



# City of Parma, Ohio



## LAW DEPARTMENT

7335 RIDGE ROAD

PARMA, OHIO 44129-5593

440-885-8132

### **Timothy G. Dobeck**

Law Director  
Prosecutor

October 4, 2022

Councilman Casselberry  
Chair, Public Service Committee

RE: Ord. No. 171-22

Dear Councilman Casselberry:

Please accept the new Exhibit A for proposed Ordinance No. 171-22.

Also, please bring out Ord. No. 171-22 (West Creek Greenway) for second reading at the October 17 meeting.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Tim Dobeck".

Timothy G. Dobeck  
Law Director

TGD/lst

**PROJECT DEVELOPMENT AGREEMENT  
FOR WEST CREEK GREENWAY**

THIS PROJECT DEVELOPMENT AGREEMENT FOR WEST CREEK GREENWAY (this "Agreement") is made effective and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2022 ("Effective Date"), by and among the **BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAN PARK DISTRICT** ("Cleveland Metroparks"), a political subdivision duly organized and existing under the laws of the State of Ohio acting pursuant to Board Resolution No. \_\_\_\_\_, the **CITY OF PARMA** ("Parma"), a municipal corporation organized and operating under the laws of the State of Ohio acting pursuant to Ordinance No. \_\_\_\_\_, and the **WEST CREEK CONSERVANCY** ("West Creek"), an Ohio non-profit organization, (collectively, the "Parties," individually a "Party").

**I. PROJECT SCOPE**

- A. In partnership with Cleveland Metroparks, the City of Parma and other civic partners, West Creek has been developing the West Creek Greenway, an interconnecting greenway trail linking multiple neighborhoods to Cleveland Metroparks West Creek Reservation. The Parties desire to further the West Creek Greenway by connecting Broadview Road to Camelot Drive, as shown on Exhibit A (the "Project").
- B. West Creek owns the land for the Project in fee simple and leases the land to Cleveland Metroparks.
- C. Cleveland Metroparks has extensive experience in leading the planning and development of shared-use paths throughout Cuyahoga County, building more than 27 miles of shared-use paths since 2012, and building complex, regionally significant trail projects, including projects funded via federal funds. The other Parties recognize the benefit Cleveland Metroparks can bring to the Project as the leader of the design and construction process.
- D. Parma has received \$560,000 in Congestion Mitigation and Air Quality Improvement grant funding from the Ohio Department of Transportation ("ODOT") via a competitive process through the Northeast Ohio Areawide Coordinating Agency ("NOACA") for use on the Project (the "CMAQ Funding").
- E. West Creek, in addition to owning property for the Project and having a vested interest in the completion of the West Creek Greenway, has obtained \$729,310 in Clean Ohio Green Space Conservation Program funds for use on the Project (the "Clean Ohio Funding").
- F. The Parties desire to complete design and construction of the Project.
- G. This agreement will stipulate the role of each party as it relates to:
  - 1. Financial Responsibilities;
  - 2. Design Responsibilities; and
  - 3. Construction/Implementation Responsibilities.



## II. ROLES

### A. Parma

#### 1. Financial

a) Parma will provide the CMAQ Funding to Cleveland Metroparks by requesting a sponsorship change with NOACA and ODOT. Parma will use a letter that is substantially similar to the letter attached hereto as **Exhibit B**.

b) If the CMAQ Funding cannot be transferred to Cleveland Metroparks, Parma shall reimburse Cleveland Metroparks for costs incurred using the CMAQ Funding upon receiving funding requests from Cleveland Metroparks.

#### 2. Design-Bid-Build Services

a) Parma will provide input to Cleveland Metroparks for the design of the Project pursuant to the Design-Bid-Build model detailed below and, if necessary, coordinate with ODOT to ensure that the design meets any CMAQ Funding and/or Clean Ohio Funding requirements.

b) Parma will perform periodic observations of the construction of the Project to evaluate whether the Project is being constructed in accordance with the requirements of CMAQ Funding. Parma will notify Cleveland Metroparks in writing immediately upon any observed deficiencies during construction.

c) Maintenance and repairs for the completed Project shall be the responsibility of Cleveland Metroparks via its existing lease agreement with West Creek.

### D. Cleveland Metroparks

#### 1. Financial

a) No Cleveland Metroparks funds, other than in-kind staff services, are being used for the Project toward the cost of design or construction. Cleveland Metroparks is providing in-kind services to assist with the Project.

b) Cleveland Metroparks shall accept transfer sponsorship of the CMAQ Funding and Clean Ohio Funding and take responsibility, as appropriate, for using those funds for the Project.

c) Cleveland Metroparks will work cooperatively with Parma and West Creek to ensure the CMAQ Funding and Clean Ohio Funding is used for the Project.

#### 2. Design-Bid-Build Services

a) Cleveland Metroparks will be responsible for providing all design services, labor, material, and contracts for the design and completion of the work in accordance with plans for the Project, which services will be obtained using the Design-Bid-Build project

delivery model currently used by Cleveland Metroparks.

- b) Cleveland Metroparks will begin the process to identify a Designer on a timeline sufficient to allow for bidding for construction of the Project to begin in by CY 2024. The Project shall be completed on a reasonable timeline and in accordance with available CMAQ Funding, Clean Ohio Funding, and, if needed, additional funding from West Creek.
- c) Cleveland Metroparks shall choose the Designer for the Project using Requests for Qualifications (“RFQs”) and Requests for Proposals (“RFP”) as is its custom. Cleveland Metroparks shall share with Parma and West Creek the responses to the RFQs and RFPs, at which times Parma and West Creek shall be given an opportunity to provide feedback on the responding firms. Cleveland Metroparks shall choose the successful Designer based on a ranking of most qualified firms to perform the required services as described in ORC 153.69 in its sole discretion. Cleveland Metroparks further reserves the right to utilize its staff to design the Project, if available.
- d) During the design phase, Cleveland Metroparks will provide Parma and West Creek with the opportunity to periodically review and comment upon design and the construction documents (the “Drawings and Specifications”).
- e) Cleveland Metroparks shall work cooperatively with Parma and West Creek on the Drawings and Specifications to the best of its ability to maintain a budget for the project that is acceptable to Parma and West Creek.
- f) If construction, based on the final Drawings and Specifications, requires funding beyond the CMAQ Funding and Clean Ohio Funding, prior to Cleveland Metroparks the project being bid to contractors, likely at the time of the engineer’s estimate, West Creek shall provide the necessary additional funds to Cleveland Metroparks, which shall hold such funds in a restricted account for use on the Project.
- g) Upon completion of the design phase and receipt of any required additional funds from West Creek, Cleveland Metroparks bid the Project per Ohio Department of Transportation rules and regulations, as is its custom. Cleveland Metroparks shall award the Project to the lowest and best Contractor, with approval from the Ohio Department of Transportation, in its sole discretion
- h) Cleveland Metroparks will be responsible for contract administration of the Project. It will ensure that all necessary building permits have been issued, as required by the State of Ohio Department of Commerce, Division of Industrial Compliance and all approvals necessary received from the Ohio Department of Transportation. At the completion of construction, Cleveland Metroparks will provide evidence of final approvals as issued by the State of Ohio, if applicable.
- i) All documents developed in relation to the Project for use by Cleveland Metroparks or the Designer, including but not limited to drawings, specifications, the Design and Contractor contracts and all exhibits attached thereto, RFQs, RFPs, bid documents, addenda, modifications or any other documents or drawings describing the Project (the “Project Documents”) shall remain the property of Cleveland Metroparks, and Cleveland Metroparks shall retain all common law, statutory and other reserved rights with respect to the Project Documents. The Project Documents may be used by

Parma and West Creek only for execution of the Project and maintenance of the Trail Improvements. The Project Documents shall not be used by Parma, West Creek, or any other third party on any other project without the prior written consent of Cleveland Metroparks, and the Parma and West Creek shall take such action as may be necessary to prevent use of the Project Documents on any other project or for additions to the Project outside the scope of the Work by any of Parma's or West Creek's employees or agents.

j) Maintenance and repairs for the completed Project shall be the responsibility of Cleveland Metroparks via its existing lease agreement with West Creek.

**E. West Creek**

**1. Financial**

a) West Creek shall provide the Clean Ohio Funding to Cleveland Metroparks in a manner mutually agreed to by the Parties and consistent with the terms of the Clean Ohio Funding agreement.

b) The Parties expect that the CMAQ Funding and Clean Ohio Funding should be sufficient to cover the costs of the Project. Should the costs for the Project exceed the CMAQ Funding and Clean Ohio Funding, however, West Creek shall be responsible for any additional funding and shall transfer such funding to Cleveland Metroparks, which shall hold the funding in a restricted fund solely for use on the Project.

**2. Design-Bid-Build Services**

a) West Creek will provide input to Cleveland Metroparks for the design of the Project pursuant to the Design-Bid-Build model detailed above and, if necessary, coordinate with any grant sources to ensure the design complies with Clean Ohio Funding and/or Clean Ohio Funding requirements.

b) West Creek will perform periodic observations of the construction of the Project to evaluate whether the Project is being constructed in accordance with the requirements of Clean Ohio Funding. West Creek will notify Cleveland Metroparks in writing immediately upon any observed deficiencies during construction.

c) Maintenance and repairs for the Project shall be the responsibility of Cleveland Metroparks via its existing lease agreement with West Creek.

**IV. ASSISTANCE FROM OUTSIDE PARTIES**

The Parties shall use reasonable efforts to obtain assistance from outside parties, including but not limited to:

A. Financial assistance from both public and private sources as may be required and desirable to facilitate the construction of the Project.

**V. DEFAULTS AND REMEDIES**

**A. Events of Default.**

Each of the following events, if not corrected as provided in this Section V, shall be deemed an "Event of Default":

1. A Party shall be adjudicated bankrupt or adjudged to be insolvent;
2. A receiver or trustee shall be appointed for a Party's property and affairs;
3. A Party shall voluntarily make an assignment for the benefit of creditors or shall file a petition in bankruptcy or insolvency or for reorganization or shall make application for the appointment of a receiver or (2) if any similar petitions are filed against a Party and not dismissed within sixty (60) days;
4. Any execution or attachment shall be issued against a Party or any of that Party's property if not bonded off or otherwise dismissed within sixty (60) days, whereby any improvements thereon (excluding for-sale units and leasehold estates created in any rental property) shall be taken or occupied by someone other than City or County; provided however, this section shall not prohibit City or County from contesting any attachment, execution or similar action by whatever legal means are available; or
5. A Party fails to perform any term, covenant or agreement contained in this Agreement, and said failure to perform continues for a period of sixty (60) days after notice in writing from the other Party specifying the nature of such failure.

**B. Remedies.**

Upon the occurrence of an Event of Default, the non-defaulting Party may, in addition to and without prejudice of any other rights and remedies available at law or in equity, exercise one or more of the following remedies:

1. Terminate the defaulting Party's rights under this Agreement by written notice.
2. Bring an action for specific performance, in which case the defaulting Party acknowledges that an Event of Default confers upon the enforcing Party a "clearly enforceable legal right" as that term is used in equity.

**C. Non-Waiver.**

Failure of a Party to complain of any act or omission on the part of the other Party, however long the same may continue, shall not be deemed to be a waiver by said Party of any of its rights hereunder. No waiver by a Party at any time, expressed or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision. No acceptance of any partial payment shall constitute an accord or satisfaction but shall only be deemed a partial payment on account. No agreement, term, covenant or condition hereof to be performed or complied with and no breach or default thereof shall be waived, altered or modified except by written agreement.

**VI. MISCELLANEOUS**

**A. Notice.**

All notices or other communications required to be given hereunder shall be given in writing and shall be deemed to have been duly given on the date delivered if delivered personally; or if delivered by a nationally recognized overnight carrier service, or upon the third day after mailing if mailed by U.S. registered mail, postage prepaid, and addressed as follows:

(a) Notice to Cleveland Metroparks:

Chief Executive Officer  
Cleveland Metroparks  
4101 Fulton Parkway  
Cleveland, OH 44144

with a copy to:  
Chief Legal & Ethics Officer  
Cleveland Metroparks  
4101 Fulton Parkway  
Cleveland, OH 44144

(b) Notice to Parma:

Mayor  
City of Parma  
6611 Ridge Road  
Parma, OH 44129

with a copy to:  
Law Director  
City of Parma  
7335 Ridge Road - 2<sup>nd</sup> Floor  
Parma, OH 44129

(c) Notice to West Creek:

Executive Director  
West Creek Conservancy  
P.O. Box 347113  
Cleveland, OH 44134

with a copy to:  
West Creek Conservancy Legal Counsel  
Ziegler Metzger LLP  
1111 Superior Ave., Suite 1000  
Cleveland, OH 44114

**B. Agreement Binding Upon Successors.**

The covenants, agreements and obligations herein contained shall extend to, bind and inure to the benefit not only of the parties hereto, but their respective personal representatives, heirs (if applicable),

successors and permitted assigns.

**C. Complete Agreement.**

All negotiations, considerations, representations and understandings between the parties are incorporated herein, and may be modified or altered only by agreement in writing, signed by all parties to this Agreement. Any such amendments shall require approvals of all parties.

**D. No Third-Party Beneficiaries.**

Nothing contained in this Agreement shall be construed so as to confer upon any other party the rights of a third-party beneficiary

**E. Exhibits**

Exhibit A – THE PROJECT

Exhibit B – CMAQ SPONSORSHIP TRANSFER REQUEST

**F. Discrimination Prohibited.**

The parties to this Agreement, and their successors and assigns, shall not, in the use of the Property, discriminate against any person or group of persons based upon race, color, religion, age, national origin, national ancestry, sex, pregnancy, gender, sexual orientation, military service or veteran status, gender identity or expression, mental or physical disability, or genetic information, including but not limited to in the sale, lease, sublease, transfer, occupancy, tenure or enjoyment of the Property, and shall so bind their successors and assigns.

**G. Counterparts and Electronic Signature.**

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one agreement. The signature page of any entity, or copies or facsimiles thereof, may be appended to any counterparts of this Agreement and when so appended shall constitute an original. By entering into this Agreement, the Parties agree on behalf of themselves, their officers, employees, subcontractors, sub-grantees, agents or assigns, that this transaction may be conducted by electronic means by agreeing that all documents requiring signatures by the Parties may be executed by electronic means, and that the electronic signatures affixed by the Parties to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. The Parties also agree to be bound by the provisions of Chapter 1306 of the Ohio Revised Code as it pertains to electronic transactions.

**H. Publicity.**

The Parties shall cooperate on press releases, press interviews, magazine articles, social media posts and other publicity regarding the Project and, whenever practicable, shall obtain the written approval of the other Party prior to discussing this Agreement or its contents with the media or issuing any press release or other public statement related thereto. No Party shall use another Party's logos unless authorized in writing by such Party, which authorization may be withdrawn at any time. Nothing in this Agreement



shall be construed to grant any Party or any other individual or entity any rights in and/or to the name, any trademark, any logo, and/or any other property of any other Party

**I. Parties' Indemnification.**

No party has nor will have any authority to act for or to assume any obligation or responsibility on behalf of another party except as expressly provided in this Agreement or in writing signed by all parties.

[SIGNATURES ON FOLLOWING PAGES]

**IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed as of the date first written.**

**Board of Park Commissioners of the  
Cleveland Metropolitan Park District**

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Brian M. Zimmerman, Chief Executive Officer  
Cleveland Metroparks  
4101 Fulton Parkway  
Cleveland, OH 44144

Approved as to legal form by Rosalina M. Fini, Chief Legal &  
Ethics Officer:

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Katie M. McVoy, Assistant Legal Counsel  
Cleveland Metroparks  
4101 Fulton Parkway  
Cleveland, OH 44144

**City of Parma**

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Timothy DeGeeter, Mayor  
City of Parma  
6611 Ridge Road  
Parma, OH 44129

Approved as to legal form by Tim Dobeck, Law Director/Chief  
Prosecutor:

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Tim Dobeck, Law Director/Chief Prosecutor  
City of Parma  
7335 Ridge Road-2nd Floor  
Parma, Ohio 44129

**West Creek Conservancy**

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Derek Schafer, Executive Director  
West Creek Conservancy  
P.O. Box 347113  
Cleveland, OH 44134

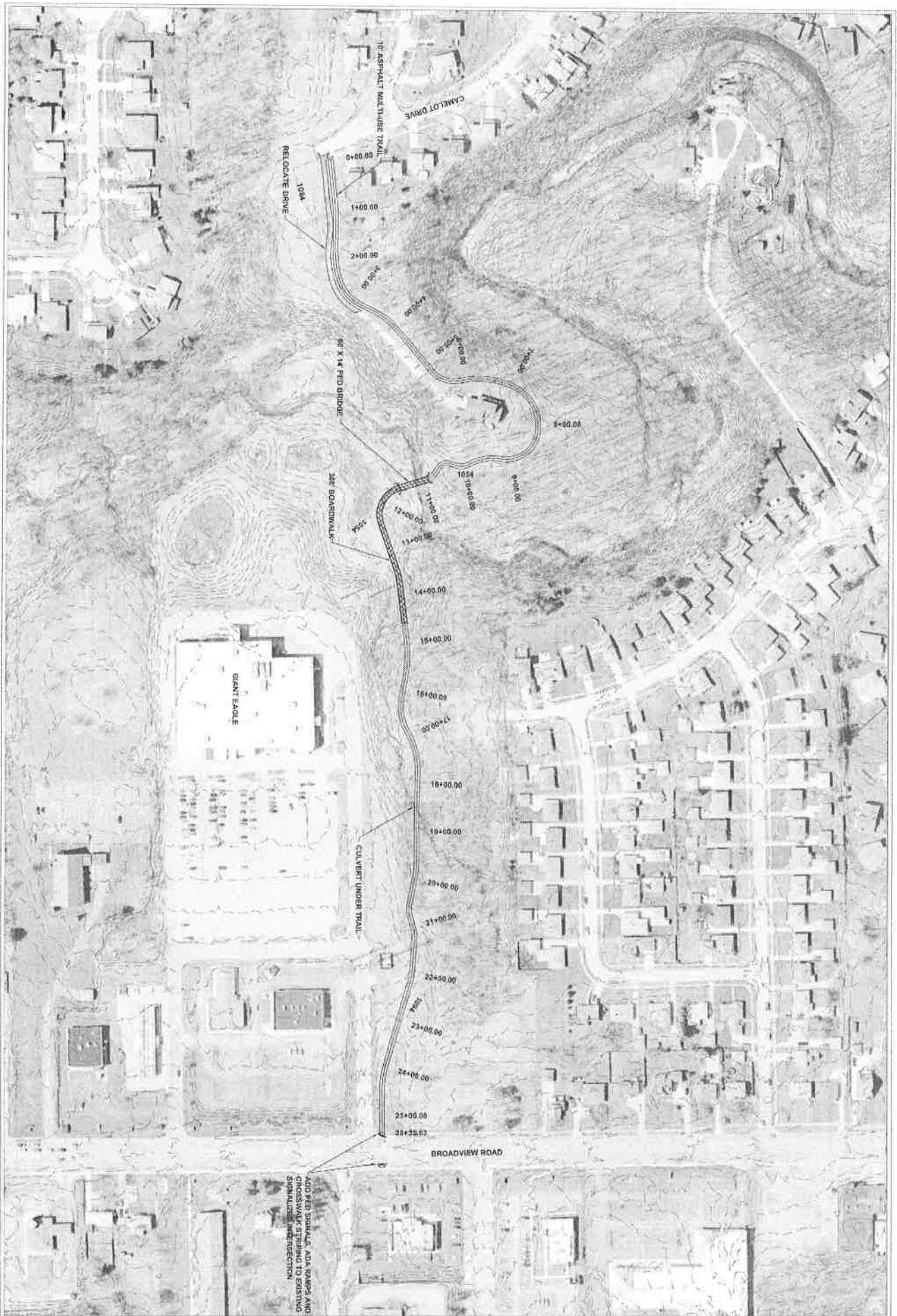
Approved as to legal form by Christopher E. Soukup, Esq., West  
Creek Conservancy Legal Counsel:

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Christopher E. Soukup, Esq., West Creek Conservancy Legal  
Counsel  
Ziegler Metzger LLP  
1111 Superior Ave., Suite 1000  
Cleveland, OH 44114

**Exhibit A**

The Project



**CLEVELAND METROPARKS**  
WEST CREEK RESERVATION

**WEST CREEK GREENWAY BROADVIEW CONNECTOR CONCEPT  
SITE PLAN**

DATE: 6/5/19  
DRAWN BY: JCK

SCALE IN FEET  
CONT. INTERVAL 2'



**Exhibit B**

CMAQ Sponsorship Transfer Request

\_\_\_\_\_, 2022

Grace Gallucci, Executive Director  
Northeast Ohio Areawide Coordinating Agency  
1299 Superior Avenue  
Cleveland, OH 44114

**RE: West Creek Greenway Trail Project Sponsorship Transfer Request**

Dear Ms. Gallucci,

The City of Parma (the "City") respectfully requests that the Northeast Ohio Areawide Coordinating Agency ("NOACA") transfer sponsorship of the portion of the West Creek Greenway Trail Project (the "project") funded with \$560,500 in Congestion Mitigation and Air Quality ("CMAQ") improvement program funds to Cleveland Metroparks. The project entails construction of a multipurpose trail from Broadview Road to Camelot Drive.

Cleveland Metroparks has been partnering with West Creek Conservancy ("West Creek"), the City and a variety of other partners to develop the West Creek Greenway, which will serve as an interconnecting greenway trail linking multiple neighborhoods to Cleveland Metroparks' West Creek Reservation. Cleveland Metroparks has experience with constructing trails using federal funds and is the preferred partner to complete this new portion of the West Creek Greenway.

I would be happy to meet with you at your convenience to discuss the sponsorship transfer. Please feel free to contact me with any questions or concerns at \_\_\_\_\_ or \_\_\_\_\_.

Best regards,

Name  
Title

**c:** Brian M. Zimmerman, Chief Executive Officer, Cleveland Metroparks