

RESOLUTION NO. 2023-47

AMENDING AND RESTATING EMPLOYMENT AGREEMENT OF INDIA L. BIRDSONG TERRY AS GENERAL MANAGER, CHIEF EXECUTIVE OFFICER OF THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY AND AUTHORIZING THE EXECUTION OF THAT AGREEMENT

WHEREAS, on August 20, 2019, the Board of Trustees ("Board") of the Greater Cleveland Regional Transit Authority ("Authority") adopted Resolution No. 2019-94, authorizing the appointment of India L. Birdsong to the position of General Manager, Chief Executive Officer for the Authority; and

WHEREAS, pursuant to Resolution No. 2019-94, the Authority entered into an employment contract with India L. Birdsong, now known as India L. Birdsong Terry ("Terry") with a term of five (5) years, beginning September 16, 2019, and expiring on September 16, 2024 (the "Agreement"); and

WHEREAS, the Board for the Authority desires to continue its employment relationship with Terry in the position of General Manager, Chief Executive Officer of the Authority; and

WHEREAS, the Authority and Terry desire to amend and restate the Agreement to provide an extension thereof under the terms and conditions stated therein.

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 ("Board") of the Greater Cleveland Regional Transit Authority ("Authority") and India L. Birdsong Terry ("Terry") hereby amend and restate the current Employment Agreement between the Authority and Terry, to be effective as of January 1, 2023 and expiring on December 31, 2027, in accordance with the terms of the Amended and Restated Employment Agreement attached hereto.

Section 2. That the President of the Board is hereby authorized and directed to execute the attached Amended and Restated Employment Agreement on behalf of the Authority.

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

Attachment: Amended and Restated Employment Agreement of India L. Birdsong Terry, the General Manager and Chief Executive Officer for the Greater Cleveland Regional Transit Authority.

Adopted: July 25, 2023



President

Attest: 

Secretary-Treasurer

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

This Amended and Restated Employment Agreement (“Agreement”) is entered into by and between the Greater Cleveland Regional Transit Authority (“Authority”) located at 1240 West 6th Street, Cleveland, Ohio 44113, and India L. Birdsong Terry, who is currently performing the duties and responsibilities of General Manager and Chief Executive Officer of the Authority (“General Manager”), pursuant to the authorization contained in Resolution No. 2023-47 of the Authority’s Board of Trustees (“Board”) duly adopted on July 25, 2023 (“Adoption Date”) 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 Terry as General Manager, and India L. Birdsong Terry desires to continue employment by the Authority as its General Manager for five (5) years, effective as of January 1, 2023 and continuing through December 31, 2027, under the terms and conditions set forth herein.

WITNESSETH:

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

1. **Term of Agreement.** The Authority desires to continue to 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 January 1, 2023 (the “Commencement Date”), and expiring on December 31, 2027 (the “Expiration Date”). The General Manager hereby accepts 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 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) calendar 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 \$335,000 per calendar year (the "Regular Salary") effective as of January 1, 2023. General Manager shall receive the difference in the salary she earned in 2023 up to the Adoption Date and the Regular Salary provided for in this Agreement on or before 30 days following the Board's approval of this Agreement in one lump sum payment of Regular Salary (net of all usual and customary tax or other withholding amounts). In addition, the General Manager shall receive the annual average base salary merit increase ("Merit Pool") the Board may establish for the Authority's non-bargaining unit employees beginning as of the 2024 calendar year and each calendar year thereafter during the term of the Agreement. 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 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, nor payment of a Performance Bonus under Section 7 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 this 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 the fourteen percent (14%) OPERS Employer contribution 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. The Authority shall not make any contribution on behalf of the General Manager to the Ohio Public Employees Deferred Compensation Program, although the General Manager is free to participate in this Program.

General Manager shall receive reimbursement for costs (including deductibles, co-pays and parking expenses) of a yearly executive health evaluation at the Cleveland Clinic up to a cap of \$3,500 per year for any amounts not covered by the General Manager's health insurance with the Authority. General Manager shall not receive 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 it will pay for said memberships and out of pocket expenses as approved by the Board or its designee in an amount not to exceed \$3,000.00 annually, unless otherwise agreed to by the Board in its sole discretion.

In addition, the Authority will reimburse General Manager for Board approved certifications, seminars and course work in accordance with its established policies and procedures.

4. Vacation and Sick Time Credit. During the term of this Agreement, the Authority grants the General Manager two hundred (200) hours of vacation per calendar 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. General Manager's accrual of additional sick time credit shall be in accordance with the Authority's Bylaws, Policies and Procedures.

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, subject to the Authority's severance pay obligation to the General Manager under Section 6 below.

For any termination under this Section 5.1 by the General Manager, the General Manager shall not receive any Regular Salary after the effective date of termination; provided however, if the termination date is after March 31st, the General Manager may receive a prorated amount of her yearly Performance Bonus as determined by the Authority's Board in its sole discretion. For purposes of this Section 5.1 only, "effective date of termination" shall mean sixty (60) days

following the notice of termination by either party.

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. The Authority shall pay the yearly premium for a supplemental life insurance policy offered by the Authority to its employees in the amount of \$300,000 on the General Manager's behalf. The General Manager shall designate the beneficiary of this life insurance policy.

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. Upon a termination for cause by the Authority, the General Manager shall not be entitled to any additional Regular Salary provided in Section 2 above, as of the effective date of the termination, or any portion of the Performance Bonus provided for in Section 7 below.

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 compensation for a one (1) year period as follows: for the first six (6) month period, the General Manager's Regular Salary in effect at the time of such termination,

regardless whether the General Manager accepts another position during this period (including the payment of the amount necessary for COBRA health benefit coverage during all or part of this six (6) month period until General Manager qualifies for replacement health insurance offered by any new employer); and provided further, in the next six (6) month period if any new position accepted by the General Manager after the termination pays a salary less than the Regular Salary paid by the Authority to the General Manager at the time of termination, the Authority shall pay the difference between the two salaries to General Manager for the second six (6) month period, and the amount of the premium for COBRA health insurance coverage during all or a portion of the second six (6) month period until General Manager qualifies for replacement health insurance with the new employer during the second six (6) month period.

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. Performance Review and Bonus. Annual performance objectives for the General Manager for each calendar year of this Agreement shall be established and mutually agreed to by the Board and General Manager prior to December 31st of each preceding calendar year. The General Manager's annual written performance review by the Board for the previous calendar year shall be completed by March 31st to determine whether the General Manager is entitled to a Performance Bonus. The Board may decide in its sole discretion to pay the General Manager up to 15% of her Regular Salary as a yearly Performance Bonus. Any Performance Bonus granted

by the Board to General Manager based upon its annual performance review will be paid by April 30th of that year. Further, the Board shall provide General Manager with her performance review for 2022 by August 31, 2023.

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.

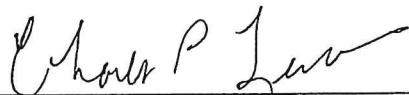
12. Entire Agreement. This instrument contains the entire agreement of the parties; it may not be changed orally but only by an agreement in writing signed by the parties.

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.

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

**GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY**

By: 
Rev. Charles P. Lucas, Board President

Date: July 18, 2023


India L. Birdsong Terry
General Manager, Chief Executive Officer

Date: July 25, 2023