

RESOLUTION NO. 1992- 130

A RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF \$10,000,000 CAPITAL IMPROVEMENT BONDS FOR THE PURPOSE OF PAYING COSTS OF CERTAIN TRANSIT FACILITIES TO SERVE THE AREA WITHIN THE TERRITORY OF THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY.

WHEREAS, the Greater Cleveland Regional Transit Authority (the Authority) is authorized under Section 306.40 of the Revised Code to issue bonds to acquire, construct, improve, replace, extend and enlarge "transit facilities" as defined in Section 306.30 of the Revised Code, serving or to serve an area within the territorial boundaries of the Authority; and

WHEREAS, the Secretary-Treasurer, as the Authority's fiscal officer, has certified to this Board (and will provide supplemental certifications to the Board) that (i) the estimated life of each element of the improvements described in Section 1 is at least five years, (ii) the maximum maturity of the bonds described in Section 1 is at least 5 years, (iii) the estimated revenues of the Authority from sources other than ad valorem taxes on property, after first meeting from all available resources the estimated operation and maintenance expenses of the Authority as they become due, are sufficient to pay the currently estimated principal of and interest on all of the bonds of the Authority as they become due, and (iv) the currently estimated maximum aggregate amount of principal and interest to become payable in any one calendar year on all of the bonds issued pursuant to Section 306.40 of the Revised Code without a vote of the electors does not and will not exceed one-tenth of 1% of the total value of all the property within the territory of the Authority as listed and assessed for taxation;

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

Section 1. It is necessary to issue the Bonds of this Authority in the aggregate principal amount of \$10,000,000 (the Bonds) for the purpose of paying costs of acquiring, constructing, improving, extending and enlarging transit facilities which serve or will serve the area within the territorial boundaries of the Authority.

Section 2. The Bonds shall be issued in one lot and only as fully registered bonds, in the denominations of \$5,000 or any integral multiple thereof, but in no case as to a particular maturity date exceeding the principal amount maturing on that date. The Bonds shall be dated as of August 1, 1992.

The Bonds shall bear interest at the rate or rates, not exceeding 6.5% per year (computed on a 360-day per year basis) for any stated maturity, as specified in the Certificate of Award, payable on June 1 and December 1 of each year (the Interest Payment Dates), commencing June 1, 1993, until the principal amount has been paid or provided for. The Bonds of any one maturity

shall all bear the same rate of interest. The Bonds shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from August 1, 1992.

The Bonds shall mature in the following amounts on December 1 in each of the years indicated:

| <u>Maturity<br/>Year</u> | <u>Principal<br/>Amount</u> |
|--------------------------|-----------------------------|
| 1994                     | \$1,000,000                 |
| 1995                     | 1,000,000                   |
| 1996                     | 2,000,000                   |
| 1997                     | 3,000,000                   |
| 1998                     | 3,000,000                   |

Those maturities are determined to be such that the total of principal and interest payments on the Bonds in any fiscal year in which principal is payable is not more than three times the amount of those payments in any other fiscal year.

The Bonds shall not be subject to redemption prior to stated maturity.

Section 3. The Bonds shall be signed by the President of the Board and the Secretary-Treasurer, in the name of the Authority and in their official capacities, provided that either or both of those signatures may be a facsimile. The Bonds shall be issued in the denominations and numbers as requested by the Original Purchaser and approved by the Secretary-Treasurer, shall be numbered as determined by the Secretary-Treasurer, and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this resolution. No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under this resolution unless and until the certificate of authentication printed on the Bond is signed by the Bond Registrar as authenticating agent. Authentication by the Bond Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, this resolution. The certificate of authentication may be signed by any authorized officer or employee of the Bond Registrar or by any other person acting as an agent of the Bond Registrar and approved by the Secretary-Treasurer on behalf of the Authority. The same person need not sign the certificate of authentication on all of the Bonds.

Section 4. The Fifth Third Bank, Cincinnati, Ohio, is appointed to act as the authenticating agent, bond registrar, transfer agent and paying agent for the Bonds (the Bond Registrar). The General Manager shall sign and deliver, in the name and on behalf of the Authority, the Bond Registrar Agreement between the Authority and the Bond Registrar (the Agreement) in substantially the form as is now on file with the Secretary-Treasurer. That Agreement is approved, together with any changes or amendments that are not inconsistent with this resolution and not substantially adverse to the

Authority and that are approved by the General Manager on behalf of the Authority, all of which shall be conclusively evidenced by the signing of the Agreement or amendments to the Agreement. The Secretary-Treasurer shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Agreement from the proceeds of the Bonds to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

Section 5. The debt charges on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent. Principal shall be payable when due upon presentation and surrender of the Bonds at the main office of the Bond Registrar. Interest on a Bond shall be paid on each Interest Payment Date by check mailed to the person in whose name the Bond was registered, and to that person's address appearing, on the Bond Register at the close of business on the 15th day of the calendar month next preceding that Interest Payment Date (the Record Date).

Section 6. So long as any of the Bonds remain outstanding, the Authority will cause the Bond Registrar to maintain and keep at its main office all books and records necessary for the registration, exchange and transfer of Bonds as provided in this Section (the Bond Register). Subject to the provisions of Section 5, the person in whose name a Bond is registered on the Bond Register shall be regarded as the absolute owner of that Bond for all purposes of this resolution. Payment of or on account of the debt charges on any Bond shall be made only to or upon the order of that person; neither the Authority nor the Bond Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this Section. All such payments shall be valid and effectual to satisfy and discharge the Authority's liability upon the Bond, including interest, to the extent of the amount or amounts so paid.

Any Bond may be exchanged for Bonds of any authorized denomination upon presentation and surrender at the main office of the Bond Registrar, together with a request for exchange signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at the main office of the Bond Registrar together with an assignment signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. Upon exchange or transfer the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any authorized denomination or denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Bond surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the Authority are required, the Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the Authority. In all cases of Bonds exchanged or transferred, the Authority shall sign and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of this resolution. The exchange or transfer shall be without charge to

the owner, except that the Authority and Bond Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The Authority or the Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds issued and authenticated upon any exchange or transfer shall be valid obligations of the Authority, evidencing the same debt, and entitled to the same security and benefit under this resolution, as the Bonds surrendered upon that exchange or transfer.

Section 7. Notwithstanding any other provisions of this resolution, if it is determined by the Secretary-Treasurer to be advantageous to the Authority, the Bonds may be issued in book entry form in accordance with the provisions of this Section. As used in this Section and this resolution:

"book entry form" or "book entry system" means a form or system under which (i) the ownership of beneficial interests in Bonds and the principal of and interest on the Bonds may be transferred only through a book entry, and (ii) physical Bond certificates in fully registered form are issued by the Authority only to a Depository or its nominee as registered owner, with the Bonds "immobilized" in the custody of the Depository. The book entry maintained by others than the Authority is the record that identifies the owners of beneficial interests in those Bonds and that principal and interest.

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in Bonds or the principal and interest, and to effect transfers of Bonds, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

"Participant" means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

The Bonds may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized, (i) the Bonds may be issued in the form of a single, fully registered Bond representing each maturity and registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository; (ii) the beneficial owners in book entry form shall have no right to receive Bonds in the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (iv) the Bonds as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the Authority.

If any Depository determines not to continue to act as a Depository for the Bonds for use in a book entry system, the Secretary-Treasurer may attempt to establish a securities depository/book entry relationship with

another qualified Depository. If the Secretary-Treasurer does not or is unable to do so, the Authority, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Bonds from the Depository, and authenticate and deliver bond certificates in registered form to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of Authority action or inaction, of those persons requesting such issuance.

The Secretary-Treasurer is also hereby authorized and directed to the extent necessary or required to enter into any agreements or written understandings determined necessary in connection with the book entry system for Bonds, including provisions for wire transfer of moneys to pay debt charges, after determining (as evidenced by his signing) that the signing thereof will not endanger the funds or securities of the Authority.

Section 8. If, in the judgment of the Secretary-Treasurer, the filing of applications for a policy of Bond Insurance relating to the Bonds is necessary or desirable for marketing purposes, the Secretary-Treasurer, in his official capacity, is hereby authorized to prepare and submit any or all of those applications, to provide such information as may be required in support thereof and to provide further for the payment of the cost of such a policy from funds to be appropriated for the purpose if and to the extent that such payment shall not be made by the Original Purchaser or from bond proceeds. As used in this Section and this resolution:

"Bond Insurance" means an insurance policy which, if determined by the Secretary-Treasurer to be necessary or desirable for marketing purpose, is issued by a Bond Insurer for the benefit of the holders of the Bonds and which guarantees the timely payment of the principal of and interest on the Bonds or a portion thereof.

"Bond Insurer" means an insurance company which is nationally recognized for the purpose of insuring the timely payment of debt service on obligations issued by state or political subdivisions thereof and which if utilized, is to be designated by the Secretary-Treasurer in the Certificate of Award or otherwise on the basis of economy and merit and is approved by the Original Purchaser.

Section 9. The Bonds are sold to A.G. Edwards & Sons, Inc. (the Original Purchaser), at private sale at not less than 97% of par, and at the interest rate or rates, determined by the Secretary-Treasurer as set forth in that officer's Certificate of Award, hereby authorized, in accordance with law and the provisions of this resolution, including the maximum interest rate stated in Section 2. The General Manager is hereby authorized and directed to sign and deliver the Bond Purchase Agreement in the form currently on file with the Secretary-Treasurer but with such changes as are found to be necessary or appropriate with respect to the Bond Purchase Agreement and as are approved by the General Manager.

The Secretary-Treasurer shall cause the Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with

reference to the issuance of the Bonds, to the Original Purchaser upon payment of the purchase price. The President of the Board, the Secretary-Treasurer, the General Manager and other Authority officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this resolution.

The preliminary official statement of the Authority relating to the original issuance of the Bonds substantially in the form now on file with the Secretary-Treasurer is approved. The distribution and use of that preliminary official statement is hereby approved. The President of the Board, the General Manager and the Secretary-Treasurer are each authorized and directed to complete and sign on behalf of the Authority, and in their official capacities, that preliminary official statement, with such modifications, completions, changes and supplements, as those officers shall approve or authorize for the purpose of preparing and determining, and to certify or otherwise represent, that the revised official statement is a "deemed final" official statement (except for permitted omissions) by the Authority as of its date and is a final official statement for purposes of SEC Rule 15c2-12(b)(1), (3) and (4).

Those officers are each further authorized to use and distribute, or authorize the use and distribution of, the final official statement and supplements thereto in connection with the original issuance of the Bonds as may in their judgment be necessary or appropriate. Those officers and each of them are also authorized to sign and deliver, on behalf of the Authority, and in their official capacities, such certificates in connection with the accuracy of the final official statement and any amendments thereto as may, in their judgment, be necessary or appropriate.

Section 10. The proceeds from the sale of the Bonds, except any premium and accrued interest, shall be paid into the proper fund or funds, and those proceeds are appropriated and shall be used for the purpose for which the Bonds are being issued. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

Section 11. There shall be levied on all the taxable property in the Authority, in addition to all other taxes, a direct tax annually during the period the Bonds are outstanding in an amount sufficient to pay the debt charges on the Bonds when due, which tax shall not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. The tax shall be within the ten-mill limitation imposed by law, shall be and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner and at the same time that taxes for general purposes for each of those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Bonds when and as the same fall due. In each year to the extent that other revenues and resources of the Authority are available for the payment of the debt charges on the

Bonds and are appropriated for that purpose, the amount of the tax shall be reduced by the amount of the revenues and resources so available and appropriated.

Section 12. The Authority covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest thereon will not be treated as an item of tax preference under Section 57 of the Code.

The Authority further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Bonds to be and to remain excluded from gross income for federal income tax purposes, and (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The Bonds are hereby designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. In that connection, the Authority hereby represents and covenants that it, together with all its subordinate entities or entities that issue obligations on its behalf, or on behalf of which it issues obligations, in or during the calendar year in which the Bonds are issued, (i) have not issued and will not issue tax-exempt obligations designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code, including the Bonds, in an aggregate amount in excess of \$10,000,000, and (ii) have not issued, do not reasonably anticipate issuing, and will not issue, tax-exempt obligations (including the Bonds, but excluding obligations, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code, that are private activity bonds as defined in Section 141 of the Code and excluding refunding obligations that are not advance refunding obligations as defined in Section 149(d)(5) of the Code) in an aggregate amount exceeding \$10,000,000, unless the Authority first obtains a written opinion of nationally recognized bond counsel that such designation or issuance, as applicable, will not adversely affect the status of the Bonds as "qualified tax-exempt obligations". Further, the Authority represents and covenants that, during any time or in any manner as might affect the status of the Bonds as "qualified tax-exempt obligations", it has not formed or participated in the formation of, or benefited from or availed itself of, any entity in order to avoid the purposes of subparagraph (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the formation of, or benefit from or avail itself of, any such entity. The Authority further represents that the Bonds are not being issued as part of a direct or indirect

composite issue that combines issues or lots of tax-exempt obligations of different issuers.

The Secretary-Treasurer, as the fiscal officer, or any other officer of the Authority having responsibility for issuance of the Bonds is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the Authority with respect to the Bonds as the Authority is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Bonds or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the Authority, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Bonds, and (c) to give one or more appropriate certificates of the Authority, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the Authority regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Bonds.

Section 13. The Secretary-Treasurer is directed to deliver a certified copy of this resolution and the Certificate of Award to the Cuyahoga County Auditor.

Section 14. This Board determines that all acts and conditions necessary to be performed by the Authority or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding general obligations of the Authority have been performed and have been met, or will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general property taxing power (as described in Section 11) of the Authority are pledged for the timely payment of the debt charges on the Bonds; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds.

Section 15. This Board finds and determines that all formal actions of this Board concerning and relating to the passage of this resolution were taken in an open meeting of this Board and that all deliberations of this Board and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.



Section 16. This resolution shall become effective immediately upon its adoption.

Adopted: July 21, 1992



\_\_\_\_\_  
President

Attest:

  
\_\_\_\_\_  
Secretary-Treasurer