

## ORDINANCE C-12-15

### AN ORDINANCE TO AUTHORIZE THE CITY ADMINISTRATOR TO ENTER INTO AN AGREEMENT WITH HOOVER PARK HOMEOWNERS ASSOCIATION INC. FOR THE EXTENSION AND MAINTENANCE OF A BIKE PATH

WHEREAS, the City has been working on interconnecting and expanding the bike path network in the City; and

WHEREAS, the Hoover Park Homeowners Association Inc. owns the real property known as Franklin County Auditor's Parcel Number 040-012789-00 ("Reserve C"); and

WHEREAS, the City currently maintains a bike path located on Reserve C and, under this Agreement, the City would like to extend the existing Bike Path.

WHEREAS, because the agreement exceeds twelve (12) months, it must be approved by Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GROVE CITY, STATE OF OHIO, THAT:

SECTION 1. The City Council hereby authorizes the City Administrator to execute a multi-year agreement with the Hoover Park Homeowners Association Inc. for the extension and maintenance of a bike path as set forth in Exhibit A.

SECTION 2. This Ordinance shall take effect at the earliest opportunity allowed by law.

Passed: 03-02-15

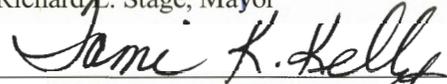
Effective: 04-02-15

Attest:

I certify that this ordinance is correct as to form.

  
Ted A. Berry, President of Council

  
Richard L. Stage, Mayor

  
Tami K. Kelly, MMC, Clerk of Council

  
Stephen J. Smith, Director of Law

C-12-15  
EXHIBIT A  
**PROPERTY MAINTENANCE AGREEMENT**

THIS PROPERTY MAINTENANCE AGREEMENT (the "Agreement") is entered into on the \_\_\_ day of \_\_\_\_\_, 2015, (the "Effective Date") by and between the City of Grove City, Ohio, an Ohio municipal corporation (the "City"), whose address is 4035 Broadway Grove City, Ohio 43123, and Hoover Park Homeowners Association Inc., (the "Association"), an Ohio non-profit corporation whose address is 5550 Blazer Parkway, Suite 175, Dublin, Ohio 43017.

**BACKGROUND INFORMATION**

- A. The Association owns the real property known as Franklin County Auditor's Parcel Number 040-012789-00 ("Reserve C").
- B. The City currently maintains a bike path located on Reserve C (the "Bike Path").
- C. The Association is currently responsible for the maintenance of Reserve C.
- D. In return for permission to extend the Bike Path, the City will take over maintenance responsibilities for Reserve C as set forth herein.

**AGREEMENT**

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

1. Grant of Easement. The Association agrees to grant to the City the necessary easements in Reserve C to extend the existing Bike Path as shown in Exhibit A. A copy of the easement is attached hereto as Exhibit B.
2. Property Maintenance. In return for the grant of the necessary easements as set forth in Section 1, the City shall be responsible for mowing the grass growing on Reserve C, in a manner consistent with other residential parks located within the City. The City shall also be responsible for maintaining the retention pond, including but not limited to, reasonably erosion control, dredging, aeration, and water quality treatments, and otherwise care for and maintain the landscaping located on Reserve C in good, safe and neat condition.
3. Bike Path Maintenance. The City shall maintain the Bike Path in accordance with the City's rules and procedures applicable to the maintenance of bike paths owned by the City. These maintenance obligations include, but are not limited to, resurfacing the Bike Path and repairing or replacing segments that are in poor or unsafe condition. The Association acknowledges that the City's rules and procedures regarding the maintenance of bike paths may change from time to time and agrees that the City's maintenance obligations set forth in this Section 3 may likewise change, provided that if such obligation changes, the City will notify the Association of any such change pursuant to the Provision of Paragraph 7.
4. Term. The term of this Agreement shall be for a period of Fifty (50) year, beginning on the Effective Date. This Agreement may be terminated upon mutual agreement of the parties.
5. Insurance. Grantee represents that it has obtained and will maintain a comprehensive public liability insurance on Reserve C and the Bike Path in an amount not less than \$1,000,000.00 per incident, in full force and effect with a reputable insurance carrier, registered to do business in Ohio.

6. Relationship of the Parties. The parties agree that no provision contained in this Agreement, or any act of the parties taken pursuant to the terms of this Agreement, will be deemed to create any relationship other than the relationship set forth in this Agreement.
7. License for Access. The Association hereby grants the City, and its residents, a license to access Reserve C for any public purpose.
8. Notice. Whenever notice must or may be given, each notice or demand must be in writing and will not be effective unless given by hand-delivery or by registered or certified mail, return receipt requested, or by overnight nationally-recognized courier service provided a receipt is required, at the notice address as set forth below, or at such other address as either party may from time to time designate in writing. Notice will be deemed delivered on receipt or refusal of receipt. Notices shall be sent:

If to the Association: Hoover Park Homeowners Association  
5550 Blazer Parkway, Suite 175  
Dublin, Ohio 43017  
Attn: President

With a copy to: Kaman & Cusimano, LLC  
470 Olde Worthington Road, Suite 460  
Columbus, Ohio 43082  
Attention: Jeffrey E. Kaman, Esq.

If to the City: City of Grove City, Ohio  
4035 Broadway  
Grove City, Ohio 43123  
Attn: Charles W. Boso, Jr.  
City Administrator

9. Miscellaneous.
  - a. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Ohio. For all litigation, disputes and controversies which may arise out of or in connection with this Agreement, the undersigned hereby waive the right to trial by jury and consent to the jurisdiction of the courts in the State of Ohio.
  - b. Complete Agreement. This Agreement sets forth all of the understandings between the Association and the City concerning the matters set forth herein. No alteration, amendment, change or addition to this Agreement shall be binding unless in writing and signed by each party.
  - c. Assignment. This Agreement may not be assigned by the Association without the City's prior written consent.
  - d. Severability. If any term or provision of this Agreement should be declared invalid or unenforceable, the balance of the Agreement shall not be affected, and each term not declared invalid or unenforceable shall be enforced to the full extent permitted by law.
  - e. Counterparts. The Agreement may be executed in counterparts, including by facsimile, all of which shall be considered one and the same agreement, binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

- f. Exoneration. All Agreements of payment or performance on the part of the signatory(ies) for Association and City will be agreements to pay and/or perform out of funds of Association and City. No signatory for Association or City assumes, neither he nor she be under, any personal liability or obligation by reason of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Property Maintenance Agreement on the Effective Date.

ASSOCIATION

CITY

Hoover Park Homeowners Association Inc.,  
an Ohio non-profit corporation

City of Grove City, Ohio,  
an Ohio municipal corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Charles W. Boso, Jr.

Print Name: \_\_\_\_\_

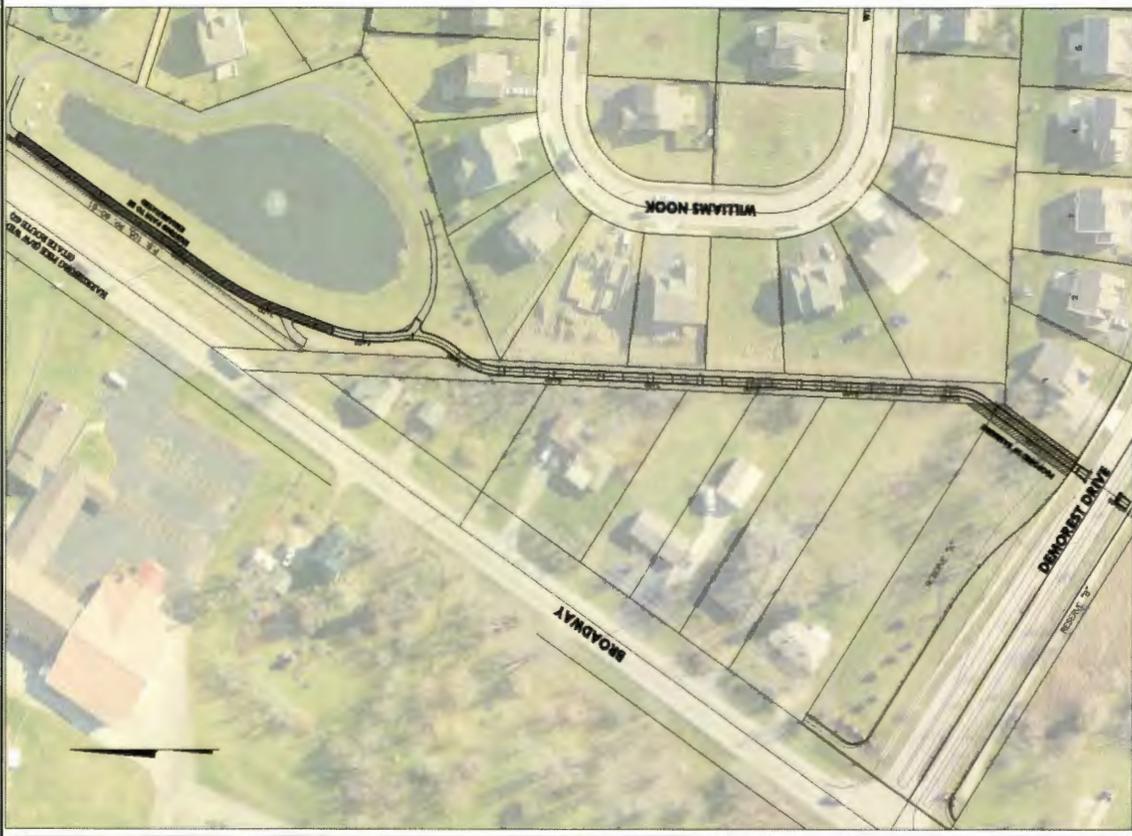
City Administrator

Approved as to form:

\_\_\_\_\_  
Stephen J. Smith, Law Director

# Exhibit A

<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">DATE</td> <td style="width: 50%; text-align: center;">DRAWN BY</td> </tr> <tr> <td style="width: 50%; text-align: center;">SCALE</td> <td style="width: 50%; text-align: center;">REVISIONS</td> </tr> <tr> <td style="width: 50%; text-align: center;">PROJECT</td> <td style="width: 50%; text-align: center;">SHEET NO.</td> </tr> </table>	DATE	DRAWN BY	SCALE	REVISIONS	PROJECT	SHEET NO.	<p><b>BROADWAY-CASA DRAINAGE &amp; TRAIL IMPROVEMENTS</b> OVERALL EXHIBIT</p> <p><b>CITY OF CHICO CITY, MANLYN COUNTY, OREGON</b> TRAIL PATH IMPROVEMENT</p>	<p><b>EMHT</b></p> <p>ENGINEERING &amp; ARCHITECTURE 1000 N. 10TH ST. SUITE 100 CHICO, OREGON 97590 PHONE: (531) 893-1111 FAX: (531) 893-1112 WWW.EMHT.COM</p>	<p>DATE: 10/1/11</p> <p>SCALE: 1" = 40'</p>	<p>PROJECT NO.: 11-001</p> <p>SHEET NO.: 1 OF 1</p>	<p>DATE: 10/1/11</p> <p>SCALE: 1" = 40'</p>
DATE	DRAWN BY										
SCALE	REVISIONS										
PROJECT	SHEET NO.										



SOURCE: THE 2008 AERIAL PHOTOGRAPHY PROVIDED BY THE CITY OF CHICO. THE CITY OF CHICO IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION SHOWN ON THIS MAP. THE CITY OF CHICO IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION SHOWN ON THIS MAP.

## Exhibit B

Portion above reserved for County Recorder, Engineer and Auditor's Offices Use

### **PERMANENT EASEMENT FOR BIKE PATH, UTILITIES, STORM DRAINAGE, AND GRADING**

THIS PERMANENT EASEMENT FOR BIKE PATH, UTILITIES, STORM DRAINAGE, AND GRADING (the "Easement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2015, by and between \_\_\_\_\_ ("Grantor"), whose mailing address is \_\_\_\_\_, and the **City of Grove City, Ohio**, an Ohio municipal corporation ("Grantee"), whose mailing address is 4035 Broadway, Grove City, Ohio 43123.

#### **BACKGROUND INFORMATION**

WHEREAS, Grantor owns the real property known as Franklin County Auditor's Parcel No. \_\_\_\_\_ (the "Grantor's Property");

WHEREAS, Grantee desires a permanent easement over those portions of the Grantor's Property legally described on the attached Exhibit A and depicted on the attached Exhibit B (the "Easement Area") for the purpose of a bike path, utilities, storm drainage, and grading; and

WHEREAS, Grantor desires to grant a permanent easement over the Easement Area for the benefit of Grantee upon the terms and conditions set forth in this Easement.

#### **STATEMENT OF AGREEMENT**

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

1. Grant of Permanent Easement. Grantor grants to Grantee, its agents, employees, independent contractors, and successors and assigns, a permanent, non-exclusive easement in, through, over and under the Easement Area for the following purposes: (i) to construct, operate, maintain, repair, and replace a bike path, utilities, and drainage facilities, and to perform such grading work as Grantee deems necessary in connection therewith; (ii) to construct, operate, maintain, repair and replace (a) utility lines for gas, electric, water, sewer, cable, and communication services, and facilities and appurtenances incidental thereto, including, but not limited to, lines, wires, cables, conduits, anchors, circuits, equipment, meters, valves, regulators, manholes, drain pipes, fixtures, and other appurtenances and facilities and (b) drainage facilities (collectively, the "Facilities") and (ii) of ingress and egress over those portions of Grantor's Property reasonably necessary to facilitate Grantee's use of the Easement Area as permitted hereby. Grantee, as soon as reasonably practicable after construction of the path and Facilities, including any alterations and repairs thereto, and completion of the grading work shall cause the Easement Area to be restored to its former condition as nearly as is reasonably practicable. Grantee shall have the right to remove any and all vegetation growing within the Easement Area as is reasonably necessary to facilitate Grantee's use thereof as permitted by this Easement. Grantor has the right to enter on the Easement Area for any purpose whatsoever provided such entry by Grantor does not in any way impair or hinder the rights granted to Grantee in this Easement.

2. Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties or by any third party as creating the relationship of principal and agent, of partnership or of joint venture between the parties, it being understood and agreed that no provision contained herein or any act of the parties hereto shall be deemed to create any relationship other than grantor and grantee of the rights and easements set forth herein.

3. Waiver. Except to the extent that a party may have otherwise agreed in writing, no waiver by such party of any breach of the other party of any of its obligations, agreements, or covenants hereunder shall be deemed to be a waiver of any subsequent breach of the same or of any other covenants, agreements, or obligations, nor shall any forbearance by a party to seek a remedy for any breach by the other party be deemed a waiver of any rights or remedies with respect to such breach or any similar breach in the future.

4. Severability. In the event any provision of this Easement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

5. Captions and Pronoun Usage. The captions and section numbers in this Easement are for convenience only and shall not be deemed to be a part hereof. The pronouns used herein shall be considered as meaning the person, number, and gender appropriate under the circumstances at any given time.

6. Governing Law. This Easement shall be governed by and construed in accordance with the laws of the State of Ohio.

7. Modification. This Easement, or any easement or covenant set forth herein, may not be amended, terminated, rescinded or otherwise modified, in whole or in part, except by a written instrument executed by the parties hereto and recorded with the Recorder's Office, Franklin County, Ohio with reference made to this Easement.

8. Benefit. This Easement shall run with the land and inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, representatives, successors and assigns.

9. Authority. Grantor represents and warrants that she has the full right and authority to enter into this Easement and to grant the rights hereby conveyed to Grantee.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date set forth above.

GRANTOR:

GRANTEE:

City of Grove City, Ohio, an Ohio Municipal Corporation

\_\_\_\_\_  
Charles W. Boso, Jr., City Administrator

STATE OF OHIO            )  
                                  )ss.  
FRANKLIN COUNTY        )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, the subscriber, a Notary Public in and for said county and state, personally came Charles W. Boso, Jr., City Administrator of the City of Grove City, Ohio, an Ohio municipal corporation, who acknowledged the signing thereof to be her free act and deed for and on behalf of the municipal corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

\_\_\_\_\_  
Notary Public

STATE OF OHIO            )  
                                  )ss.  
FRANKLIN COUNTY        )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, the subscriber, a Notary Public in and for said county and state, personally came \_\_\_\_\_, Grantor, who acknowledged the signing thereof to be her free act and deed for the purpose stated therein.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

\_\_\_\_\_  
Notary Public

This Instrument Prepared By:  
Frost Brown Todd LLC  
One Columbus  
10 West Broad Street  
Columbus, Ohio 43215