

# COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2021-49

By Bick Skoczen Sponsored By Mayor Cyril M. Hjem

## AN ORDINANCE

**AUTHORIZING THE MAYOR TO ENTER INTO A LICENSE AGREEMENT WITH THE BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAN PARK DISTRICT TO PROVIDE THE CITY USE OF A CERTAIN PORTION OF THE CLEVELAND METROPARKS PROPERTY FOR THE PURPOSE OF ACCESS, CONSTRUCTION, CONTINUING MAINTENANCE, REPAIR AND REMOVAL OF EXISTING PAVEMENT OF WEST CENTER STREET AND PLACEMENT OF A NEW SIDEWALK ON HENRY STREET FOR ANY PRESENT OR FUTURE NEEDS, AND DECLARING AN EMERGENCY.**

**WHEREAS**, pursuant to warranty deeds, Volume 4874 Page 103, filed for record on September 30, 1938, and Volume 4852 Page 245, filed for record on May 18, 1938, Cleveland Metroparks is the fee owner of certain real property identified as Permanent Parcel Numbers 361-11-001 and 364-08-001 in the Mill Stream Run Reservation, located in the City of Berea, County of Cuyahoga, State of Ohio (the "Cleveland Metroparks Property"); and

**WHEREAS**, the City of Berea (Licensee) has requested of Cleveland Metroparks a license to use a certain portion of the Cleveland Metroparks Property for the purpose of access, construction, continuing maintenance, repair and removal of existing pavement of West Center Street and placement of a new sidewalk on Henry Street for any present or future needs; and

**WHEREAS**, Cleveland Metroparks has the right and authority to grant the License; and

**WHEREAS**, Cleveland Metroparks will grant to the City the right to, among other things, use the area located on a portion of the Cleveland Metroparks Property as depicted on the map attached hereto as **Exhibit A** (referred to as the "License Area") to perform improvements consistent with the drawings attached hereto as **Exhibit B**.

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

**SECTION 1.** That the Mayor be and he is hereby authorized to execute a License Agreement with the Board of Park Commissioners of The Cleveland Metropolitan Park, subject to the terms and conditions of the Agreement, which is attached hereto as **Exhibit C**, and incorporated herein by reference.

**SECTION 2.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of the 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, including Section 121.22 of the Ohio Revised Code.

**SECTION 3.** 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, or providing for the usual daily operation of a municipal department and for the further reason that the public welfare and health would be best served by the prompt demolition of the bridge and construction of a sidewalk. 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.

# COUNCIL CHAMBER

City of Berea, Ohio

Ord No. 2021-49

By Skoczen Sponsored By Mayor Klem

PASSED: October 4, 2021

[Signature]  
President of Council

ATTEST: [Signature]  
Clerk of Council

APPROVED: October 5, 2021  
[Signature]  
Mayor

Approved as to Form:

[Signature]  
Director of Law

Exhibit  
"A"



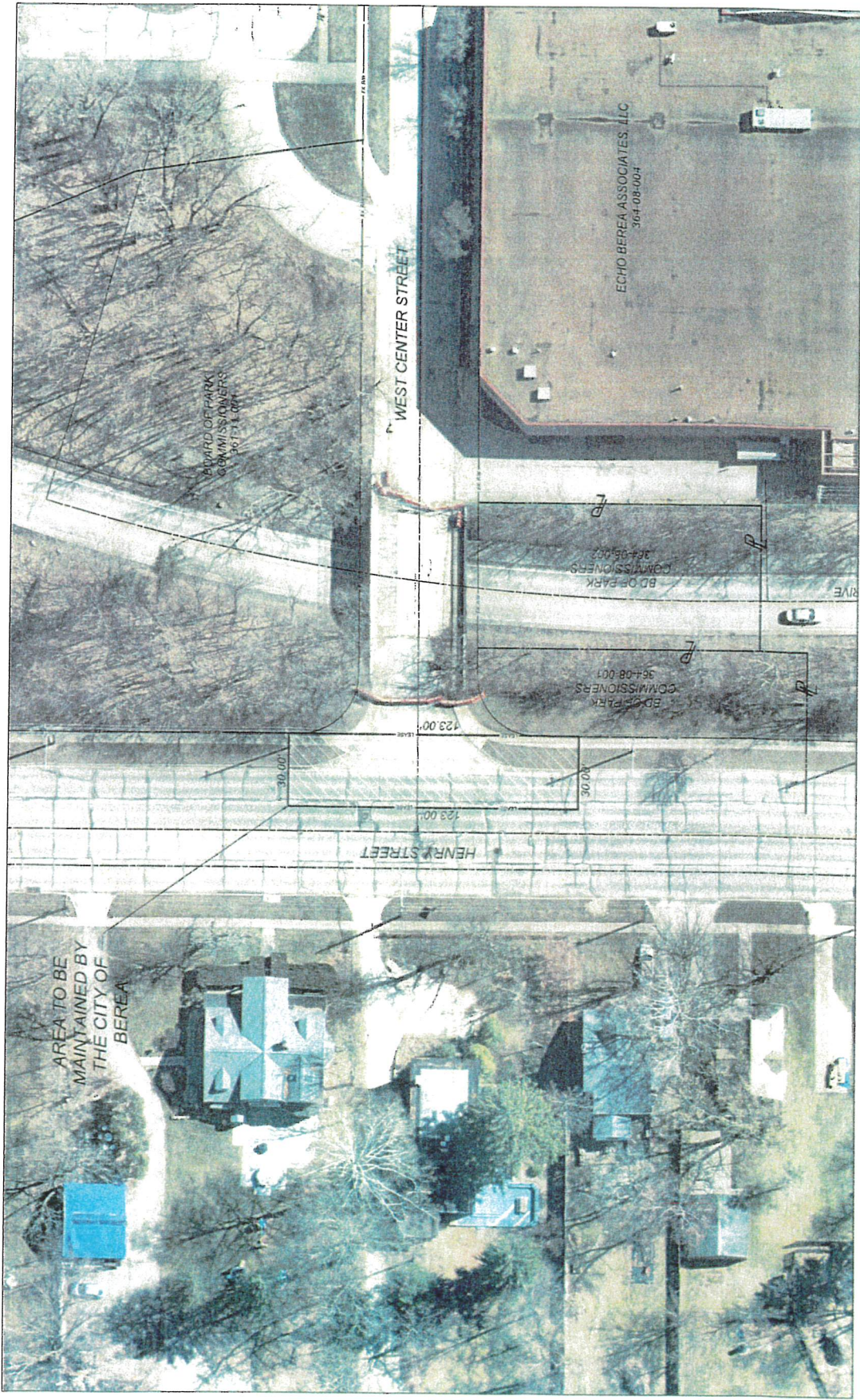
NO.	REVISION	DATE

ISSUE FROM:	NO. ACQ/REV	NO.
ISSUE DATE:	XXXXXX	
SCALE:	1" = 30'	
DESIGNED BY:	PSJ	
DRAWN BY:	RLJ	
CHECKED BY:	TTH	

PROJECT NO.	1500953
CLIENT	
DATE	
SHEET	00X-01
OF	1
XX	

BEREA WEST CENTER STREET  
BRIDGE REMOVAL (OVER VALLEY PARKWAY)  
AND FORCE MAIN RELOCATION

PERPETUAL SIDEWALK  
MAINTENANCE AGREEMENT AREA



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September 14, 2021

**DESCRIPTION OF  
SIDEWALK MAINTENACE  
LICENSE AGREEMENT AREA  
FOR  
THE CITY OF BEREA**

**PARCEL NO. 1**

Situated in the City of Berea, County of Cuyahoga, and State of Ohio and known as being a part of Sublot No. 19 in Sheldon's Addition to the Village of Berea of original Section No. 17 in the Township of Middleburgh as shown by plat recorded in Deed Book Volume 45, Page 83 of Cuyahoga County Deed Records, and more particularly being a part of Parcel No. 2 (PPN 364-08-001) of the premises conveyed to the Board of Park Commissioners of the Cleveland Metropolitan Park District by instrument dated May 18, 1938 and recorded in Deed Book Volume 4852, Page 245 of Cuyahoga County Deed Records and is bounded and described as follows:

Beginning in the original easterly right-of-way line of Henry Street, 50 feet in width, at its intersection with the southerly right-of-way line of Center Street, 50 feet in width, said Point of Beginning being the northwesterly corner of said Sublot No. 19 in Sheldon's Addition to the Village of Berea, all as appears on said plat;

Thence, North  $89^{\circ}47'28''$  East along said southerly right-of-way line of Center Street, the same being the northerly line of said Sublot No. 19, a distance of 30.00 feet to a point therein;

Thence, South  $0^{\circ}13'36''$  West, through said land of the Board of Park Commissioners of the Cleveland Metropolitan Park District, a distance of 43.00 feet to a point therein;

Thence, South  $89^{\circ}47'28''$  West, continuing through said land of the Board of Park Commissioners of the Cleveland Metropolitan Park District, a distance of 30.00 feet to the aforesaid original easterly right-of-way line of Henry Street;

Thence, North  $0^{\circ}13'36''$  East along said original easterly right-of-way line of Henry Street, the same being the westerly line of said Sublot No. 19, a distance of 43.00 feet to the Point of Beginning and containing 0.030 of an Acre (1,290 Square Feet) of land as described in September, 2021 by CT Consultants, Inc.

**PARCEL NO. 2**

Situated in the City of Berea, County of Cuyahoga, and State of Ohio and known as being a part of Sublot No. 20 in Sheldon's Addition to the Village of Berea of original Section No. 17 in the Township of Middleburgh as shown by plat recorded in Deed Book Volume 45, Page 83 of Cuyahoga County Deed Records, and more particularly being a part of the premises (PPN 364-29-001) conveyed to the Board of Park Commissioners of the Cleveland Metropolitan Park District by instrument dated January 18, 1950 and recorded in Deed Book Volume 6871, Page 439 of Cuyahoga County Deed Records and is bounded and described as follows:

Beginning in the original easterly right-of-way line of Henry Street, 50 feet in width, at its intersection with the northerly right-of-way line of Center Street, 50 feet in width, said Point of Beginning being the southwesterly corner of said Sublot No. 20 in Sheldon's Addition to the Village of Berea, all as appears on said plat;

Thence, North  $0^{\circ}13'36''$  East along said original easterly right-of-way line of Henry Street, the same being the westerly line of said Sublot No. 20, a distance of 30.00 feet to a point therein;

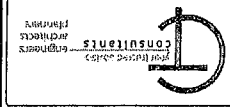
Thence, North  $89^{\circ}47'28''$  East, through said land of the Board of Park Commissioners of the Cleveland Metropolitan Park District, a distance of 30.00 feet to a point therein;

Thence, South  $0^{\circ}13'36''$  West, continuing through said land of the Board of Park Commissioners of the Cleveland Metropolitan Park District, a distance of 30.00 to the aforesaid northerly line of Center Street;

Thence, South  $89^{\circ}47'28''$  West along said northerly right-of-way line of Center Street, the same being the southerly line of said Sublot No. 20, a distance of 30.00 feet to the Point of Beginning and containing 0.021 of an Acre (900 Square Feet) of land as described in September, 2021 by CT Consultants, Inc.

Bearings contained herein are based upon observations of existing survey monuments utilizing the Ohio State Plane (North Zone-3401) Coordinate System, NAD83(2011).

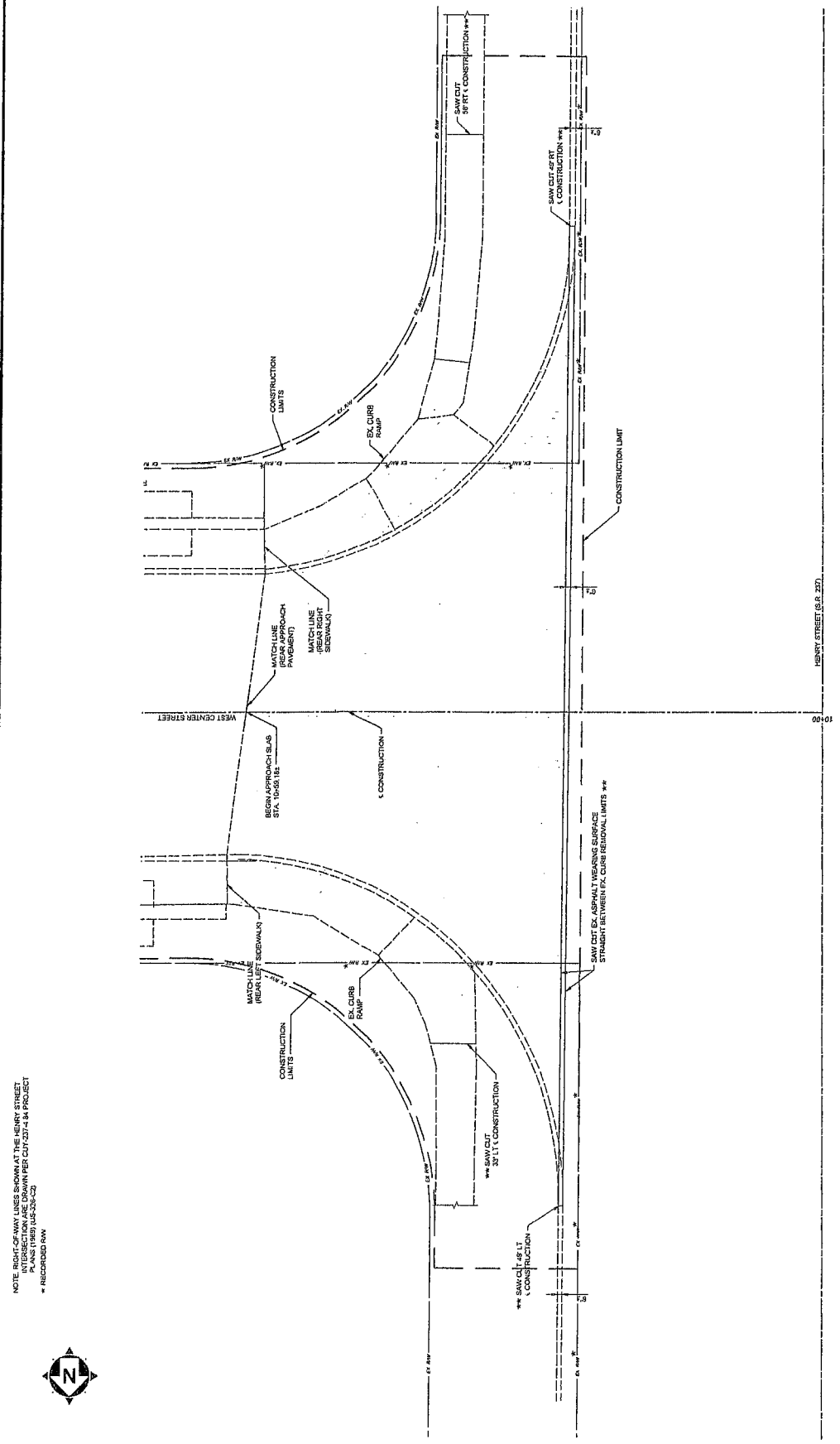
Exhibit B



NO.	REVISION	DATE

ISSUE FOR	
ISSUE DATE(S)	
SCALE	
DESIGNED BY	JUN
DRAWN BY	SAV
CHECKED BY	JUN
PROJECT NO.	180953
CIVIL	
DATE	

PROJECT NAME	BEREA WEST CENTER STREET BRIDGE REMOVAL (OVER VALLEY PARKWAY) AND FORCE MAIN RELOCATION
PROJECT NO.	180953
CIVIL	
DATE	
SHEET NO.	15
TOTAL SHEETS	15A



NOTE: RIGHT-OF-WAY LINES SHOWN AT THE HENRY STREET INTERSECTION ARE FROM THE PROJECT PLANS (1809) (SHEET 22A-22B).  
\* INCORPORATED R/W



- NOTES:**
- FOR GENERAL STRUCTURE PLAN (REMOVAL), SEE SHEET 15B.
  - FOR GENERAL REAR APPROACH PLAN (RESTORATION), SEE SHEET 15B.
  - FOR REAR APPROACH SECTIONS, SEE SHEETS 22 AND 23A.

**REAR APPROACH PLAN - REMOVAL**

- LEGEND**
- INDICATES SIDEWALK, CURB RAMP AND CURBS TO BE REMOVED AND ARE TO BE INCORPORATED INTO THE PROJECT.
  - INDICATES SIDEWALK, CURB RAMP AND CURBS TO BE REMOVED AND ARE TO BE INCORPORATED INTO THE PROJECT.
  - INDICATES SIDEWALK, CURB RAMP AND CURBS TO BE REMOVED AND ARE TO BE INCORPORATED INTO THE PROJECT.
  - SAW CUTS ARE INCIDENTAL TO THE ASSOCIATED OR REMOVAL ITEM

CONSULTANTS, INC. 180953 - BERA WEST CENTER STREET BRIDGE REMOVAL (OVER VALLEY PARKWAY) AND FORCE MAIN RELOCATION - SHEET 15A

Exhibit  
"C"

LICENSE AGREEMENT FOR HENRY STREET SIDEWALK  
AT MILL STREAM RUN RESERVATION

THIS LICENSE AGREEMENT (this "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2021, between the BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAN PARK DISTRICT ("Cleveland Metroparks"), 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, and the CITY OF BEREA, a municipality of the State of Ohio, located at 11 Berea Commons, Berea, Ohio 44017 ("Licensee") (collectively, the "Parties").

WITNESSETH THAT:

WHEREAS, pursuant to warranty deeds, Volume 4874 Page 103, filed for record on September 30, 1938, and Volume 4852 Page 245, filed for record on May 18, 1938, Cleveland Metroparks is the fee owner of certain real property identified as Permanent Parcel Numbers 361-11-001 and 364-08-001 in the Mill Stream Run Reservation, located in the City of Berea, County of Cuyahoga, State of Ohio (the "Cleveland Metroparks Property");

WHEREAS, Licensee has requested of Cleveland Metroparks a license to use a certain portion of the Cleveland Metroparks Property for the purpose of access, construction, continuing maintenance, repair and removal of existing pavement of West Center Street and placement of new sidewalk on Henry Street for any present or future needs;

WHEREAS, Cleveland Metroparks has the right and authority to grant the License; and

WHEREAS, Cleveland Metroparks will grant to Licensee the right to, among other things, use the area located on a portion of the Cleveland Metroparks Property 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. Cleveland Metroparks hereby grants permission to Licensee, its members, officers, directors, employees, lessees, sublessees, contractors, subcontractors, invitees and guests to use the License Area for the purpose of access, construction, maintenance, repair and removal of existing pavement of West Center Street and placement of new sidewalk on Henry Street as detailed on Exhibit B (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 legally described in Exhibit A. Cleveland Metroparks shall approve all plans and specifications for the Improvements in writing and in advance of Licensee commencing construction. Licensee shall pay all costs, expenses, and charges related to the Improvements and shall make all Improvements in accordance with applicable laws and building codes and ordinances and in a good and workmanlike manner, and shall fully and completely resolve any mechanic's lien or other liens or claims in connection with the making of such Improvements. Cleveland Metroparks retains ownership of all buildings and improvements on the License Area or additions thereto, and all other present or future construction upon the License Area shall vest and continue to remain exclusively with Cleveland Metroparks. No alterations in or additions to the buildings nor the construction of new buildings or structures, nor alterations or improvements to the License Area shall be made except in accordance with the plans and specifications thereof first approved by Cleveland Metroparks. All such alterations and additions shall become the property of Cleveland Metroparks. Licensee may use the License Area for those activities approved in advance in writing by Cleveland Metroparks. Licensee's use of the License Area is limited to the purposes set forth herein.

2. Term. This Agreement shall be in effect commencing on the date of execution and delivery hereof by Cleveland Metroparks and Licensee, and shall be in effect until such time that both parties agree to terminate such Agreement, in writing, in which event the termination will be effective on the date that is fifteen (15) days after the mutual execution and delivery of the written termination, unless the Agreement is terminated earlier pursuant to the terms of this Agreement.

3. Use of License Area.

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

(b) In the event of hazardous or dangerous conditions, the Cleveland Metroparks' Executive Office may temporarily suspend operations and activities of Licensee upon the License Area for the protection of public safety as determined by Cleveland Metroparks at its sole discretion.

(c) Except for the uses provided for herein, Licensee, in the operation and conduct of its business and activities under this Agreement, shall not in any manner interfere with the general use of the License Area or the Mill Stream Run Reservation by the Cleveland Metropolitan Park District for park and recreational purposes nor with the enjoyment of the License Area or the Mill Stream Run Reservation by the general public.

(d) Licensee shall not park any vehicle or equipment so as to block access to the License Area by emergency, Metroparks Police, fire or medical vehicles. Licensee shall also ensure that its employees, invitees, and guests park in designated parking areas only.

(e) Licensee shall not store any materials or equipment in the License Area unless otherwise approved in writing by the Park Manager.



(f) Licensee shall not remove any trees or vegetation from the License Area or otherwise damage any trees or vegetation unless approved in writing by Cleveland Metroparks. Licensee 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.

(h) Licensee shall remove from the License Area any topsoil and/or dirt removed for placement of the Improvements within seven (7) days.

(i) Licensee shall use all reasonable care and diligence in permitting the public use of the License Area.

4. Compliance with Laws. Licensee's 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.

5. 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 <https://codelibrary.amlegal.com/codes/clevelandmetroparks>.

6. Signs. Licensee shall not place any signs upon the License Area except upon receipt of prior written approval from Cleveland Metroparks, with specific approval for the location, size and content of such sign(s).

7. Inspections by Cleveland Metroparks. Representatives of Cleveland Metroparks may inspect the License Area and the operations of Licensee from time to time to ensure that the provisions of this Agreement are being fulfilled. Provided, further, that the failure of Cleveland Metroparks to inspect shall not be considered a waiver of any right accruing to Cleveland Metroparks upon any failure of Licensee to perform duties and obligations under the provisions of this Agreement.

8. Restoration of License Area. Licensee, at Licensee's own expense, shall restore roads, parking lots, trails, and vegetation pursuant to the Road and Parking Lot, Trail, Vegetation and Seed Specifications set forth in Exhibit C. Licensee shall restore all other surfaces to conditions approved by Cleveland Metroparks.

9. Fee. Subject to the performance of Licensee's obligations hereunder, Cleveland Metroparks agrees that in consideration of the promises of Licensee hereunder, the License Area may be used by Licensee for no fee.

10. Alterations or Improvements by Licensee. Licensee shall not, without Cleveland Metroparks's prior written consent, make, or permit to be made, any alterations, additions or improvements (each an "Alteration") to the License Area, which consent Cleveland Metroparks may withhold in its sole discretion. Any Alterations which may be permitted by Cleveland Metroparks shall be based upon plans and specifications submitted by Licensee and approved by Cleveland Metroparks and upon the condition that Licensee shall promptly pay all costs, expenses, and charges thereof, shall make such Alterations in accordance with applicable laws and building codes and ordinances and in a good and workmanlike manner, and shall fully and completely indemnify Cleveland Metroparks against any mechanic's lien or other liens or claims in connection with the making of such Alterations. Licensee shall promptly repair any damages to the License Area caused by any Alterations to the License Area by Licensee. In addition, Cleveland

Metroparks shall have the right, but not the obligation, to (a) conduct periodic audits during construction of the Alteration; (b) require that Licensee enter into a project development agreement in connection with the Alteration; (c) manage the construction of the Alteration, including administration of the bidding of contracts; and/or (d) require that the entire cost of the Alteration, plus ten percent (10%), be deposited with Cleveland Metroparks prior to the commencement of construction of the Alteration.

11. Utilities. Licensee shall pay for all public utilities used or consumed on the License Area, including, but not limited to, electricity, gas and telephone. Such utilities shall be placed in Licensee's name. Licensee shall, at its own expense, obtain all necessary licenses and permits for public utilities and shall pay the fees, charges and taxes associated with such utilities. Licensee shall promptly pay all public and utility service charges billed to Licensee or Cleveland Metroparks for services or facilities furnished on the License Area.

12. Maintenance and Repairs. Licensee is responsible for any and all costs associated with the maintenance and upkeep of the sidewalk, including material, supplies, parts and labor. Notwithstanding the foregoing, Cleveland Metroparks shall have the right, but not the obligation to perform any maintenance or repairs to the License Area.

13. Ownership. Licensee acknowledges that Cleveland Metroparks has exclusive right, title, and interest in and to the License Area and will not at any time do or cause any act or thing contesting or in any way impairing or tending to impair any part of such right, title, and interest, and Licensee acknowledges that the use of the License Area shall not create any right, title, or interest in the Licensee. Upon expiration and/or termination of this Agreement, Licensee will cease from all future uses of the Licensed Area.

14. Reversion to Cleveland Metroparks and Licensee. 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 Cleveland Metroparks.

15. Termination.

(a) If at any time the License Area ceases to be used by Licensee for the purpose specified herein, the rights hereby granted automatically shall terminate whereupon Licensee, if Cleveland Metroparks so requests, shall remove the Improvements from the License Area and restore the License Area pursuant to Section 8.

(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) Cleveland Metroparks may terminate this agreement without cause at any time upon thirty (30) calendar days written notice to Licensee.

(d) In the event Licensee 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 Licensee of a meritorious petition in bankruptcy or under bankruptcy or debtor's law, Cleveland Metroparks may, at its option, immediately terminate this Agreement by giving written notice thereof.

(e) Any termination of this Agreement shall not relieve Licensee of any claim or obligation which shall have accrued under this Agreement, but Licensee shall remain liable therefor as fully and completely as if said Agreement had not been terminated.

16. Reversion to Cleveland Metroparks and Licensee. 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 Cleveland Metroparks.

17. Right of Re-Entry. Upon termination, Cleveland Metroparks may reenter the License Area, either by force or otherwise, and have the possession of the same and/or recover possession thereof in the manner prescribed by the Ohio statutes relating to summary proceedings or similar applicable statutes, it being understood that no re-entry for condition broken and no notice to quit possession or other notices prescribed by statute shall be necessary to enable Cleveland Metroparks to recover such possession, but that all right of any such further demand or such re-entry or any notice to quit possession or other statutory notices or prerequisites are hereby expressly waived by Licensee.

18. 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.

19. Damage or Loss. Licensee shall promptly remedy all damage or loss to the Cleveland Metroparks' property caused in whole or in part by Licensee, its members, officers, directors, employees, lessees, sublessees, contractors, subcontractors, invitees and guests.

20. Insurance. Throughout the term of this Agreement, Licensee shall maintain the insurance set forth in Exhibit D.

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

22. ADA. Licensee shall be responsible for ensuring that all structures comply with the Americans with Disabilities Act ("ADA"). If it is determined that any structure does not comply with the ADA, Licensee shall at its own expense correct any noncompliant construction.

23. Acceptance of License. Acceptance of the License by Licensee will constitute acceptance of all conditions set forth herein.

24. 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 Licensee to:

City of Berea  
c/o Cyril Kleem, Mayor  
11 Berea Commons  
Berea, Ohio 44107

25. 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.

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

27. 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.

28. 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.

29. Assignment. This Agreement and the License granted hereunder are personal to Licensee. Licensee 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 Cleveland Metroparks, which consent may be withheld in Cleveland Metroparks' sole and absolute discretion. 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. Notwithstanding the foregoing to the contrary, Licensee shall have the right, without obtaining Cleveland Metroparks' consent, to assign this Agreement or License to any parent, subsidiary or affiliate of Licensee.

30. 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.

31. 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 Licensee may be executed by electronic means, and that the electronic signatures affixed by Licensee 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.

32. 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.

33. Authority to Execute. Cleveland Metroparks and Licensee 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 Licensee, respectively, enforceable against it in accordance with its terms.

34. Public Records. Licensee acknowledges that this Agreement and other records in the possession or control of Cleveland Metroparks 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]

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, Senior Assistant Legal  
Counsel

CITY OF BEREA

---

Cyril Klein  
Mayor

EXHIBIT A

Permit Area

Exhibit  
"A"

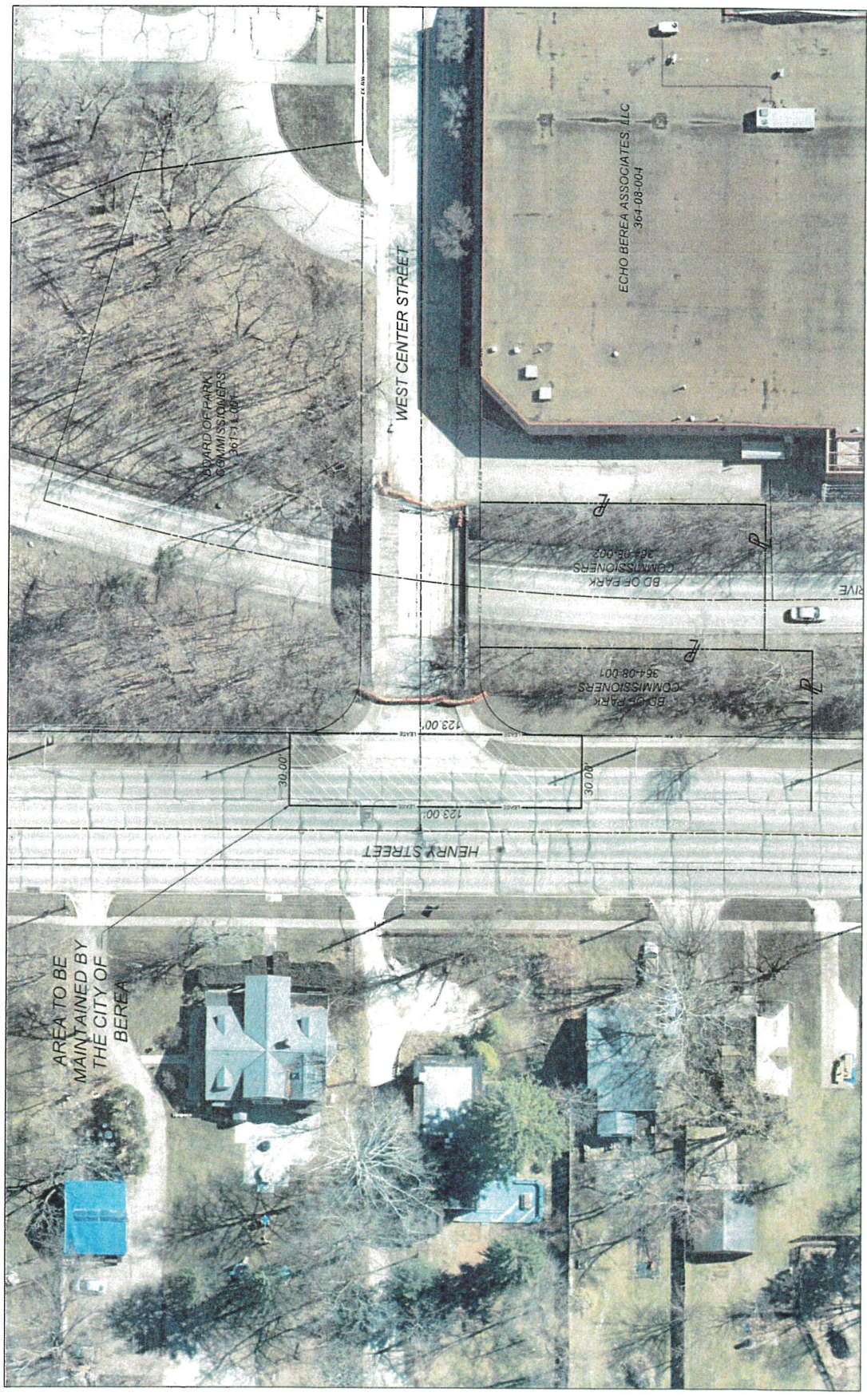


NO	REVISION	DATE

CHECKED BY: TPW	ISSUE FOR: 15% REVIEW
DRAWN BY: PBL	NO. REV. 0
DESIGNED BY: PBL	
SCALE: ... - 30'	
DATE: 10/20/2011	

PROJECT NO. 150925	SHEET 1
CIVIL	OF XX
DATE/NAME 00X-01	

**BEREA WEST CENTER STREET  
BRIDGE REMOVAL (OVER VALLEY PARKWAY)  
AND FORCE MAIN RELOCATION  
PERPETUAL SIDEWALK  
MAINTENANCE AGREEMENT AREA**



BEREA, OHIO - CITY OF BEREA ENGINEERS AND ARCHITECTS, INC. 2011



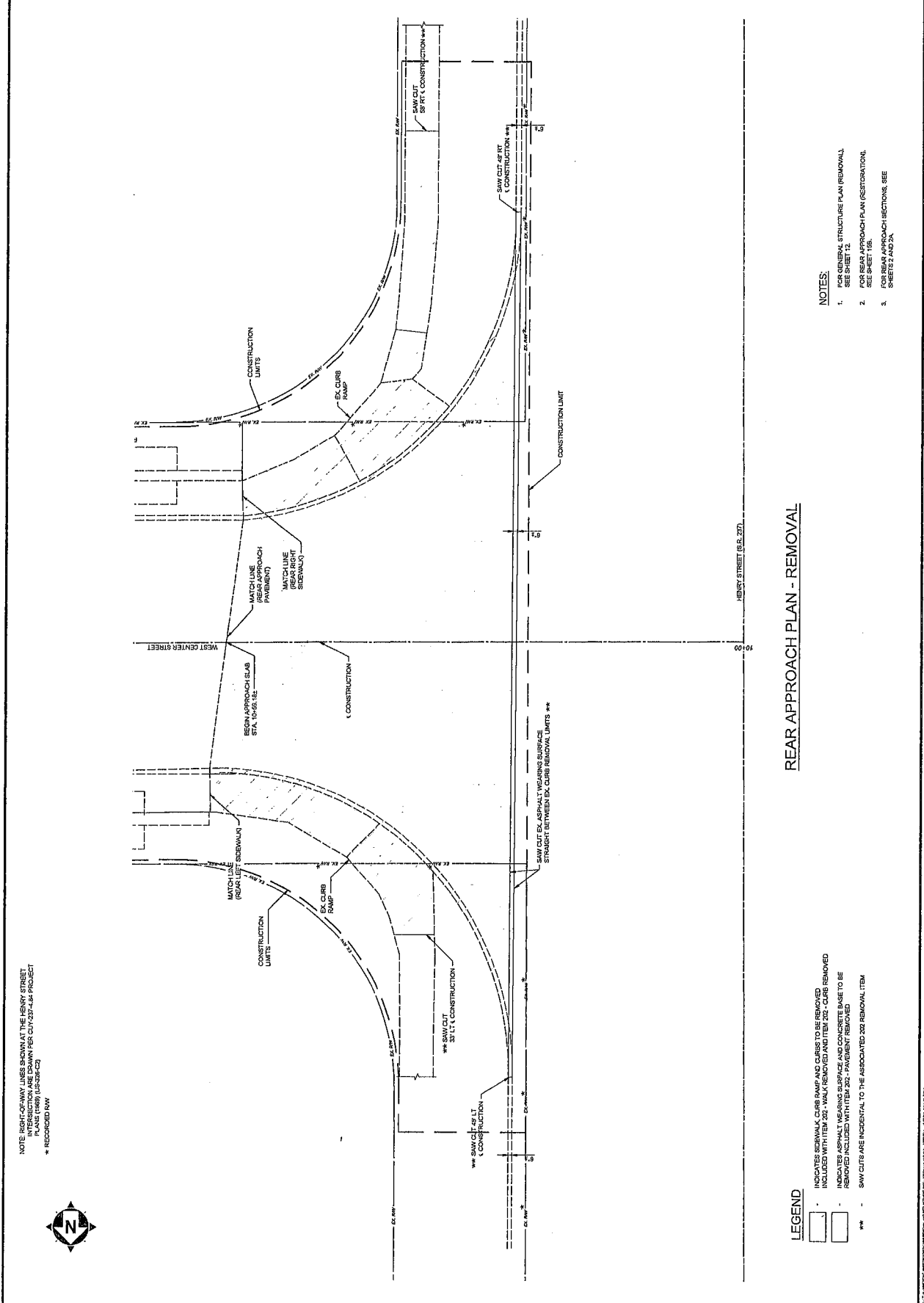
Exhibit B



DATE	REVISION

ISSUE FOR:	BRIDGE AND FENCE MAIN REALIGN
ISSUE DATE:	12/11/08
SCALE:	1" = 20'
DESIGNED BY:	JPR
DRAWN BY:	SAT
CHECKED BY:	JPR
PROJECT NO.:	180953
DISTRICT:	CIVIL
SHEET NO.:	15A
TOTAL SHEETS:	15

PROJECT NO.	180953
DISTRICT	CIVIL
SHEET NO.	15A
TOTAL SHEETS	15



NOTE: RIGHT-OF-WAY LINES SHOWN AT THE HENRY STREET INTERSECTION ARE DRAWN FOR CULVERT-AS-REQUEST \* RECORDED N.W.



REAR APPROACH PLAN - REMOVAL

- NOTES:
1. FOR GENERAL STRUCTURE PLAN (REMOVAL) SEE SHEET 12
  2. FOR REAR APPROACH PLAN (RESTORATION) SEE SHEET 15B.
  3. FOR REAR APPROACH SECTIONS SEE SHEETS 15C & 15D.

- LEGEND
- INDICATES SIDEWALK, CURB RAMP AND CURBS TO BE REMOVED INCLUDED WITH ITEM 202 - WALK REMOVED AND ITEM 202 - CURB REMOVED
  - INDICATES ASPHALT WEARING SURFACE AND CONCRETE BASE TO BE REMOVED INCLUDED WITH ITEM 202 - PAVEMENT REMOVED
  - \*\* SAW CUTS ARE INCIDENTAL TO THE ASSOCIATED 202 REMOVAL ITEM

## EXHIBIT C

### All Purpose Trail Specifications.

- All repair areas will be full width; partial width patches will not be permitted.
- After existing asphalt removed, existing subbase shall be inspected by Cleveland Metroparks and direction given as to re-grading and compaction or subbase replacement.
- Subbase shall be replaced as directed with not less than 6" ODOT CMS item 304 limestone aggregate (not slag), compacted, and placed on proof rolled subgrade.
- Installation of not less than 3" ODOT CMS item 448 Asphaltic Concrete.
- Asphalt joints shall be "butt" type, perpendicular to trail alignment and saw-cut full asphalt depth, no "feather" edges permitted, and sealed per ODOT CMS 705.04.
- Compliance of all materials with requirements of State of Ohio, Department of Transportation, and Construction & Material Specifications.
- It is advised that the Permittee video the access trails and roadways prior to commencing activities.

### Road and Parking Lot Specifications

- Repair area(s) will be delineated by paint lines as agreed by Cleveland Metroparks.
- Repair area will be milled per ODOT CMS 254 to a depth of three (3) inches, all edges will be vertical (no "feather edges" will be permitted), all cuttings will be completely removed.
- Tack coat per ODOT CMS 407 will be applied.
- Installation of not less than 3" ODOT CMS item 448 Asphaltic Concrete to match prevailing pavement cross-slope.
- Asphalt joints shall be sealed per ODOT CMS 705.04.
- All pavement striping damaged or destroyed by Permittee will be replaced per ODOT CMS 641 and 642.

### Seed Specifications

- All soil areas disturbed by Permittee's activities shall be seeded and mulched per ODOT CMS 659.
- The seed mixture for restoration of lawn and roadside 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).
- When specifically required, other areas shall be seeded with ODOT CMS 659 Type 5B Native Wildflower and Grass Mixture or, in certain situations, a mix specified by Cleveland Metroparks Natural Resources Division.
- Mulching material shall conform to ODOT CMS 659.
- Topsoil shall conform to ODOT CMS 653.

### Vegetation Removal Specifications

- Permittee may remove from the Permit Area only that brush necessary to perform the Work and as approved by Cleveland Metroparks in a site visit prior to initiation of the Work.
- Permittee may remove only those trees (four (4) inches DBH or greater) as marked by Permittee and approved by Cleveland Metroparks in a site visit prior to initiation of the Work. Permittee must replace all removed trees at a 2:1 ratio, species and size as specified by Cleveland Metroparks. Permittee shall provide deer protection for newly planted trees, using Cleveland Metroparks approved plastic mesh tree guards or wire fencing to protect the stem for a height of at least forty-eight (48) inches. Tree protectors should fit loosely around stems.

- Permittee shall not clear cut the Permit Area unless permitted in writing by Cleveland Metroparks.
- Permittee shall properly dispose of all removed vegetation within seven (7) calendar days of cutting the vegetation unless otherwise approved in writing by Cleveland Metroparks

## EXHIBIT D

### Insurance Requirement

Permittee understands that insurance carried by Cleveland Metroparks will not include insurance related to the Activities. Permittee shall maintain self-insurance for claims for bodily injury (including death) and property damage related to this Permit, the Permit Area, and the Activities in accordance with its customary practices, including without limitation maintenance of an assigned reserve therefore, up to commercially reasonable limits but not less than One Million Dollars (\$1,000,000) per occurrence. Promptly upon request by Cleveland Metroparks from time to time, Permittee shall provide Cleveland Metroparks with a letter of confirmation with respect to such self-insurance and assigned reserve, in form satisfactory to Cleveland Metroparks.