws of the State of Ohio, by the Authority's Bylaws, Policies and Procedures, and by the directives of the Authority's Board. The General Manager shall be classified as a salaried, non-bargaining exempt employee of the Authority. Unless terminated as provided for in Sections 5.1, 5.2 or 5.3 herein, if at least six (6) months prior to the expiration of the initial five (5) year term of this Agreement and any subsequent one (1) year renewal term, the Authority or General Manager has not notified the other in writing that it/she does not intend to renew this Agreement, the term of the Agreement shall automatically be renewed and extended for one (1) contract year under the same terms and conditions.

2. **Regular Salary.** In consideration of the services to be performed hereunder by the General Manager, the Authority shall pay the General Manager \$260,000 per contract year. This Regular Salary shall be paid in periodic installments in the usual and customary intervals applicable to payment of other executive level managers of the Authority, as may be in effect from time to time. The General Manager's Regular Salary will be reviewed by the Authority for the first time in September and October of 2020, and thereafter during the same time period for the remaining contract years as provided in this Agreement. General Manager's Regular Salary may be increased (but not decreased) in an amount determined in the sole discretion of the Board. Should the General Manager's employment be terminated in accordance with Section 5.3 of this Agreement by the Board, the General Manager shall not be entitled to any Regular Salary for the remaining portion of the term of this Agreement. Any adjustment to the General Manager's Regular Salary made during the term of this Agreement shall be in the form of a written amendment hereto and shall become a part of this Agreement; provided, however, that by so doing it shall not be deemed that the Authority has entered into a new agreement with the General Manager, nor that the Expiration Date of the existing Agreement has been extended.

At any point within eighteen (18) months prior to the expiration of this Agreement, the General Manager may request a meeting with the Board to discuss her contract status. Upon such request, the Board shall grant the General Manager a meeting in executive session to discuss potential reasons for considering extension, renewal or nonrenewal of this Agreement. The establishment of this meeting shall not create an expectancy of continued employment; nor shall it prevent the Board from making the final determination regarding the extension, renewal or failure to renew of the General Manager's contract consistent with this Agreement.

3. **Benefits.** During the term of the General Manager's employment by the Authority and except as otherwise expressly provided in this Agreement, the General Manager shall be entitled to the benefits of employment set forth in the Authority's Bylaws, Policies and Procedures for the Authority's executive level managers, which may include the Authority's usual and customary employer's contribution toward healthcare insurance premiums, (medical, prescription drug, dental, and/or vision insurance coverages as applicable); the employer's contribution toward term life insurance premiums; paid leaves (sick, personal and/or vacation); accumulation of and payment for unused sick time credit at the time of retirement (if any); accumulation of and payment for unused vacation leave upon separation from employment (if any); the definition of *accrual* or *accumulate* for the purposes of any such payments (if any); paid legal holidays; and the reimbursement of reasonable business expenses incurred by the General Manager and that are authorized in advance by the Board. The Authority shall not pay the General Manager's contribution to the Ohio Public Employees Retirement System nor the General Manager's Medicare tax notwithstanding any provision of the Authority's Bylaws, Policies and Procedures to the contrary. The Authority shall make all employer contributions, including in accordance with the fourteen percent (14%) OPERS Employer contribution in the

summary of benefits on behalf of General Manager's OPERS, in addition to any other benefit contributions the Authority makes to other executive level managers of the Authority. In addition, the Authority shall not make any contribution on behalf of the General Manager to the Ohio Public Employees Deferred Compensation Program.

In lieu of any payment to General Manager for relocation assistance, reimbursement of moving expenses, temporary housing payment, relocation of household goods or similar relocation-related reimbursements that may otherwise be provided for or allowed in the Bylaws, Policies and Procedures of the Authority, the General Manager shall receive a one-time signing bonus of \$15,000, to be paid within 30 days of the Commencement Date. General Manager shall not receive any prior service credit nor a car allowance, although she will be entitled to use an Authority vehicle as needed for official business. In the event that General Manager is unable to use an Authority vehicle for Authority business, she may use her personal vehicle for Authority business and shall be reimbursed for the use of her personal vehicle in the same manner as afforded other employees using personal vehicles for Authority business. The Authority encourages General Manager as part of her regular duties to become a member of local business and community organizations relating to the activities of the Authority and will pay for said memberships in an amount not to exceed \$500.00 annually in accordance with the Authority's Professional Society Membership policy then in effect.

**4. Vacation and Sick Time Credit.** During the term of this Agreement, the Authority grants the General Manager one hundred and sixty (160) hours of vacation per contract year or prorated for a portion thereof, which shall not be supplemented or increased by any other Per Pay Vacation Rate Schedule provided in the Policies and Procedures of the Authority. The grant, accrual, use, carryover and payment, if any, of unused vacation time shall be subject to the

terms and conditions of the Authority's Bylaws, Policies and Procedures. The Authority also grants General Manager forty (40) hours of sick time credit effective as of the Commencement Date of this Agreement. General Manager's accrual of additional sick time credit shall be in accordance with the Policies and Procedures of the Authority.

**5. Termination of Agreement.**

5.1 Termination by Notice. Except as otherwise provided in Section 5.2 or Section 5.3, this Agreement may be terminated by either the Authority or the General Manager, at either Party's discretion or convenience, upon the expiration of sixty (60) days after written notice by certified United States mail is received by the Authority, or personally delivered by the terminating Party to the other Party. The Authority shall have the sole discretion to determine whether the General Manager shall continue to render services hereunder during such notice period. Notwithstanding the foregoing, for any termination under this Section 5.1, the Authority shall continue to pay the General Manager's Regular Salary during the notice period.

5.2 Termination Upon General Manager's Death. Notwithstanding Section 5.1 or any other provision herein, this Agreement shall terminate automatically, immediately and without prior notice upon the General Manager's death.

5.3 Termination for Cause. This Agreement may be terminated at any time upon thirty (30) days written notice by the Authority for just cause, which shall include, but not be limited to, the General Manager's: (i) fraud or dishonesty pertaining to her employment with the Authority or which impairs her ability to perform the responsibilities of General Manager, (ii) theft of Authority assets, (iii) conviction of a crime involving moral turpitude, (iv) material violation of the terms of this Agreement, or (v) intentional gross failure to properly perform or discharge the duties of General Manager as established by the Authority's Bylaws, Policies and

Procedures or directives of the Board following ten (10) days' notice and thirty (30) days to cure said performance deficiencies.

**6. Severance Pay.** If the General Manager's employment is terminated by the Authority for its convenience in accordance with Section 5.1 above, the Authority shall pay the General Manager severance pay equivalent to: (i) twelve (12) months of the General Manager's Regular Salary in effect at the time if such termination occurs within the first three (3) contract years of this Agreement, or (ii) six (6) months of the General Manager's Regular Salary in effect at the time if such termination occurs after the third contract year of this Agreement.

If General Manager's employment is terminated for cause by the Authority in accordance with Section 5.3 above, the Authority may, but is not required to, offer the General Manager severance pay equivalent to two (2) months of Regular Salary. Any severance pay associated with a termination of employment by the Authority under Section 5.3 above shall be contingent upon the General Manager's execution of a complete and unconditional waiver and release of claims satisfactory to the Authority.

**7. Annual Objectives for Salary Increases; Performance Review.** Annual performance objectives for the General Manager for each contract year of this Agreement shall be established and mutually agreed to during the months of September and October of each year. The General Manager's annual performance review by the Board for the previous year to determine any compensation increase will also occur in the months of September and October simultaneous with the establishment of performance objectives for the next contract year. Any salary or compensation increase granted by the Board to General Manager based upon its annual performance review will be effective as of September 16th of that year.

**8. Duties and Responsibilities of General Manager.** The General Manager shall devote her best business and professional skills, knowledge, and experience to the lawful business affairs of the Authority. In all events, the General Manager shall expend the time and effort necessary to fulfill her duties and responsibilities pursuant to this Agreement on a full time basis, and shall use all reasonable efforts to perform the duties and responsibilities as the General Manager. The General Manager shall not assume any other employment, consulting or compensated work relationship with any other person or entity beside the Authority during the term of this Agreement. The duties and responsibilities of the General Manager are set forth in the Bylaws, Policies and Procedures of the Authority, and the Board's directives to the General Manager as they may be adopted or amended from time to time by the Board. The General Manager shall faithfully, honestly, and diligently perform the obligations under this Agreement and shall exert best efforts to promote and enhance the efficient operation and functioning of the Authority in accordance with the Authority's Bylaws, Policies and Procedures and the Board's directives.

**9. Confidential Information.** The General Manager is privy to certain data and information that is confidential and proprietary to the Authority or its employees. The General Manager agrees that all information furnished or disclosed to the General Manager by the Authority or any of its employees (as well as work product developed by the General Manager during the term of this Agreement) shall be property of the Authority, shall be maintained in confidence by the General Manager and shall not be disclosed to any person or entity or used by the General manager in any way, except as specifically authorized by the Authority. Nothing in the foregoing sentences of this Section 9 is meant to preclude disclosure of information as required by federal, state or local law. The General Manager's obligation to protect the



confidentiality of Authority information shall survive the expiration or termination of this Agreement. The General Manager further agrees that, at the termination of this Agreement, all data, documents, property and other information received from the Authority or that was used by the General Manager during the term of this Agreement will be immediately returned and no copies thereof shall be retained by the General Manager.

**10. Defense of Actions.** The Authority shall defend, indemnify and hold the General Manager harmless from and against any court actions or lawsuits against the General Manager (including the costs and expenses of defending against such actions and liabilities arising therefrom) for any action taken during the normal performance of duties and responsibilities of the General Manager in accordance with the Bylaws, Policies and Procedures of the Authority, and the applicable provisions of Ohio Revised Code Chapter 2744.

**11. Savings Clause.** Should any provision of this Agreement be found illegal, void, or voidable, the remainder of the Agreement shall continue in full force and effect.

**12. Entire Agreement.** This instrument contains the entire agreement of the parties; it may not be changed orally but only by an agreement in writing signed by the parties.

**13. Miscellaneous.** The recitals are hereby incorporated in the Agreement as if fully rewritten herein. To the extent that any Bylaw, Policy or Procedure of the Authority grants to the General Manager the authorization to make a discretionary decision concerning any employment-related conduct, or a change in compensation or employment benefits for an employee of the Authority, the General Manager shall not exercise such power to specifically benefit herself unless and until such conduct, change or increase is approved by the Board.

*[signatures on next page]*

**IN WITNESS WHEREOF** the Greater Cleveland Regional Transit Authority, by its President having been duly authorized, and India L. Birdsong have set their hands hereto on the dates stated below.

**GREATER CLEVELAND REGIONAL  
TRANSIT AUTHORITY**

By: \_\_\_\_\_  
Dennis Clough, President

Date: August \_\_\_\_, 2019

\_\_\_\_\_  
India L. Birdsong

Date: August \_\_\_\_, 2019