

PROJECT DEVELOPMENT AGREEMENT

THIS PROJECT DEVELOPMENT AGREEMENT (this "Agreement") is made effective and entered into as of the 7 day of May, 2009 ("Effective Date"), by and among the CITY OF CLEVELAND (the "City"), a municipal corporation and political subdivision duly organized and existing under the laws of the State of Ohio, acting pursuant to the authority of Ordinance No. 829-08 passed by the Council of the City of Cleveland on July 2, 2008, the CUYAHOGA COUNTY BOARD OF COUNTY COMMISSIONERS (the "County"), a political subdivision duly organized and existing under the laws of the State of Ohio acting pursuant to the authority of Resolution No. 091303 authorized by the Board of County Commissioners on April 7, 2009, 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 the authority of Resolution No. 09-04-098 authorized by the Board of Park Commissioners on April 16, 2009, and the NORTH CUYAHOGA VALLEY, INC. dba OHIO CANAL CORRIDOR (the "OCC"), a nonprofit corporation organized and existing under the laws of the State of Ohio acting pursuant to the authority of Resolution No. 2009-01 authorized by the Board of Directors on May 4, 2009.

SECTION 1: COMMITTEE/PROJECT SCOPE

- 1.1** This Agreement establishes a Towpath Trail Management Committee consisting of the parties to this Agreement (the "Committee").
 - (a)** The City, the County, and the OCC shall each have one voting representative on the Committee.
 - (b)** Any matter before the Committee will be deemed approved by the Committee upon an affirmative vote by a majority of the voting members of the Committee.
- 1.2** The Committee will, as more specifically set forth in this Agreement:
 - (a)** Secure right-of-way and complete engineering and construction of the final +/- 6 miles of the towpath trail in Cuyahoga County from Harvard Avenue to Canal Basin Park, working generally from south to north, including without limitation amenities such as paved trails, trail lane markings, trails bridges, Environmental Regeneration Zones (as hereinafter defined), and recreational areas developed adjacent to the trails (collectively, the "Towpath Trail");
 - (b)** Complete activities related directly to the Towpath Trail, including design/construction of trailheads, interpretive exhibits, right-of-way improvements, and environmental regeneration work; and
 - (c)** Secure necessary funding to complete the Towpath Trail and the related activities described in Section 1.2 above; and

- (d) Develop neighborhood access connectors, where and when appropriate, to serve the neighborhoods west and east of the Cuyahoga River Valley, as well as the central business district and its environs, including the lakefront.

SECTION 2: BACKGROUND

- 2.1 The Towpath Trail is a signature regional trail project in Cuyahoga County. The approximate 10 miles of Towpath Trail completed to date in Cuyahoga County are part of the 101-mile trail spine being constructed the length of Ohio & Erie National Heritage Canalway. The 101-miles of trail in the Canalway are part of the 460-mile Ohio to Erie Trail, which will connect Cincinnati, Columbus, and Cleveland.
- 2.2 The working guide for implementation shall be the *Towpath Trail Extension: Alignment & Design Study*, published in 2002 by the Cuyahoga County Planning Commission, and incorporated herein by reference. This document was adopted by the Cuyahoga County Planning Commission on March 14, 2002 and adopted by the City Planning Commission on June 21, 2002. The Committee members and other entities were involved as a Steering Committee for the development of the *Towpath Trail Extension: Alignment & Design Study* and subsequent refinements resulting in the Towpath Trail Alignment Update published by the Cuyahoga County Planning Commission in November 2007.
- 2.3 The Committee members recognize that the alignment for Stage 4: Literary Road to Canal Basin Park will be finalized taking into consideration the possibility of a Riverfront Convention Center, development plans for the "Scranton Road Peninsula," Canal Basin Park and connections to Whisky Island, the Flats East Bank project, and other initiatives that may impact or influence alignment.

SECTION 3: ROLES

- 3.1 **Definitions** For purposes of this Section 3, the following definitions shall apply:
 - (a) "Environmental Regeneration Zones" shall mean areas designated in the Alignment & Design Study described above, as such Study may be amended from time to time, and intended to be subject to habitat management activities by Cleveland Metroparks.
 - (b) "Operational Maintenance" shall mean work not classified as Capital Responsibilities. Items in this category include by way of example, but are not limited to: patching of small portions of trail pavement; collection and disposal of trash and litter; mowing or maintenance of landscaped or natural areas including replanting as necessary and removal of invasive species from natural areas; cleaning of buildings such as restrooms or interpretive structures; replacement of components with limited life spans such as light bulbs, sealants, and pavement stripping; patching of potholes or cracks in pavements; touchup painting between capital painting; and sign and interpretive graphic replacement due to normal wear, weathering, or damage.
 - (c) "Operational Management" shall mean Operational Maintenance, habitat management activities including without limitation the long term management of any Environmental Regeneration Zones, provision of interpretive services, and

safety and security services through deployment of Cleveland Metroparks Rangers Department throughout the Towpath Trail, consistent with services provided at other Cleveland Metroparks park properties.

- (d) "Capital Responsibilities" shall mean the installation of new and/or replacement of infrastructure or components during or at the end of their useful life, so as to restore the component to the original design intent, enhance its efficiency or expand its capacity. Examples include without limitation: complete resurfacing of trails; replacement of waterproofing or sealants on tunnels or underpasses; and repair of damage to structures, buildings or amenities caused by acts such as fire, flooding, collisions by vehicles, trains or ships.

The Committee members will be involved, as more specifically set forth in this Agreement, in all phases of project implementation (such as design and securing project funding), and all members shall carry out their responsibilities in a timely manner. Primary responsibilities, however, will be as follows:

3.2 Board of County Commissioners, Cuyahoga County, Ohio

- (a) The County will make available, and remain as the owner of, land it owns or controls that is not needed for county use and is needed for the Towpath Trail. The County may, in accordance with applicable law, become the owner of record of, and make available, other land for the Towpath Trail and the associated "ribbon" of land, as appropriate and necessary.
- (b) The County, through its County Engineer, will: (i) be responsible for managing the preparation of the plans and specifications of the Towpath Trail, environmental documentation, other design aspects, and construction of the Towpath Trail; (ii) provide assistance in property acquisition when such assistance is requested by the City; (iii) be responsible for such Capital Responsibilities to the Towpath Trail as are accepted and deemed appropriate by the County Engineer, and for which funds are available; and (d) engage in discussions with the City's Office of Equal Opportunity to explore how, in accordance with law, employment of local residents and minority and female business enterprises can best be advanced.
- (c) The County, through its County Planning Commission, will provide coordination and technical assistance functions for the Towpath Trail.

3.3 City of Cleveland

- (a) The City will be the owner of record for the land occupied by the Towpath Trail and the associated "ribbon" of land; provided that exceptions to City ownership would involve land controlled or owned by the County, or land obtained by the County for the Towpath Trail and associated "ribbon" of land. The City will make available existing public rights-of-way which are necessary. The City will make available land it owns or controls that is needed for the Towpath Trail and the associated "ribbon" of land, and remain as the owner of record. The City may become the owner of record of, and make available, other land for the Towpath Trail and the associated "ribbon" of land.

- (b) The City will coordinate improvements to public rights-of-way that are directly related to the implementation of the Towpath Trail.
- (c) The City will manage legislative or administrative approvals of City funding needed for the Towpath Trail, including but not limited to authorization by Cleveland City Council of City expenditures as required by the Charter and ordinances of the City.
- (d) The City will plan for, and complete the construction of, any neighborhood access connectors.
- (d) Future land use and alignment changes are subject to approval of the Committee and adoption by the City.
- (e) The City shall be the owner of record for all structures within Cleveland and shall be responsible for all Capital Responsibilities to the Towpath Trail that are within Cleveland and not accepted by the County Engineer. The City shall not be responsible for Operational Maintenance. The City shall provide emergency response through its Divisions of Emergency Medical Service and Fire and shall support Cleveland Metroparks safety and security efforts through normal neighborhood deployment of the City's Division of Police.
- (f) The City, through its Office of Equal Opportunity, shall engage in discussions with the County Engineer to explore how employment of local residents and minority and female business enterprises can best be advanced.

3.4 Cleveland Metroparks

Upon completion of the Towpath Trail from its current terminus to Canal Basin Park, and in accordance with a schedule agreed to by the Committee, Cleveland Metroparks will, at its cost, provide day-to-day Operational Management of the Towpath Trail and neighborhood access connectors linking the Towpath Trail to Cleveland Metroparks properties, subject to the terms and conditions of a lease or other written agreement to be approved by Cleveland Metroparks and in accordance with the Ohio Revised Code. Cleveland Metroparks shall not be responsible for Capital Responsibilities.

3.5 North Cuyahoga Valley, Inc. dba Ohio Canal Corridor

- (a) OCC will provide staff to serve the Committee.
- (b) OCC will coordinate public outreach functions related to the Towpath Trail.
- (c) OCC will monitor & coordinate Towpath Trail fund development strategies.
- (d) OCC will help in securing appropriate land donations, easements, and land acquisitions when necessary.

SECTION 4: ASSISTANCE FROM OUTSIDE PARTIES

The Committee members shall use reasonable efforts to obtain assistance from outside parties, including without limitation:

- (a) Technical assistance from the National Parks Service, including Cuyahoga Valley National Park's provision of staff and programming support for future visitor or interpretive services, subject to the availability of funds.
- (b) Technical assistance from the Northeast Ohio Area Coordinating Agency ("NOACA") to: (a) work with the sponsor, the Cuyahoga County Engineer, to advance the project to the region's Transportation Plan, consistent with the Plan goals and objectives: this will be accomplished through Project Planning Review (PRR), which includes NOACA committee review, public involvement, intergovernmental review, and staff assessment; (b) when appropriate, program the project on the region's Transportation Improvement Program (TIP); and (c) when appropriate, prioritize the project for federal funding.
- (c) Ohio Department of Transportation's ("ODOT's") coordination of ODOT-sponsored projects with the Towpath Trail project.

SECTION 5: TAX INCREMENT FINANCING ASSISTANCE

5.1 Steelyard Commons Tax Increment Financing Agreement. City of Cleveland Ordinance Number 1780-05, passed January 9, 2006 ("Ordinance") created a Steelyard Commons Tax Increment Financing Fund ("TIF") with Steelyard Commons LLC to provide funds to be used for development and recreational improvements. After the Cleveland Municipal School District has been paid in full, seventy percent of the funds generated by the TIF "shall be used for acquisition of land and to make improvements to the Towpath Trail and Canal Basin Park." Under the Ordinance, funds generated by the TIF shall be distributed by the County Treasurer to the City, and then deposited in a Steelyard Commons TIF Fund ("Fund").

5.2 Advisory Panel. The Ordinance creates an Advisory Panel ("Panel") consisting of five members selected as follows: one member appointed by Cleveland City Council; one member appointed by the Mayor; one member appointed by the County; and two members appointed by OCC. The Panel will hold public meetings at least twice each calendar year at a location to be determined by the Panel.

Each six months, the Panel will report to the County and Cleveland City Council committees on Community and Economic Development and Employment, Affirmative Action & Training on all aspects of the Towpath Trail and Canal Basin projects.

5.3 Disbursement of Funds. At least annually during the first quarter of each year, the Panel, after receiving and reviewing recommendations and disbursement requests from the Committee, will submit to the City recommendations and disbursement requests regarding proposed expenditures from the Fund. The City will at least annually disburse funds after taking into consideration the recommendations of the Panel. This disbursement is authorized by Ordinance No. 1780-05 passed January 9, 2006.

5.4 Compliance With Laws, Rules And Regulations. The Committee members, their agents, employees and any other persons over whom the Committee members have control shall comply with all present and future laws and ordinances applicable to the Towpath Trail.

- (a) Contracts for Capital Responsibilities funded wholly by TIF funds as described in Section 5.1, above, shall be administered by the City and shall be subject to, without limitation: Chapter 187 of the Cleveland Codified Ordinances, as amended by Ordinance No. 77-08, passed February 4, 2008; the Fannie M. Lewis Cleveland Resident Employment Law; and the Cleveland Fair Employment Wage Law.
- (b) Any other contracts for Capital Responsibilities shall be administered by the County Engineer and shall be subject to Ordinance No.1780-05, which requires the County Engineer to engage in discussions with the Director of the Office of Equal Opportunity to explore how employment of local residents and minority and female business enterprises can best be advanced.

SECTION 6: DEFAULTS AND REMEDIES

6.1 Events of Default. Each of the following events, if not remedied as provided in this Section 6, shall be deemed an “Event of Default”:

- (a) If any party shall be adjudicated bankrupt or adjudged to be insolvent,
- (b) If a receiver or trustee shall be appointed for any party’s property and affairs,
- (c) (i) If any 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 (ii) if any similar petitions are filed against any party and not dismissed within sixty (60) days,
- (d) Any execution or attachment shall be issued against any party or any of that party’s property if not bonded off or otherwise dismissed within sixty (60) days, whereby the Towpath Trail or 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 clause (d) shall not prohibit City or County from contesting any attachment, execution or similar action by whatever legal means are available.
- (e) If any 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 a party to this Agreement specifying the nature of such failure.

6.2 Remedies. Upon the occurrence of an Event of Default, the party asserting default 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:

- (a) Terminate the defaulting party’s rights under this Agreement by written notice;
- (b) 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.

6.3 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 part 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 instrument.

SECTION 7: MISCELLANEOUS

7.1 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 City:

Director of Parks, Recreation and Properties
City of Cleveland
Cleveland Convention Center
500 Lakeside Avenue
Cleveland, OH 44113

with a copy to:

Director of Law
City of Cleveland
Room 106, City Hall
Cleveland, OH 44114

(b) Notice to County:

Cuyahoga County Engineer
2100 Superior Viaduct
Cleveland, Ohio 44113

with a copy to:

Cuyahoga County Planning Commission
323 Lakeside Ave. West, Suite 400
Cleveland, OH 44113

With a copy to:

Cuyahoga County Prosecutor's Office
Civil Division
1200 Ontario Street
Cleveland, OH 44113

(c) Notice to Cleveland Metroparks:

Executive Director
Cleveland Metroparks
4101 Fulton Parkway
Cleveland, OH 44144

with a copy to:

Director of Law
Cleveland Metroparks
4101 Fulton Parkway
Cleveland, OH 44144

(d) Notice to OCC:

Executive Director
P.O. Box 609420
Cleveland, Ohio 44109

7.2 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.

7.3 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 both parties to this Agreement. Any such amendments shall require approvals of all parties.

7.4 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.

7.5 Exhibits. All exhibits listed and attached hereto are incorporated herein as if fully rewritten herein.

7.6. Approvals

(a) City Approvals: Except as otherwise specifically provided in this Agreement, any provision of this Agreement requiring the approval of the City, satisfaction of the City, or certification, determination or opinion of the City, or any official or employee thereof, shall be interpreted as requiring written action by the Director of the Department of Parks, Recreation and Properties granting, authorizing or expressing such approval, satisfaction, certification, determination or opinion, as the case may be. In all such instances, the Director of the Department of Parks, Recreation and Properties or other specified official or employee shall act reasonably unless such provision expressly provides otherwise.

(b) County Approvals: Except as otherwise specifically provided in this Agreement, any provision of this Agreement requiring the approval of the County,

satisfaction of the County, or certification, determination or opinion of the County, or any official or employee thereof, shall be interpreted as requiring written action by the County Engineer granting, authorizing or expressing such approval, satisfaction, certification, determination or opinion, as the case may be. In all such instances, the County Engineer or other specified official or employee shall act reasonably unless such provision expressly provides otherwise.

7.7 Prior MOU. The parties hereto entered into a Memorandum of Understanding establishing an ad hoc Towpath Trail Partnership Committee on October 16, 2004 (the "Prior MOU"). The parties hereto agree that the Prior MOU shall terminate and no longer be of effect upon execution of this Agreement.

7.8 Discrimination Prohibited. The parties to this Agreement, and their successors and assigns, shall not, in the use of the Towpath Trail, discriminate against any person or group of persons based upon race, religion, color, sex, sexual orientation, national origin, age disability, ethnic group or Vietnam-era or disabled veteran status, in the sale, lease, sublease, transfer, occupancy, tenure or enjoyment of the Towpath Trail, and shall so bind its successors and assigns by appropriate agreements and covenants running with the land enforceable by the parties to this Agreement.

7.9 Counterparts. 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.

{Balance of this page intentionally left blank; signatures follow.}

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

CITY OF CLEVELAND

By: [Signature]
Director of Parks, Recreation & Properties

The legal form and correctness of this instrument is approved:
Robert J. Triozzi
Director of Law

By: [Signature]
Assistant Director of Law
Date: 6/5/09

CUYAHOGA COUNTY BOARD OF COUNTY COMMISSIONERS

By: [Signature]
Digitally signed by: Timothy Hagan
Reason: I am approving this document
Location:
Date: 4/7/09 14:08

The legal form of this document is hereby approved;
CUYAHOGA COUNTY PROSECUTOR

By: [Signature]
Digitally signed by: Sandra Curtis Patrick
Reason: I am approving this document
Location: Cuyahoga County, Ohio
Date: 4/7/09 14:08
Assistant Prosecuting Attorney

BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAN PARK DISTRICT

By: [Signature]

Approved as to legal form:
[Signature]
Date: 5/12/09

NORTH CUYAHOGA VALLEY, INC. dba OHIO CANAL CORRIDOR, INC.

By: [Signature]
5-4-2009

RESOLUTION

Approving a project development agreement among the Board of County Commissioners of Cuyahoga County, Ohio and City of Cleveland, Board of Park Commissioners of the Cleveland Metropolitan Park District and North Cuyahoga Valley, Inc. dba Ohio Canal Corridor for planning, design, construction and operation of the Towpath Trail and Greenway Project for the County Engineer's Office.

BE IT RESOLVED by the Board of County Commissioners of Cuyahoga County, Ohio, that a project development agreement among said Board and City of Cleveland, Board of Park Commissioners of the Cleveland Metropolitan Park District and North Cuyahoga Valley, Inc. dba Ohio Canal Corridor for planning, design, construction and operation of the Towpath Trail and Greenway Project for the County Engineer's Office be, and the same is, hereby approved.

BE IT FURTHER RESOLVED that the Clerk of the Board be, and she is, hereby instructed to transmit a copy of this resolution together with the project development agreement to Robert C. Klaiber, Jr., P.E., P.S., County Engineer, with instructions to return one complete set to the Clerk of the Board's Office when properly executed.

On Motion of Commissioner Dimora, seconded by Commissioner Jones, the foregoing resolution was duly adopted.

Ayes: Dimora, Jones, Hagan.

Nays: None.

Resolution Adopted.

Jeanne M. Schmotzer,
Clerk of the Board

Journal 302
April 7, 2009
091303
fg