

ORDINANCE RECORD
COUNCIL OF THE CITY OF BRECKSVILLE

Ordinance No. 5391

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO
A LICENSE AND FUNDING COMMITMENT AGREEMENT WITH
THE BOARD OF PARK COMMISSIONERS OF THE CLEVELAND
METROPOLITAN PARK DISTRICT FOR THE BRECKSVILLE
ROAD INTERSECTION IMPROVEMENT PROJECT IMPLEMENTATION
GRANT AT BRECKSVILLE RESERVATION; AND DECLARING AN
EMERGENCY**

WHEREAS, Cleveland Metroparks, with Brecksville's support, submitted and was approved for funding for the Transportation for Livable Communities Initiative Brecksville Road Intersection Improvement Project Implementation Grant; and

WHEREAS, as part of the Grant, Brecksville has agreed to make certain portions of the Brecksville road Right of Way available to Cleveland Metroparks for Cleveland Metroparks to construct, maintain, and operate the project for an enhanced park experience for visitors to Brecksville Reservation and a safer pedestrian and bicycle connection across Brecksville Road; and

WHEREAS, Cleveland Metroparks and Brecksville have both agreed to submit matching funds of up to fifteen thousand dollars (\$15,000.00) each.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Brecksville, County of Cuyahoga, and State of Ohio, that:

SECTION 1. The Mayor be and is hereby authorized to execute a License and Funding Commitment Agreement on behalf of the City of Brecksville with the Board of Park Commissioners of the Cleveland Metropolitan Park District for the Brecksville Road Intersection Improvement Project Implementation Grant at Brecksville Reservation, a copy of such Agreement is attached hereto, expressly made a part hereof by reference and marked Exhibit "A."

SECTION 2. The Council hereby appropriates sufficient funds to effectuate the provisions contained in Section 1 hereof, and the Director of Finance is hereby authorized to transfer the funds necessary to complete this expenditure from the available, non-tax revenue, funds of the City. The Director of Finance be and is hereby further authorized to issue the fiscal officer's certificate necessary to make the expenditures as described in Section 1 hereof and is further directed to issue vouchers of this City in the amounts and for the purposes as expressed in Section 1 hereof, said amounts to be charged to the appropriately designated Fund.

SECTION 3. The Council declares this Ordinance to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare, the reason for the emergency is to commence with the project, therefore, said Ordinance shall be in full force and effect immediately upon its adoption by this Council and approval by the Mayor, otherwise, from and after the earliest period allowed by law.

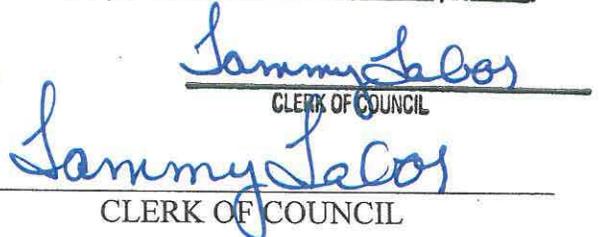
PASSED: February 16, 2021

APPROVED: February 16, 2021

I do hereby certify that the foregoing is a true and correct copy of Ordinance No. 5391 duly passed by the Council of the City of Brecksville, Ohio, on 2-16, 2021 and that same was duly posted in accordance with the existing Charter of the City of Brecksville on 2-19, 2021.



MAYOR



CLERK OF COUNCIL

EXHIBIT "A"

LICENSE AND FUNDING COMMITMENT AGREEMENT FOR BRECKSVILLE ROAD
INTERSECTION IMPROVEMENT PROJECT IMPLEMENTATION GRANT
AT BRECKSVILLE RESERVATION

THIS LICENSE AND FUNDING COMMITMENT AGREEMENT (this "Agreement") is made as of the ____ day of _____, 2021, between the CITY OF BRECKSVILLE, OHIO, a municipal corporation organized and operating under Ohio law and located at 9069 Brecksville Road, Brecksville, Ohio 44141 ("Brecksville" or "Licensor") and the BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAN PARK DISTRICT ("Cleveland Metroparks" or "Licensee"), a political subdivision of the State of Ohio organized and operating pursuant to Chapter 1545 of the Ohio Revised Code and located at 4101 Fulton Parkway, Cleveland, Ohio 44144 (collectively, the "Parties").

WITNESSETH THAT:

WHEREAS, Brecksville owns the right of way for Brecksville Road near the intersection of Brecksville Road and Valley Parkway ("Brecksville Road Right of Way"), and Valley Parkway is a Cleveland Metroparks' owned road on property owned in fee by Cleveland Metroparks (currently known as Permanent Parcel Numbers 603-16-038 and 603-29-001) ("Cleveland Metroparks Property");

WHEREAS, Cleveland Metroparks, with Brecksville's support, submitted and was approved for funding for the Transportation for Livable Communities Initiative ("TLCI") Brecksville Road Intersection Improvement Project Implementation Grant ("Grant") administered by the Northeast Ohio Areawide Coordinating Agency ("NOACA");

WHEREAS, as a part of the Grant, Brecksville has agreed to make available certain portions of the Brecksville Road Right of Way for Cleveland Metroparks to implement the Grant by making an all purpose trail crossing of Brecksville Road off-set to the south of the intersection with Valley Parkway ("Project");

WHEREAS, Cleveland Metroparks and Brecksville have both agreed to submit matching funds of up to \$15,000 each (split evenly) for implementation of the Project and intend to make their respective commitments a part of this Agreement;

WHEREAS, Brecksville has agreed to make certain portions of the Brecksville Road Right of Way (as outlined below) available to Cleveland Metroparks for Cleveland Metroparks to construct, maintain, and operate the Project for an enhanced park experience for visitors to Brecksville Reservation and a safer pedestrian and bicycle connection across Brecksville Road;

WHEREAS, Brecksville has the right and authority to grant to Cleveland Metroparks a license to construct, maintain, and operate the Project of the Brecksville Road Right of Way ("License"); and

WHEREAS, Brecksville will grant to Cleveland Metroparks the right to, among other things, use the portion of the Brecksville Road Right of Way as depicted on the map attached hereto as **Exhibit A** (referred to as the "License Area") consistent with the terms of this License.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements provided herein by the parties hereto, the parties hereto mutually agree as follows:

1. Grant of License. Brecksville hereby grants permission to Cleveland Metroparks, its members, officers, directors, employees, lessees, sublessees, contractors, subcontractors, invitees and guests to use the License Area for the purpose of constructing, operating, and maintaining a bicycle and pedestrian crossing of Brecksville Road on the License Area and for ingress and egress to such License Area. Cleveland Metroparks is authorized to make the improvements detailed on **Exhibit B** (the "Improvements"). Brecksville shall approve all plans and specifications for the Improvements in advance of Cleveland Metroparks commencing construction.

2. Term. This Agreement shall be in effect commencing on the date of execution and delivery hereof by Brecksville and Cleveland Metroparks and shall be in effect for the entire useful life of the Improvements, unless the Agreement is terminated earlier pursuant to the terms of this Agreement.

3. Use of License Area.

(a) Cleveland Metroparks shall, at all times, exercise all reasonable care to guard the License Area against damage by Cleveland Metroparks' invitees, guests or others, and keep the License Area clean and free from refuse and debris.

(b) Neither Party shall not park any vehicle or equipment so as to block access to the License Area by emergency, Police, fire or medical vehicles. Both Parties shall also ensure that its employees, invitees, and guests park in designated parking areas only.

(c) Except as necessary for construction or maintenance of the Improvements, neither Party shall not store any materials or equipment in the License Area.

(d) During the term of the License, at Cleveland Metroparks' sole cost and expense, Cleveland Metroparks shall maintain the License Area consistent with Cleveland Metroparks park maintenance practices.

4. Grant Commitment. Brecksville hereby affirms its commitment to provide up to \$15,000 towards the Project and Improvements. Cleveland Metroparks and Brecksville shall make reasonable accommodations to transfer the up to \$15,000 from Brecksville to Cleveland Metroparks for implementation of the Project. If the Improvements end up costing less than initially expected, then Cleveland Metroparks and Brecksville will split the costs under \$30,000 evenly.

5. Future Signal Warrant Analysis. If a traffic signal is warranted at the intersection of Valley Parkway and Brecksville Road in the future, the Improvements shall be realigned to a more traditional crossing within the intersection and the offset intersection removed. The current traffic warrant analysis did not justify a traffic light at this time. However, extensive development in the area is planned and that could change the traffic counts in the future, at which point the Parties shall revisit the issue with NOACA. Moreover, the Parties agree that this future change would likely require attaining additional grant funding and neither party is committing to paying for such future change at this time.

6. Compliance with Laws. Cleveland Metroparks' use of the License Area shall comply with all applicable laws, ordinances, rules, and regulations of all public authorities having any jurisdiction over the License Area or any part thereof.

7. Park Regulations. The use of the License Area shall be subject to the applicable Park Rules and Regulations as the same may from time to time be adopted by the Board of Park Commissioners of the Cleveland Metropolitan Park District. A copy of Cleveland Metroparks' Rules and Regulations can be found at <http://www.conwaygreene.com/clemetroparks.htm>.

8. Signs. Cleveland Metroparks may place reasonable signs upon the License Area which relate to the use of the License Area, the Improvements, and/or the Project.

9. Maintenance and Repairs. Routine grounds maintenance shall be provided by Cleveland Metroparks at no cost to Brecksville. Cleveland Metroparks is responsible for any and all costs associated with the maintenance and upkeep of the Improvements, including material, supplies, parts and labor.

10. Reversion to Brecksville. If at any time this Agreement is terminated, the rights hereby granted automatically shall terminate in accordance with the terms of this Agreement and the License shall revert to the Brecksville.

11. Termination.

(a) If for a period of more than a year the License Area ceases to be used by Cleveland Metroparks for the purpose specified herein, the rights hereby granted automatically shall terminate. If so terminated, Cleveland Metroparks shall remove all of the Improvements at its cost and restore the License Area to its original condition.

(b) This Agreement may be terminated by either party upon a material breach by the other party of its obligations hereunder, which material breach remains uncured for thirty (30) days after written notice from the non-breaching party to the breaching party specifying the breach.

(c) In the event either Party becomes financially unstable to the point of (a) ceasing to conduct business in the normal course, (b) making a general assignment for the benefit of creditors, or (c) suffering or permitting the appointment of a receiver for its business or its assets, or there is a filing by or against either Party of a meritorious petition in bankruptcy or under bankruptcy or debtor's law, the other party may, at its option, immediately terminate this Agreement by giving written notice thereof.

12. Force Majeure. The provisions of this Agreement shall not be applicable if there shall occur during or prior to the Term hereof any: (a) strikes, lockouts or labor disputes, or (b) acts of God, civil commotion or insurrection, revolution, sabotage, flood or fire or other conditions similar to those indicated in the foregoing items (a) and (b) beyond the reasonable control of the party whose performance shall be required. If either party shall, as a result of such event, fail to perform any obligations hereunder, then such obligations shall be performed as soon as practicable after such event shall abate. If either party shall, as a result of such event, be unable to exercise any right or option with any time limit provided therefor in this Agreement, such time limit shall be deemed extended for a period equal to the duration of such event.

13. Liability. Cleveland Metroparks shall be responsible for any and all losses, liabilities, costs, claims, and expenses, including without limitation attorneys' fees, in any way related to, or arising in connection with, activities related to this Agreement except those caused by Brecksville's negligence or recklessness.

14. Insurance. Throughout the term of this Agreement, Cleveland Metroparks shall maintain the reasonable insurance coverages for the License Area and Improvements.

15. Safety and Worker's Compensation. Cleveland Metroparks is responsible for and shall ensure the safety of its own work force. Cleveland Metroparks will maintain Workers' Compensation and Employer's Liability Insurance in an amount required by the State of Ohio.

16. Acceptance of License. Acceptance of the License by Cleveland Metroparks will constitute acceptance of all conditions set forth herein.

17. Notices. All notices, requests, reports and other communications in connection with this Agreement shall be made in writing and shall be deemed to have been given when hand delivered or sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier, to the parties at the following addresses:

If to Cleveland Metroparks:

Cleveland Metroparks
4101 Fulton Parkway
Cleveland, Ohio 44144
Attention: Chief Executive Officer

With a copy to:

Chief Legal & Ethics Officer
Cleveland Metropolitan Park District
4101 Fulton Parkway
Cleveland, Ohio 44144

If to Brecksville to:

City of Brecksville
c/o Mayor
9069 Brecksville Road
Brecksville, Ohio 44141

18. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect thereto.

19. Modification. No modification of this Agreement shall be binding upon Cleveland Metroparks or Brecksville unless set forth in writing and executed by Cleveland Metroparks and Brecksville.

20. Severability. If any provision of this Agreement shall be or become invalid or unenforceable, then this Agreement shall be divisible as to such provision, and the remainder of this Agreement shall be and remain valid and binding as though such provision were not included herein.

21. Third-Party Rights. Nothing herein expressed or implied is intended or shall be construed to confer upon any other entity, other than as herein set forth, any rights or remedies under, or by reason of, this Agreement.

22. Assignment. This Agreement and the License granted hereunder are personal to Cleveland Metroparks. Cleveland Metroparks will have no right, power, or authority to assign this Agreement or the License, either voluntarily or involuntarily, or by operation of law, without the express, prior written consent of Brecksville, which consent will not unreasonably be withheld or delayed. Any attempt to assign this Agreement or the License without the required consent will be null and void and of no legal force or effect.

23. Counterparts. This Agreement may be executed by both parties in counterparts, each of which shall be deemed an original, but all of such counterparts taken together shall constitute one and the same Agreement.

24. Electronic Signatures. By entering into this Agreement, the Parties agree on behalf of themselves, their officers, employees, agents, successor or assigns, that this transaction may be conducted by electronic means by agreeing that all documents requiring signatures by Cleveland Metroparks and Brecksville may be executed by electronic means, and that the electronic signatures affixed by Brecksville and/or Cleveland Metroparks 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.

25. Governing Law; Jurisdiction. This Agreement shall be governed by the laws of the State of Ohio, without regard to any otherwise applicable principles of conflicts of laws. All actions arising from or relating to this Agreement or a claim of breach of this Agreement shall be instituted and prosecuted exclusively in a federal or state court located in Cuyahoga County, Ohio, and the Parties consent to the exercise of personal jurisdiction by and exclusive venue in such courts.

26. Authority to Execute. Cleveland Metroparks and Brecksville have all necessary power and authority to enter into this Agreement, that the execution of this Agreement and the consummation of the transaction contemplated hereby have been duly authorized by all requisite corporate action and constitutes the valid and binding obligation of Cleveland Metroparks and Brecksville, respectively, enforceable against it in accordance with its terms.

27. Public Records. Both Parties acknowledge that this Agreement and other records in the possession or control of Cleveland Metroparks or Brecksville regarding the License may be public records under Ohio Revised Code Section 149.43 and may be open to public inspection unless a legal exemption applies.

IN WITNESS WHEREOF, Cleveland Metroparks and Licensee have executed this Agreement as of the day and year first above written.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

LICENSEE:
BOARD OF PARK COMMISSIONERS OF THE
CLEVELAND METROPOLITAN PARK
DISTRICT

Brian M. Zimmerman
Chief Executive Officer

APPROVED AS TO LEGAL FORM BY
ROSALINA M. FINI, CHIEF LEGAL &
ETHICS OFFICER:

Kyle G. Baker, JD, Sr. Assistant Legal
Counsel

LICENSOR:
CITY OF BRECKSVILLE, OHIO

By: Jerry N. Hruby
Its: Mayor

APPROVED AS TO LEGAL FORM ONLY

David J. Matty, Law Director

EXHIBIT A
LICENSE AREA

EXHIBIT B

PLANS FOR IMPROVEMENTS