

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2015-81

By Nick Haschka Sponsored By Mayor Cyril M. Kleem

AN ORDINANCE

APPROVING AND AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAN PARK DISTRICT ("METROPARKS") FOR THE PURPOSE OF OBTAINING A LICENSE NEEDED TO FACILITATE THE USE AND MAINTENANCE OF AN EXISTING RETAINING WALL IN CONNECTION WITH THE REPLACEMENT AND RECONSTRUCTION OF THE EASTERLY WEST CENTER STREET BRIDGE, AUTHORIZING THE EXECUTION OF ALL RELATED DOCUMENTS THEREFOR, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Berea is engaged in a project with the Ohio Department of Transportation (ODOT) for the replacement of the bridge over the Rocky River on Center Street west of Front Street; and

WHEREAS, in preparation for the project the city has found that a retaining wall built at the time of the construction of the existing bridge is located at least in part on Metroparks land; and

WHEREAS, it is necessary and appropriate for the city to acquire a license for use and maintenance of the retaining wall in connection with to carrying out the project.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, State of Ohio:

SECTION 1. That the Mayor of the City of Berea is hereby authorized to enter into a License Agreement on behalf of the City with The board of Park Commissioners of the Cleveland Metropolitan Park District (Metroparks") for a certain License over the real estate currently owned by the Metroparks more fully described on the map and in the legal description appended to the License Agreement which is marked as Exhibit "A", attached hereto and incorporated herein by reference.

SECTION 2. That the Mayor and City Engineer, as needed, are hereby authorized to execute any and all documents (including the attached License Agreement) and documents and instruments necessary and appropriate to carry out the purposes of this Ordinance, and the same are hereby ratified and affirmed.

SECTION 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements.

SECTION 4. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare of the City, and for the further reason to acquire the necessary property use so that the referenced bridge replacement construction project may be completed at the earliest practicable time for the safety of the motoring public. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise, from and after the earliest period allowed by law.

PASSED: December 7, 2015

ATTEST: [Signature]
Clerk of Council

APPROVED: December 10, 2015

[Signature]
President Pro Tempore of Council
[Signature]
Mayor

Approved as to form:
[Signature]
Director of Law

| DRAFT 9-4-15 (Edited by Legal on 9/11/15)

**LICENSE AGREEMENT
Center Street Bridge Wing Wall, Berea**

THIS LICENSE AGREEMENT (this "Agreement") made as of the ____ day of September, 2015 between the BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAN PARK DISTRICT, a political subdivision of the State of Ohio organized and operating pursuant to Chapter 1545 of the Ohio Revised Code ("Cleveland Metroparks"), and the CITY OF BEREA, a municipal corporation of the State of Ohio (the "City"),

W I T N E S S E T H I H A T :

WHEREAS, Cleveland Metroparks herein is the owner of certain real property located in Cuyahoga County, Ohio; and

WHEREAS, the City has requested of Cleveland Metroparks a temporary license to use a certain portion of Cleveland Metroparks property for the purpose of access, construction, maintenance, repair, and removal of an existing concrete bridge wing wall, handrail and slope as well as regrading and restoration in the Mill Stream Run Reservation of the Cleveland Metropolitan Park District for any present or future Center Street Bridge Construction Project, and Cleveland Metroparks has agreed to grant such a temporary license, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties agree as follows:

1. Grant of License. Upon the terms and conditions hereinafter set forth, Cleveland Metroparks hereby grants to the City, its officers, employees, agents, and designated contractor, together with its subcontractors, agents, and material suppliers, a temporary license (the "License" or "Agreement"), to use a certain portion of Cleveland Metroparks property as shown on Exhibit A attached hereto and made a part hereof (the

"License Area") for the purpose, at Licensee's sole cost and expense, of access, construction, maintenance, repair, and removal of an existing concrete bridge wing wall, handrail and slope as well as regrading and restoration (the "Improvements") as well as regrading and restoration, together with reasonable rights of entry in, on, over, across, under and through a certain portion of the Cleveland Metroparks property ~~designated~~ legally described in Exhibit B, attached hereto and made a part hereof, in accordance with applicable laws, ordinances, rules, and regulations which are now in effect or may be adopted hereafter on the condition that the City will maintain the Improvements in good condition and repair at all times and shall be permitted to enter upon the License Area from time to time for such maintenance and replacement or repair, upon request and after approval of plans and specifications, pursuant to permit(s) issued by Cleveland Metroparks; provided, however, that Cleveland Metroparks reserves the right to use the License Area for any and all purposes that would not unreasonably and materially interfere with the City's use of the License Area for the purpose specified herein and provided further that the City shall notify Cleveland Metroparks Ranger Department at 440-331-5530 and the Park Manager of Mill Stream Run Reservation (216-739-6055) (the "Park Manger") at least two (2) working days in advance of any maintenance and replacement or repair and that the Agreement shall terminate, in any event, no later than July 31, 2045.

2. Conditions of Work.

(a) Plans and Specifications. The City shall construct the Improvements in accordance with the plans and specifications submitted by an Engineer licensed as such by the State of Ohio and approved by, or on behalf of, Cleveland Metroparks (the "Approved Plans") unless a modification thereof is approved in writing by Cleveland Metroparks.

(b) Compliance with Law. Plans and specification for, work with respect to, and use of the Improvements must be in compliance with all applicable laws, ordinances, rules, and regulations, including without limitation any and all conditions and requirements

imposed by Cleveland Metroparks and other governmental authorities with competent jurisdiction.

(c) Permits, etc. Prior to commencing any work on the Improvements, the City shall have obtained any and all necessary permits, authorizations, and other consents from any and all governmental authorities with competent jurisdiction.

3. Use of License Area and Mill Stream Run Reservation.

(a) Removal of Vegetation. The City agrees that clear cutting of the License Area is not required or permitted. No trees or vegetation on Cleveland Metroparks property shall be removed, trimmed, or otherwise damaged unless otherwise approved in writing by the Cleveland Metroparks Natural Resource Manager (440-253-2162). The City shall be liable to Cleveland Metroparks for loss or damage to any vegetation, including without limitation trees, arising out of, or associated with or related to, any of the activities described herein, the amount of such loss or damage being determined by Cleveland Metroparks.

(b) Removal of Topsoil and/or Dirt. Any topsoil and/or dirt removed for placement of the Improvements shall be removed from Cleveland Metroparks property promptly by the City.

(c) Storage and Parking Conditions. No storage of equipment or materials, parking of vehicles, including without limitation standing or stacking of trucks and parking of the City's employees' cars or trucks, shall be permitted on the License Area or adjoining Cleveland Metroparks property unless otherwise approved in writing by the Park Manager, and such equipment, materials, or vehicles, including without limitation trucks, shall be at the risk of the City.

(d) Traffic Control. To ensure safety of park users, the City shall be required to provide traffic control measures. Such measures, whether they be in the form of flaggers, barricades, lighting, escorts, or any other devices, shall be developed by the City and shall follow the standards and guidelines of the Ohio Department of Transportation Manual of

Uniform Traffic Control Devices for Streets and Highways, subject to the approval of Cleveland Metroparks Ranger Department. In the event of road closures or other temporary impediments to traffic, Ranger personnel are required and must be arranged in advance with Ranger Headquarters at 440-331-5530.

(e) Inspection Rights. To ensure compliance with the terms of this Agreement, Cleveland Metroparks shall retain rights of inspection before, during, and after work with respect to the Improvements.

(f) Injury/Emergency Events. In the event of injury that arises in connection with work with respect to the Improvements, or upon the occurrence of an event that would constitute an emergency, Cleveland Metroparks Ranger Department must be notified immediately at 440-331-5530.

4. Use of Park Roadways and Trails.

(a) No Interference. The operation of equipment and vehicles, including without limitation trucks, on any roadway or trail, and access by persons entering or leaving the License Area shall be undertaken in a manner that shall not interfere with, or restrict the use of, or access to, park facilities by park visitors, including without limitation vehicle, bicycle, and pedestrian traffic.

(b) Limited Access. Access for vehicles, including without limitation trucks, to the License Area shall be over ~~Chippewa Road~~West Center Street. No other roadway shall be used for such access.

(c) Limitations on Vehicles. No vehicle, except rubber-tired, shall be operated on any roadway, trail, or portion of ~~Brecksville-Mill Stream Run~~Reservation unless otherwise approved in writing by the Park Manager. Without limiting the generality of the foregoing, materials delivered to the License Area shall be delivered in single-axle or double-axle trucks, not exceeding twenty (20) ton gross loads.

(d) Removal of Debris. All roadways and trails must be kept clear of construction

debris, spillage, and mud at all times. Should debris, spillage, or mud be carried onto the roadway or trail from the License Area, it shall be removed immediately and, in any event, the roadway and trail shall be left clean at the end of each work day.

5. Restoration of License Area.

(a) Restoration. The City, at the City's sole cost and expense, promptly shall restore all surfaces, including without limitation pavements, lawns, grass areas, and fences, to the condition existing before being disturbed.

(b) All Purpose Trail Specifications. (Not Applicable)

(c) Seed Specifications. The seed mixture for restoration of grass areas shall be a mixture of 20% Kentucky 31 Fescue, 25% common Kentucky Bluegrass, 20% Manhattan Rye Grass, and 35% Creeping Red Fescue at the rate of eight (8) pounds per one thousand square feet (8:1000). Mulching material shall conform to State Specification 659.06, and installed per State Specification 108.04 and 659.09. Topsoil shall conform to State Specifications 653.01, 653.02, 653.05, 654.03, and 654.04.

6. Indemnification. To the extent permitted by law, the City agrees to indemnify, hold harmless, and, if requested, defend Cleveland Metroparks, and any and all of Cleveland Metroparks officers, employees, and agents from and against any and all liabilities, costs, claims, demands, fines, penalties, suits (including cost of defense), proceedings, actions, and causes of action, including reasonable attorneys' fees, arising out of, or associated with, or related to, any of the activities described herein, including without limitation failure to obtain any necessary permits, authorizations, or consents of any governmental agency with jurisdiction.

7. Insurance. The City shall maintain and pay for, or cause to be maintained and paid for, (i) commercial general liability insurance, including without limitation contractual liability coverage, products and completed operations coverage, and coverage for collapse, underground exposure, and explosion hazards; and (ii) commercial automobile

liability insurance for owned, hired, and non-owned automobiles. Such insurance (A) shall insure against claims for bodily injury (including death) and property damage, with each policy having a combined single limit of not less than \$1,000,000 per occurrence, (B) shall be primary to any insurance maintained by Cleveland Metroparks, and (C) shall name the Board of Park Commissioners of the Cleveland Metropolitan Park District as an additional insured. Certificates of insurance evidencing the aforementioned coverage(s) shall be provided to Cleveland Metroparks prior to commencement of the work. Cleveland Metroparks reserves the right to request a full and complete copy of all insurance policies. The City's coverage may not be cancelled or materially changed until at least ten (10) days after written notice to Cleveland Metroparks. The aforementioned insurance coverage(s) shall be placed with an insurance company listed in the latest edition of "Best's Insurance Guide and Key Ratings" with a policy rating of at least A-, X.

8. Reversion to Licensor. If at any time the License ceases to be used by Licensee for the purpose specified herein, the rights hereby granted automatically shall terminate and the License shall revert to Licensor.

9. Acceptance of License. Acceptance of the License by t will constitute acceptance of all conditions set forth herein.

10. Termination of Agreement. If at any time the License Area ceases to used by the City for the purpose specified herein, the rights hereby granted automatically shall terminate whereupon the City, if Cleveland Metroparks so requests, shall remove the Improvements from the License Area in a manner satisfactory to Cleveland Metroparks; provided, however, that Cleveland Metroparks maintains the right to terminate this Agreement at any time for failure by the City to comply with any of the terms and conditions hereof.

11. 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.

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

13. 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.

14. 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.

15. Successors and Assigns. The rights and obligations of the parties set forth herein shall be binding upon, and inure to the benefit of each of them, and their respective successors and assigns.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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

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

By: _____
Brian M. Zimmerman
Chief Executive Officer

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

Kyle G. Baker, Assistant Legal Counsel

LICENSEE:
CITY OF BEREA

By: _____
Cyril Kleem
Mayor

Approved as to legal form:

Berea Law Director, James N. Walters III

EXHIBIT A

Drawing of License Area

EXHIBIT B

Legal Description of License Area

**LEGAL DESCRIPTION FOR LICENSE AGREEMENT
FROM THE BOARD OF PARK COMMISSIONERS OF THE
CLEVELAND METROPOLITAN PARK DISTRICT
TO THE CITY OF BEREA**

Situated in the City of Berea, County of Cuyahoga and State of Ohio and known as being a part of Fractional Lot "C" in Sheldon's Addition to the Village of Berea of part of Original Middleburg Township Section 17, as shown by the recorded plat in Volume 45, Page 83 of Cuyahoga County Map Records and is bounded and described as follows:

Beginning in the existing northerly right of way line of West Center Street at its intersection with the westerly line of land conveyed to Dimitrios I. Gountis (PPN 384-09-008) by instrument recorded in Document No. 201112010604 of Cuyahoga County Records;

Thence South 66° 12' 25" West, along said existing northerly right of way line of West Center Street, 19.99 feet to an angle point therein;

Thence South 89° 47' 07" West, continuing along said existing northerly right of way line of West Center Street, 27.30 feet to the PRINCIPAL PLACE OF BEGINNING;

Thence South 89° 47' 07" West, continuing along said existing northerly right of way line of West Center Street, 28.15 feet to a point;

Thence North 44° 56' 53" West, 42.23 feet to a point;

Thence North 89° 47' 07" East, 28.15 feet to a point;

Thence South 44° 56' 53" East, 42.23 feet to the principal place of beginning and containing 0.019 acres (845 square feet) of land as surveyed and described in August 2015 by Timothy P. Hadden, Ohio Professional Survey No. 6786 of CT Consultants, Inc. Registered Engineers and Surveyors.

Prior instrument reference as of the date this survey was prepared: Volume 7033, Page 732 of the Cuyahoga County Records.

The above described area is part of Cuyahoga County Auditor's Parcel No. 364-29-001 and 364-29-002.

Bearings contained herein are for project use only and are based on Ohio State Plane (North Zone) Coordinates, Horizontal Datum NAD83(1986).