

RESOLUTION NO. 2017-52

RATIFYING A STUDENT UNIVERSAL PASS AGREEMENT BETWEEN
THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY AND
THE CLEVELAND INSTITUTE OF MUSIC

WHEREAS, the Greater Cleveland Regional Transit Authority ("GCRTA") entered into a Student Universal Pass ("U Pass") agreement with Case Western Reserve University ("CWRU") in 2008, pursuant to Resolution No. 2008-127; and

WHEREAS, the Cleveland Institute of Music ("CIM") students were obtaining U Passes through CWRU; and

WHEREAS, it is necessary that a separate agreement be established with CIM; and

WHEREAS, an agreement was negotiated and GCRTA and CIM entered into a U Pass agreement on June 16, 2017 on substantially the same terms as the CWRU U Pass Agreement.

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

Section 1. That the action of the CEO, General Manager/Secretary-Treasurer in executing the Student Universal Pass ("U Pass") agreement with the Cleveland Institute of Music ("CIM"), for a term extending through spring semester 2019 with two options for GCRTA to extend the term for up to four (4) years through 2023 at a per-student price of \$30 per semester for the 2017-2018 school year and increasing periodically to \$45 for the 2022-2023 school year, is hereby ratified.

Section 2. That this resolution shall become effective immediately upon its adoption.

Attachment: Student Universal Pass Program Agreement between the Greater Cleveland Regional Transit Authority and the Cleveland Institute of Music

Adopted: July 18, 2017



President

Attest: 

CEO, General Manager/Secretary-Treasurer

**STUDENT UNIVERSAL PASS FARE ("U PASS") PROGRAM AGREEMENT
BETWEEN
THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY
AND
THE CLEVELAND INSTITUTE OF MUSIC**

The Cleveland Institute of Music ("CIM"), a non-profit corporation organized under the laws of the State of Ohio, 11021 East Blvd Cleveland, Ohio 44106, and the Greater Cleveland Regional Transit Authority ("GCRTA"), a political subdivision of the State of Ohio, 1240 West 6th Street, Cleveland, OH 44113-1331, known collectively as "the Parties" agree as follows:

1. BACKGROUND

- A. GCRTA is a regional transit authority providing public transit services within Cuyahoga County in the State of Ohio.
- B. CIM is an independent music conservatory located in the University Circle neighborhood of Cleveland, Ohio.
- C. CIM believes there are tangible public benefits if members of its student body are encouraged to use public transportation services as provided by GCRTA.
- D. Both CIM and GCRTA recognize that among the public benefits of using public transit are reducing vehicle traffic congestion, improving the quality of air and the environment and limiting the amount of real property set aside or dedicated to motor vehicle users and parking in urban locations.
- E. GCRTA has implemented a transit pass program for volume users through which participants agree to purchase from GCRTA transit passes that are discounted from the individual price based upon estimated or actual use in a pricing schedule approved by GCRTA.
- F. CIM desires to participate in the transit pass program pursuant to the terms and conditions set forth in this Agreement.
- G. GCRTA is willing to sell to CIM at a discounted rate, based upon its volume of anticipated use, a special transit pass ("U Pass" or "U Passes") for use by all students at the downtown, main campus of CIM.

2. DEFINITIONS

As used in this Agreement:

- A. The term "U Pass" means the sticker provided by GCRTA to CIM prior to the beginning of each Semester to be affixed to each Student's CIM-issued identification card. U Passes shall be nontransferable.

- B. The term "Student" means any individual registered at CIM and taking one or more credit hours for academic credit who pays a student activity fee. CIM may not exempt any Students.
- C. The term "Semester" means the fall semester and the spring semester as scheduled by CIM.

3. TERMS AND CONDITIONS

- A. Term of Agreement; Termination. This Agreement shall extend from the beginning of the Fall Semester 2017 through Spring Semester 2019. GCRTA shall have two, 1- or 2-year options to extend the agreement for up to four additional years at the rates listed below. Alternatively, GCRTA may opt to re-negotiate the rates at the end of each term. Either party may terminate this Agreement, effective at the end of the then current semester, upon written notice to the other party no less than thirty (30) days prior to the end of the semester.

If CIM fails to observe or perform any of the provisions, terms, or conditions required by this Agreement, then GCRTA may suspend or terminate this Agreement immediately. The expiration or termination, for any reason, of this Agreement, shall be without prejudice to the rights of GCRTA against CIM and shall not relieve CIM of any obligations hereunder. Upon expiration or termination of this Agreement, GCRTA shall invalidate all U Passes that have been issued under this Agreement.

- B. Issuance of U Passes. Prior to the beginning of each semester, CIM shall request the number of U Passes CIM will need in order to provide a U Pass to each Student. GCRTA shall issue to CIM the number of Passes requested ("Supply") along with a delivery manifest. CIM will promptly sign and return one copy of the delivery manifest to GCRTA's contract administrator or his or her designee to confirm receipt of the U Passes. Each U Pass will contain a serial number. CIM shall advise GCRTA of the total number of registered Students within fifteen (15) days after registration closes. CIM may retain a supply of up to 10 extra U Passes for use as replacement U Passes that can be returned to GCRTA at the end of the semester in exchange for a credit or refund. Until such time as GCRTA and CIM agree to a new process in writing, GCRTA shall accept the U Passes provided by GCRTA and issued by CIM to its students for transportation on its system. GCRTA reserves the right to initiate alternative U Pass media, and shall ensure adequate notice to CIM should such a program change become necessary.

C. Payment for U Passes. The cost assessed to CIM and remitted to GCRTA for U Passes shall be as follows, per Student, per semester ("U Pass Fee"):

2017-2018: \$30.00

2018-2019: \$35.00

2019-2020: \$35.00

2020-2021 \$40.00

2021-2022 \$40.00

2022-2023 \$45.00

CIM shall not assess or collect any amount in excess of the fees stated herein. Within fifteen (15) days after registration closes, CIM shall remit to GCRTA an amount equal to the number of U Passes ordered and received times the U Pass Fee. At the conclusion of each semester, CIM may return any unused U Passes in excess of the number of registered Students to GCRTA for credit or refund. No later than thirty (30) days after the conclusion of each Semester, the Parties will reconcile the account and CIM will make a payment to GCRTA for any U Pass Fees collected after registration closes.

All payments shall be submitted to GCRTA's Accounting Department at 1240 West Sixth Street, Cleveland, Ohio 44113-1331.

Unused U Passes and the total number of registered Students shall be submitted to GCRTA's contract administrator or his/her designee.

GCRTA and CIM will meet in December of each year to assess their on-going experience as well as renegotiate payment for the subsequent year. If an increase in the U Pass Fee is warranted or GCRTA implements a fare increase applicable to the general public, CIM shall consider a corresponding increase in the U Pass Fee prior to the end of the then current academic year. Any increase in the U Pass Fee will be effective at the start of the semester following CIM's approval. In the event that a U Pass Fee increase does not receive CIM's approval, then GCRTA may choose either to continue this Agreement on the existing terms or terminate the Agreement at the conclusion of the then current academic year.

D. Term of U Passes. U Passes shall be valid for one semester, with a start date one (1) week prior to the official "beginning" of classes. The U Passes issued for the fall semester will expire one week after the beginning of the spring semester. The U Passes issued for the spring semester will expire the day after commencement. In April of each year, CIM shall provide the dates for the following academic year to GCRTA.

- E. Lost or Stolen U Passes. GCRTA will not be responsible for or replace any lost or stolen U Passes. With proper documentation of a stolen U Pass, such as a police report, GCRTA may choose not to charge for a stolen U Pass.
- F. Service. U Passes shall entitle the Student holder to unlimited usage of GCRTA's regularly scheduled service for the mass transit of the general public and, for ADA eligible students, unlimited usage of GCRTA's Paratransit service. GCRTA reserves the right to change, alter, add, or delete any service within its current system with no prior written notice to CIM other than general public notice. It is understood and agreed to by the Parties that the buses to be utilized in providing these mass transit services are not school buses, but instead are mass transit buses. It is understood and agreed to by the Parties that if GCRTA is prevented from performing any of its obligations, as set forth in this Agreement, because of an act of God, war, riot, civil disorder, fire, strike, labor dispute, or other occurrences beyond its control, the performance shall be excused for such period of time as performance is reasonably prevented by such occurrence. An appropriate pro-rata reduction or reimbursement shall be made to CIM for this period of time.
- G. Surcharge. CIM requests and GCRTA agrees to waive the surcharge assessed on trips originating or ending out of Cuyahoga County in recognition that not all Students are residents of Cuyahoga County.
- H. Misconduct on Public Transit. GCRTA maintains the authority granted by applicable laws and regulations, including the right to eject temporarily or permanently any Student who in GCRTA's opinion has acted in such a manner as to adversely affect the safety of GCRTA passengers or its drivers. As appropriate, GCRTA may eject Students for misconduct on public transportation and/or seek prosecution of any person who is responsible for damage to GCRTA property or injury to GCRTA personnel.
- I. Audit. CIM shall maintain books, records, documents, and other evidence directly pertinent to the performance of the Work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied and Federal Acquisition Regulations, Parts 30 and 31, as applicable. GCRTA and its authorized representatives shall have the right to audit, to examine and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of the CIM, including, but not limited to those kept by the CIM, its employees, agents, assigns, successors and subcontractors. Such records shall include, but not be limited to, administrative costs, enrollment figures, U Pass allotments and distributions and U Pass Fee assessments, accounting records, written policies and procedures; subcontract files; other reimbursement supported by invoices; cancelled checks; bank statements; memoranda; and correspondence.

CIM shall, at all times during the term of this Agreement and for a period of three (3) years after the completion of this Agreement, maintain such records, together with such supporting or underlying documents and materials. The CIM shall at any time requested by GCRTA, whether during or after completion of this Agreement, and at CIM's own expense make such records available for inspection and audit (including copies and extracts of records as required) by GCRTA. Such records shall be made available to GCRTA during normal business hours at the CIM's office or place of business. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for GCRTA. CIM shall ensure GCRTA has these rights with CIM's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the CIM and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the CIM's obligations to GCRTA.

If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, GCRTA may recoup the costs of the audit work from the CIM. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the CIM's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of GCRTA's findings to CIM.

J. Remedies.

No provision of this Agreement shall be construed as a waiver by GCRTA of its right to pursue any and all rights and remedies available to it for a violation of the terms of this Agreement.

K. Other Interests. No person not a party to this Agreement shall have any rights or entitlement of any nature under it.

L. Entire Agreement. This Agreement contains the entire agreement between the Parties; supersedes all prior agreements with respect to the same subject matters, is effective as of the commencement date of this Agreement, and cannot be changed or altered except by written agreement signed by both Parties.

M. Contract Administrator. GCRTA's contract administrator for this Agreement is Rajan D. Gautam, GCRTA's Director of Accounting. CIM's contract administrator is David W. Gilson. All questions and correspondence relating to the contractual aspects of this Agreement should be directed to Mr. Gautam and Mr. Gilson or their designee.

- N. Miscellaneous. Any and all obligations contained herein are contingent upon final approval of the GCRTA Board of Trustees.
- O. Governing and Applicable Law. This Agreement and all future amendments shall be governed by and construed in accordance with Ohio law and only Ohio courts shall have jurisdiction over any action or proceeding concerning this Agreement. In the performance of this Agreement, the parties shall comply with all applicable federal, state, and municipal laws and regulations.
- P. Headings. All headings, subheadings, and titles in this Agreement are for guidance purposes only and shall not be used to interpret or enforce any part of the Agreement.
- Q. Waiver. A waiver by any Party of any breach or default by the other Party under this Agreement shall not constitute a continuing waiver by such Party of any subsequent act in breach of or in default hereunder.
- R. Severability. The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.
- S. Successors and Assigns. Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part by their Party, without the prior written consent of the other Party.
- T. Notices. All notices to be given pursuant to this Agreement shall be sufficient if given in writing, delivered in person, delivered by bonded delivery service or sent by registered or certified mail, postage prepaid, and in any case addressed to the respective party at its postal address or at such other address or addresses each may hereafter designate in writing. Notices sent by delivery service or commercial carrier shall be deemed effective and complete at the time of acceptance by delivery service or posting in accordance herewith. Notice shall be delivered or mailed to the parties at the addresses below:

Cleveland Institute of Music
 Attn: David Gilson
 Associate Dean for Student Affairs
 11021 East Blvd
 Cleveland, OH 44106

Greater Cleveland Regional Transit
 Authority
 Attn: Rajan D. Gautam
 Director of Accounting
 1240 West 6th Street
 Cleveland, OH 44113-1331

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the last day listed below.

Cleveland Institute of Music

By: Dan W. Silva

Title: Associate Dean for Student Affairs

Date: June 6, 2017

Greater Cleveland Regional Transit

Authority
By: Joseph A. Calabrese

Joseph A. Calabrese, CEO
General Manager/Secretary-
Treasurer

Date: 6/16/17

Approved as to Legal Form and
Correctness:

Sheryl King Benford
Sheryl King Benford, General Counsel
Deputy General Manager Legal Division

DKB



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

TITLE/DESCRIPTION: RATIFYING A U-PASS AGREEMENT WITH THE CLEVELAND INSTITUTE OF MUSIC	Resolution No.: 2017- 52
	Date: July 13, 2017
	Initiator: Finance & Administration
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 is to ratify a U-Pass agreement dated June 16, 2017 between the Cleveland Institute of Music (CIM) and the Greater Cleveland Regional Transit Authority (GCRTA).
- 2.0 DESCRIPTION/JUSTIFICATION: The agreement allows for discounted rates. CIM students were obtaining U-Passes through Case Western Reserve University (CWRU) and it is necessary that a separate agreement be established with CIM.
- 3.0 PROCUREMENT BACKGROUND: Does not apply.
- 4.0 DBE/AFFIRMATIVE ACTION BACKGROUND: Does not apply.
- 5.0 POLICY IMPACT: This action is consistent with the Board's policy to authorize the Authority to enter into agreements with institutions of higher learning for discounted student fares under the U-Pass program. Authorization of the Agreement will allow GCRTA to continue to provide economical public transportation to students as well as promote ridership of public transportation.
- 6.0 ECONOMIC IMPACT: No increase in revenue is expected from this agreement. CIM students were previously obtaining U-Passes through CWRU.
- 7.0 ALTERNATIVES: Reject this resolution. The agreement with CIM would not be ratified.
- 8.0 RECOMMENDATION: It is recommended that this resolution be approved.
- 9.0 ATTACHMENTS: None

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

CEO, General Manager/Secretary-Treasurer