

EXHIBIT “A”

VALLEY PARKWAY ACCESS AND MAINTENANCE AGREEMENT

THIS VALLEY PARKWAY ACCESS AND MAINTENANCE AGREEMENT (this “Agreement”) is made as of the ____ day of _____, 2024, 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 (“Grantor” or “Cleveland Metroparks”), the BRECKSVILLE-BROADVIEW HEIGHTS CITY SCHOOL DISTRICT (“BBH Schools”), a school district operating under Ohio law, and the CITY OF BRECKSVILLE (“Brecksville”), a municipal corporation of the State of Ohio (BBH Schools and Brecksville are collectively the “Grantees”).

WITNESSETH THAT:

WHEREAS, Grantor herein is the fee simple owner of certain real property located in Cuyahoga County, Ohio known as Permanent Parcel Nos. 603-10-002 and 584-16-002 (“CMP Property”); and

WHEREAS, BBH Schools is the owner of real property located in Cuyahoga County, Ohio known as Permanent Parcel No. 603-09-006 (the “Elementary School”); and

WHEREAS, Brecksville is the owner of real property located in Cuyahoga County, Ohio known as Permanent Parcel No. 603-09-007 (the “Field House Property”); and

WHEREAS, The Ohio School Design Manual developed by the Ohio Facilities Construction Commissions strongly suggest separating car traffic and bus traffic to best provide for student safety when site logistics permit; and

WHEREAS, to most effectively separate car and bus traffic, BBH Schools, after consultation with Brecksville and Grantor, designed the Elementary School to have car traffic enter and exit on Oakes Drive and bus traffic vis Valley Parkway

WHEREAS, BBH Schools intends to operate school buses on the driveway which connects the CMP Property to the Elementary School and Field House (“School Driveway”);

WHEREAS, Grantor holds deed restrictions upon the Elementary School and Field House Property by way of a document recorded on November 29, 1938 in the Cuyahoga County Records, Volume 4913, Page 327 limiting, amongst other restrictions, the use of the adjacent 200 feet of the Elementary School Property and Field House Property to residential, agricultural, or gardening use (“Deed Restrictions”); and

WHEREAS, under Grantor’s Code of Regulations and Deed Restrictions, a driveway exclusively for school buses along Valley Parkway on CMP Property would not be permitted due to use restrictions and weight load issues that unduly cause wear and tear on Valley Parkway; and

WHEREAS, Grantor intends to permit BBH Schools school bus traffic along Valley Parkway on CMP Property between Broadview and Barr Roads only subject to the terms of this Agreement in furtherance of local cooperation, public good, site safety, and traffic relief; and

WHEREAS, Grantees have requested of Grantor the right to have school bus traffic along Valley Parkway on the CMP Property as shown on Exhibit A attached hereto and made a part hereof for the purpose of servicing the Elementary School which has students from Brecksville and Broadview Heights, and Grantor has agreed to allow such school bus traffic, 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 Access to School Driveway Along Valley Parkway Between Barr and Broadview Roads. Upon the terms and conditions hereinafter set forth, Grantor hereby grants to Grantees a right to bring school bus traffic (as such school buses would have weight in excess of what is allowable in Grantor's Code of Regulations) along Valley Parkway on CMP Property between Barr and Broadview Roads only as identified on **Exhibit A** for the purpose of bringing students via school bus to the Elementary School. Grantees warrant and agree that no school bus traffic will be brought along any other part of Valley Parkway except to pick up students that live along Valley Parkway. Grantees also warrant and agree that the School Driveway onto Valley Parkway on CMP Property shall only be used for school bus traffic (and not regular vehicular traffic for school drop off or pick up or any other activities at the Elementary School or Field House Property).

2. Term. This Agreement shall be effective so long as the Elementary School is operational as a school and requires school bus access. Should the Elementary School close or not require school bus access, this Agreement shall terminate, the Grantees shall restore the area of CMP Property impacted by the School Driveway to a condition reasonably acceptable to Grantor.

3. Operation, Inspection and Ongoing Maintenance of Valley Parkway Between Barr and Broadview Roads.

(a) **Maintenance and Repair of Valley Parkway.**

a. Area Around School Driveway – Due to the increased wear and tear of the school bus traffic and the school buses turning into and out of the School Driveway, BBH Schools shall be responsible for the capital maintenance and repair of 100 feet from the centerline of the School Driveway on Valley Parkway in each direction (200 feet total) (“BBH Schools Area”). The BBH Schools Area is generally depicted on **Exhibit A**. Grantor and BBH Schools shall work together to cause a pavement inspection of the BBH Schools Area to occur immediately after mutual execution of this Agreement and biannually after the initial inspection. If at any time the pavement condition rating (“PCR”) of the BBH Schools Area goes below a 70, BBH Schools agrees to cover the cost to repair (and potentially improve to save on future repair costs) and repave the BBH Schools Area. Grantor shall commence and complete the work and bill BBH Schools for the costs of said work to the BBH Schools Area. BBH Schools shall pay Grantor back expeditiously and within its standard payment procedures subject to Board of Education appropriation. If such funds are not appropriated, Grantor may terminate this Agreement consistent with Section 7 below.

b. Valley Parkway in City of Brecksville - Grantor shall work with Brecksville to cause a pavement inspection of Valley Parkway within the municipal boundaries of the City of Brecksville excepting the BBH Schools Area (“Brecksville Area”) to occur immediately after mutual execution of this Agreement and biannually after the initial inspection. The Brecksville Area is generally depicted on **Exhibit A** and is approximately 3,800 feet of Valley Parkway. If at any time the PCR of the Brecksville Area goes below a 70, Grantor and Brecksville agree to each cover 1/2 of the cost to repair and repave the Brecksville Area. Grantor shall commence and complete the work and bill Brecksville for 1/2 of the share of the costs of said work. Brecksville shall pay Grantor back expeditiously and within its standard payment procedures.

- c. Valley Parkway in City of Broadview Heights - The City of Broadview Heights (“Broadview Heights”) is also included within the BBH Schools and sends students to the Elementary School. Approximately 4,000 feet of Valley Parkway between Broadview and Barr Roads is within the municipal boundaries of Broadview Heights (“Broadview Heights Area”). Broadview Heights has decided to not be a party to this Agreement at this time, but should it agree at a later date to join this Agreement and share the maintenance responsibilities for the Broadview Heights Area, the Parties agree to reasonably amend the Agreement to reflect that fact. If any agreement between Broadview Heights and Grantor makes Broadview Heights responsible for less than 1/2 of the costs to repair the section of the Broadview Heights Area, then that same percentage will automatically become Brecksville cost-share for the Brecksville Area.

(b) **Snow Removal.** Brecksville shall be responsible for snow removal on the portion of Valley Parkway between Barr and Broadview Roads. Cleveland Metroparks shall not be responsible for snow removal for Valley Parkway between Barr and Broadview Roads (but may do so if it so chooses).

(c) **Control Arm Gate.** BBH Schools has installed an arm gate that can be actuated by school bus drivers where the School Driveway meets Valley Parkway so that only school bus traffic will use the School Driveway (and it will not be a general access point for vehicular traffic). BBH Schools shall maintain the arm gate or otherwise prevent vehicular traffic from entering or exiting the site through the School Driveway.

4. Trail Connection Towards Oakes Road. In furtherance of the desire to have connectivity from Valley Parkway for pedestrians and bicyclists, Brecksville agrees to install on its adjacent “Blossom Hill” property a paved multi-use trail from Valley Parkway northward towards Oakes Road, and continuing thereon near to Glenwood Trail, to be used by pedestrians and bicyclists. Brecksville will be responsible for the maintenance and repairs of the trail at its own expense. Brecksville will work with Grantor for any trail work that is to occur on CMP Property and shall obtain an access permit before conducting any work on CMP Property. The access permit may be issued following review of the engineering of the multi-use trail and the identification of the competent contractor to perform the work. Once completed and accepted, any trail remaining on CMP Property shall be the responsibility of Grantor.

5. Signage on School Driveway. In furtherance of public convenience and information, Grantor agrees to allow Grantees to erect a sign to identify the Valley Parkway entrance to the School Driveway and to effectively visually communicate the driveway’s restriction to only buses, using substantially natural materials to complement the aesthetics of Brecksville Reservation. The sign has been reviewed and approved by Grantor. Any replacement of the sign shall be subject to review and approval by Grantor, which approval shall not be unreasonably withheld or delayed.

6. Insurance. Grantees 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 Grantor. Certificates of insurance evidencing the aforementioned coverage(s) shall be provided to Grantor upon request. Grantor reserves the right to request a full and complete copy of all insurance policies. Grantees’ coverage may not be cancelled or materially changed until at least ten (10) days after written notice to Grantor. 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.

7. Termination. Grantor may terminate this Agreement if either Grantee is in violation of any term of this Agreement and such violation remains uncured for thirty (30) days after written notice of the violation.

8. Notices. Whenever a Party is required or permitted to give notice to the other pursuant to this Agreement, such notice shall be deemed given when delivered by hand or via regular U.S. mail and addressed as follows:

If to Grantor: Cleveland Metroparks
Attn: Chief Executive Officer
4101 Fulton Parkway
Cleveland, Ohio 44144

With a copy to: Cleveland Metroparks
Attn: Chief Legal and Ethics Officer
4101 Fulton Parkway
Cleveland, Ohio 44144

If to BBH Schools: Brecksville-Broadview Heights City School District
Attn: Superintendent
6638 Mill Road
Brecksville, Ohio 44141

If to Brecksville: City of Brecksville
Attn: Mayor
9069 Brecksville Road
Brecksville, Ohio 44141

Any party may from time to time change its designated recipient or address for notification purposes by giving the other parties written notice of the new designated recipient or address and the date upon which such new recipient or address will become effective.

9. 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.

10. Modification. No modification of this Agreement shall be binding upon Grantor or Grantees unless set forth in writing and executed by Grantor and Grantees.

11. 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.

12. 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.

13. 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.

12. Choice of Law/Jurisdiction. This Agreement shall be governed by the laws of the State of Ohio regardless of any choice of law principles. All actions arising from or relating to this Agreement may be instituted and prosecuted only 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.

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

14. Public Records. Grantees acknowledge that this Agreement and other records in the possession or control of Grantor regarding the Improvements may be public records under Ohio Revised Code Section 149.43 and may be open to public inspection unless a legal exemption applies.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor and Grantees have executed this Agreement as of the day and year first above written.

GRANTOR:

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:

By: _____
Kyle G. Baker, Senior Assistant Legal Counsel

STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2024 by Brian M. Zimmerman, Chief Executive Officer of the Board of Park Commissioners of the Cleveland Metropolitan Park District, a political subsidiary of the State of Ohio, on behalf of said political subsidiary.

Notary Public

My commission expires:_____

GRANTEE:

BRECKSVILLE-BROADVIEW HEIGHTS CITY
SCHOOL DISTRICT

By: _____

Name:

Title:

Approved as to Form:

David J. Riley,

STATE OF OHIO)
) SS.
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me this ___ day of _____, 2024
by _____, _____ of the Brecksville-Broadview
Heights City School District, a _____, on behalf of said _____.

Notary Public
My commission expires: _____

GRANTEE:

CITY OF BRECKSVILLE

By: _____

Name:

Title:

Approved as to Form:

Law Director

STATE OF OHIO)
) SS.
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024 by _____, _____ of the City of Brecksville, a municipal corporation of the State of Ohio, on behalf of said municipal corporation.

Notary Public
My commission expires: _____

This instrument prepared by,
and should be returned to:
Kyle G. Baker (0085270)
Cleveland Metroparks
Administrative Offices
4101 Fulton Parkway
Cleveland, Ohio 44144

Exhibit A - Valley Parkway Access and Maintenance Agreement

