

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2022 – 088

By: Mayor Perciak and All Members of Council

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A PROJECT DEVELOPMENT AGREEMENT WITH THE BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAN PARK DISTRICT (“CLEVELAND METROPARKS”) TO PROVIDE FUNDING IN CONNECTION WITH THE WHITNEY ROAD COVERED BRIDGE PROJECT IN THE CITY OF STRONGSVILLE, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Strongsville is responsible for repair and maintenance of the Whitney Road Covered Bridge located on Whitney Road just west of Valley Parkway and north of Interstate 80 over the East Branch of the Rocky River (hereinafter referred to as the “Bridge”); and

WHEREAS, by and through Ordinance No. 2021-023, Council authorized the Mayor to enter into an Agreement with a firm of professional engineers to provide engineering design services in connection with the Whitney Road Bridge Project (“Project”) consisting of removing, rehabilitating and reinstalling the wooden covered bridge; removing and replacing the bridge deck; and removing and replacing structural steel; and

WHEREAS, the Bridge provides crucial access to the Cleveland Metroparks Mill Stream Run Reservation and its Mill Stream Run Management Center; and

WHEREAS, Cleveland Metroparks vehicles routinely use the Bridge to access the Mill Stream Run Reservation and the Management Center; and

WHEREAS, because of its importance to Cleveland Metroparks, the Cleveland Metroparks has committed to contributing Fifty Thousand Dollars (\$50,000.00) towards the cost of the Project; and

WHEREAS, therefore, it is the mutual desire of both Cleveland Metroparks and the City to enter into a Project Development Agreement in order to establish procedures for accomplishing the Project, to properly document such arrangement, and to stipulate the role of each party with regard to financial, design and construction/implementation responsibilities.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STRONGSVILLE, COUNTY OF CUYAHOGA AND STATE OF OHIO:

Section 1. That the Mayor be and is hereby authorized and directed to enter into a Project Development Agreement with the Board of Park Commissioners of the Cleveland Metropolitan Park District for funding of \$50,000.00, as the Cleveland Metroparks’ contribution towards the Whitney Road Covered Bridge Project in the City of Strongsville, a copy of which Agreement is attached hereto as Exhibit “1” and in all respects is hereby approved.

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Section 2. That the Mayor, City Engineer, Director of Finance and/or other appropriate officials of the City and their designees be and are hereby authorized to do all things necessary to perform the terms and conditions of the Agreement in accordance with their respective responsibilities thereunder.

Section 3. That the funds necessary to pay the City's share for the purposes of the Project shall be appropriated and paid from the General Capital Improvement Fund.

Section 4. 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 any of its committees, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 5. That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety, and general welfare of the inhabitants of the City, and for the further reason that it is necessary to enter into said Agreement in order to proceed with the Whitney Road Covered Bridge Project to implement the proposed improvements, and to conserve public funds. 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.

ARBONE

President of Council

Date Passed: 06.06.2022

	<u>Yea</u>	<u>Nay</u>
Carbone	<input checked="" type="checkbox"/>	_____
Clark	<input checked="" type="checkbox"/>	_____
DeMio	<input checked="" type="checkbox"/>	_____
Kaminski	<input checked="" type="checkbox"/>	_____
Kosek	<input checked="" type="checkbox"/>	_____
Roff	<input checked="" type="checkbox"/>	_____
Short	<input checked="" type="checkbox"/>	_____

Approved: Thomas B. Surina

Mayor

Date Approved: June 6, 2022

Attest: Chimue Pienka

Clerk of Council

ORD. No. 2022-088 Amended: _____
1st Rdg. 06-06-22 Ref: _____
2nd Rdg. Suspended Ref: _____
3rd Rdg. Suspended Ref: _____

Pub Hrg. _____ Ref: _____
Adopted: 06/06/22 Defeated: _____

**PROJECT DEVELOPMENT AGREEMENT
FOR WHITNEY ROAD COVERED BRIDGE**

THIS PROJECT DEVELOPMENT AGREEMENT FOR WHITNEY ROAD COVERED BRIDGE (this "Agreement") is made effective and entered into as of the 2 day of June, 2022 ("Effective Date"), by and among the **BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAN PARK DISTRICT** ("Cleveland Metroparks"), a political subdivision duly organized and existing under the laws of the State of Ohio, and the **CITY OF STRONGSVILLE** ("Strongsville"), a municipal corporation organized and operating under the laws of the State of Ohio (collectively, the "Parties," individually a "Party").

I. PROJECT SCOPE

- A.** Strongsville is responsible for repair and maintenance of the Whitney Road Bridge located on Whitney Road just west of Valley Parkway and north of Interstate 80 over the East Branch of the Rocky River (hereinafter referred to as the "Bridge" and depicted in the attached **Exhibit A**).
- B.** The Bridge provides crucial access to Cleveland Metroparks Mill Stream Run Reservation (the "Reservation") and its Mill Stream Run Management Center (the "Management Center"). Cleveland Metroparks vehicles routinely use the Bridge to access the Reservation and the Management Center.
- C.** Strongsville has approved legislation to reconstruct the Bridge (the "Project"). Because of its importance to Cleveland Metroparks, Cleveland Metroparks has committed to contributing Fifty Thousand Dollars (\$50,000) towards the cost of the Project.
- D.** This Agreement establishes a procedure for accomplishing the Project.
- E.** This agreement will stipulate the role of each party as it relates to:
 - 1.** Financial Responsibilities;
 - 2.** Design Responsibilities; and
 - 3.** Construction/Implementation Responsibilities.

II. ROLES

A. Strongsville

1. Financial

- a) Except as detailed in Section II(B)(1), Strongsville will provide all of the funds required for the Project including, but not limited to, design, construction, permits, inspections, and fund raising.

2. Design

- a) Strongsville will be responsible for the design of the Project. Strongsville will ensure that the Project is designed such that it includes a covered bridge, one-lane vehicular road, and narrow multi-use path. The design of the covered bridge shall allow Cleveland Metroparks maintenance vehicles to pass through and under the bridge structure without clearance conflicts. Specifically, the interior of the Bridge must: (1)

have a minimum clearance height of thirteen feet six inches (13' 6"); (2) have a minimum clearance width of ten feet (10'); and (3) be constructed to bear vehicles weighing up to eighty thousand pounds (80,000 lbs).

b) Strongsville will provide Cleveland Metroparks with the opportunity to periodically review and comment upon design drawings during their development. Reviews shall occur at intervals customarily referred to as Schematic Design, Design Development and 60% Construction Documents and 100% Construction Documents. Within ten (10) days of receiving the design drawings, Cleveland Metroparks shall either approve the drawings or provide comments, which comments shall be incorporated into updated design drawings. Should Strongsville object to Cleveland Metroparks' comments, the Parties shall work cooperatively to address Cleveland Metroparks' concerns and reach a mutually agreeable resolution. Design drawings must be approved by Cleveland Metroparks before Strongsville proceeds to the next phase of design

c) It shall be Strongsville's sole obligation to ensure that the design complies with all relevant rules and regulations, including the Americans with Disabilities Act ("ADA") and any requirements of any funding sources.

3. Construction

a) Strongsville will be responsible for finding or providing all services, labor, materials and contracts for the Project. Strongsville shall be responsible for identifying any required contractor(s) or other required service provider(s) to complete the Project.

b) Strongsville will be responsible for contract administration of the Project and the Project's compliance with all governmental requirements, including the securing of all necessary inspections and occupancy permits.

B. Cleveland Metroparks

1. Financial

a) Except as set forth below, no Cleveland Metroparks funds are being used for the Project toward the cost of design or construction.

b) Provided the design of the Project complies with the requirements of Section II(A)(2)(a), Cleveland Metroparks shall contribute Fifty Thousand Dollars (\$50,000) towards construction of the Project, which funds will be transferred from Cleveland Metroparks to Strongsville within fifteen (15) days of the date Strongsville provides evidence to Cleveland Metroparks that construction is fifty percent (50%) complete.

2. Design

a) Cleveland Metroparks will review all design drawings shared by Strongsville with Cleveland Metroparks. Within ten (10) days of receiving Schematic Design, Design Development, 60% Construction Documents, and 100% Construction Documents, Cleveland Metroparks shall provide either written approval of the drawings or provide comments, which shall be incorporated into the design drawings or negotiated to an agreeable resolution as set forth in Section II(A)(2)(b).

b) Cleveland Metroparks shall be required to provide comments relating to the design drawings' compliance with the requirements set forth in Section II(A)(2)(a). While it may provide comments on other aspects of the design drawings, Cleveland Metroparks is not obligated to do so. Cleveland Metroparks' ability to review the design drawings shall in no way limit Strongsville's obligations to ensure the design drawings comply with all relevant rules and regulations and provide a bridge that complies with the requirements of Section II(A)(2)(a) above.

3. **Construction.**

a) Cleveland Metroparks shall have no obligations as relates to construction of the Project.

IV. DEFAULTS AND REMEDIES

A. Events of Default.

Each of the following events, if not corrected as provided in this Section V, shall be deemed an "Event of Default":

1. A Party shall be adjudicated bankrupt or adjudged to be insolvent;
2. A receiver or trustee shall be appointed for a Party's property and affairs;
3. A Party shall voluntarily make an assignment for the benefit of creditors or shall file a petition in bankruptcy or insolvency or for reorganization or shall make application for the appointment of a receiver, or if any similar petitions are filed against a Party and not dismissed within sixty (60) days; or
4. A Party fails to perform any term, covenant or agreement contained in this Agreement, and said failure to perform continues for a period of sixty (60) days after notice in writing from the other Party specifying the nature of such failure.

B. Remedies.

Upon the occurrence of an Event of Default, the non-defaulting Party may, in addition to and without prejudice of any other rights and remedies available at law or in equity, exercise one or more of the following remedies:

1. Terminate the defaulting Party's rights under this Agreement by written notice.
2. Bring an action for specific performance, in which case the defaulting Party acknowledges that an Event of Default confers upon the enforcing Party a "clearly enforceable legal right" as that term is used in equity.

C. Non-Waiver.

Failure of a Party to complain of any act or omission on the part of the other Party, however long the same may continue, shall not be deemed to be a waiver by said Party of any of its rights hereunder. No waiver by a Party at any time, expressed or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision of this Agreement or a consent to any

subsequent breach of the same or any other provision. No acceptance of any partial payment shall constitute an accord or satisfaction but shall only be deemed a partial payment on account. No agreement, term, covenant or condition hereof to be performed or complied with and no breach or default thereof shall be waived, altered or modified except by written agreement.

V. MISCELLANEOUS

A. Notice.

All legal notices required to be given hereunder shall be given in writing and shall be deemed to have been duly given on the date delivered if delivered personally; or if delivered by a nationally recognized overnight carrier service, or upon the third day after mailing if mailed by U.S. registered mail, postage prepaid, and addressed as follows:

(a) Notice to Cleveland Metroparks:

Chief Executive Officer
Cleveland Metroparks
4101 Fulton Parkway
Cleveland, OH 44144

with a copy to:
Chief Legal & Ethics Officer
Cleveland Metroparks
4101 Fulton Parkway
Cleveland, OH 44144

(b) Notice to Strongsville:

Thomas Perciak, Mayor
City of Strongsville
16099 Foltz Parkway
Strongsville, Ohio 44149

with a copy to:

_____.

For all communications other than legal notices, all communication from Strongsville to Cleveland Metroparks shall be from the Mayor or the Mayor's authorized designee to Cleveland Metroparks' Chief Planning and Design Officer or his authorized designee, and all communication from Cleveland Metroparks to Strongsville shall be from Cleveland Metroparks Chief Planning and Design Officer or his authorized designee to Strongsville's Mayor or the Mayor's authorized designee. Strongsville's Mayor or his authorized designee and Cleveland Metroparks' Chief Planning and Design Officer or his designee shall be responsible for sharing such communications with their team members.

B. Condition Precedent

The Parties understand and agree that a condition precedent of this Agreement is that the City Council of the City of Strongsville accept and approve this Agreement. If the City Council of the City of Strongsville fails to approve the terms and conditions as herein stated, the Agreement shall immediately terminate with no further obligation of either Party to the terms and conditions of this Agreement.

C. Approvals

All approvals as required under this Agreement shall be provided by the Party representatives listed in this Section VI(C). If additional internal approvals are required before the Party representative can provide approval, each Party shall be responsible for obtaining such approvals in a timely manner so as not to delay the Project.

(a) Cleveland Metroparks representative:

Sean McDermott, Chief Planning and Design Officer, or his designated representative.

(b) Strongsville representative:

Thomas Perciak, Mayor, or his authorized representative.

D. Agreement Binding Upon Successors.

The covenants, agreements and obligations herein contained shall extend to, bind and inure to the benefit not only of the parties hereto, but their respective personal representatives, heirs (if applicable), successors and permitted assigns.

E. Complete Agreement.

All negotiations, considerations, representations and understandings between the parties are incorporated herein, and may be modified or altered only by agreement in writing, signed by all parties to this Agreement. Any such amendments shall require approvals of all parties.

F. No Third-Party Beneficiaries.

Nothing contained in this Agreement shall be construed so as to confer upon any other party the rights of a third-party beneficiary

G. Exhibits

Exhibit A – The Bridge

Exhibit B – Insurance

H. Discrimination Prohibited.

The parties to this Agreement, and their successors and assigns, shall not, in the use of the Property, discriminate against any person or group of persons based upon race, color, religion, age, national origin, national ancestry, sex, pregnancy, gender, sexual orientation, military service or veteran status, gender identity or expression, mental or physical disability, or genetic information, including but not limited to in the sale, lease, sublease, transfer, occupancy, tenure or enjoyment of the Property, and shall so bind their

successors and assigns.

I. Counterparts and Electronic Signature.

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one agreement. The signature page of any entity, or copies or facsimiles thereof, may be appended to any counterparts of this Agreement and when so appended shall constitute an original. 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.

J. Publicity.

The Parties shall cooperate on press releases, press interviews, magazine articles, social media posts and other publicity regarding the Project and, whenever practicable, shall obtain the written approval of the other Party prior to discussing this Agreement or its contents with the media or issuing any press release or other public statement related thereto. A Party shall not use the logo of the other Party here to unless authorized in writing by the requested Party, which authorization may be withdrawn by the consenting Party at any time. Nothing in this Agreement shall be construed to grant Strongsville or any other individual or entity any rights in and/or to the name, any trademark, any logo, and/or any other property of Cleveland Metroparks. Similarly, nothing in this Agreement shall be construed to grant Cleveland Metroparks or any other individual or entity any rights in and/or to the name, any trademark, any logo, and/or any other property of Strongsville.

K. Parties' Indemnification.

No party has nor will have any authority to act for or to assume any obligation or responsibility on behalf of another party except as expressly provided in this Agreement or in writing signed by all parties.

L. Insurance.

Strongsville shall maintain the insurance set forth on **Exhibit B** hereto.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed as of the date first written.

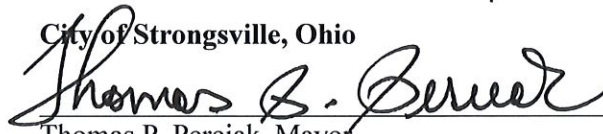
**Board of Park Commissioners of the
Cleveland Metropolitan Park District**

Brian M. Zimmerman, Chief Executive Officer
Cleveland Metroparks
4101 Fulton Parkway
Cleveland, OH 44144

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

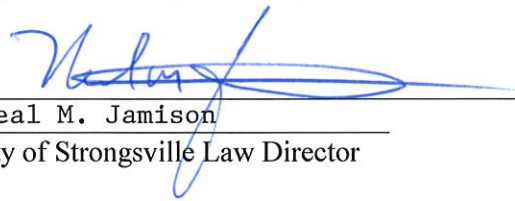
Katie M. McVoy, Assistant Legal Counsel
Cleveland Metroparks
4101 Fulton Parkway
Cleveland, OH 44144

City of Strongsville, Ohio



Thomas P. Perciak, Mayor
City of Strongsville
16099 Foltz Parkway
Strongsville, Ohio 44149

Approved as to legal form by:



Neal M. Jamison
City of Strongsville Law Director

Exhibit A

The Bridge

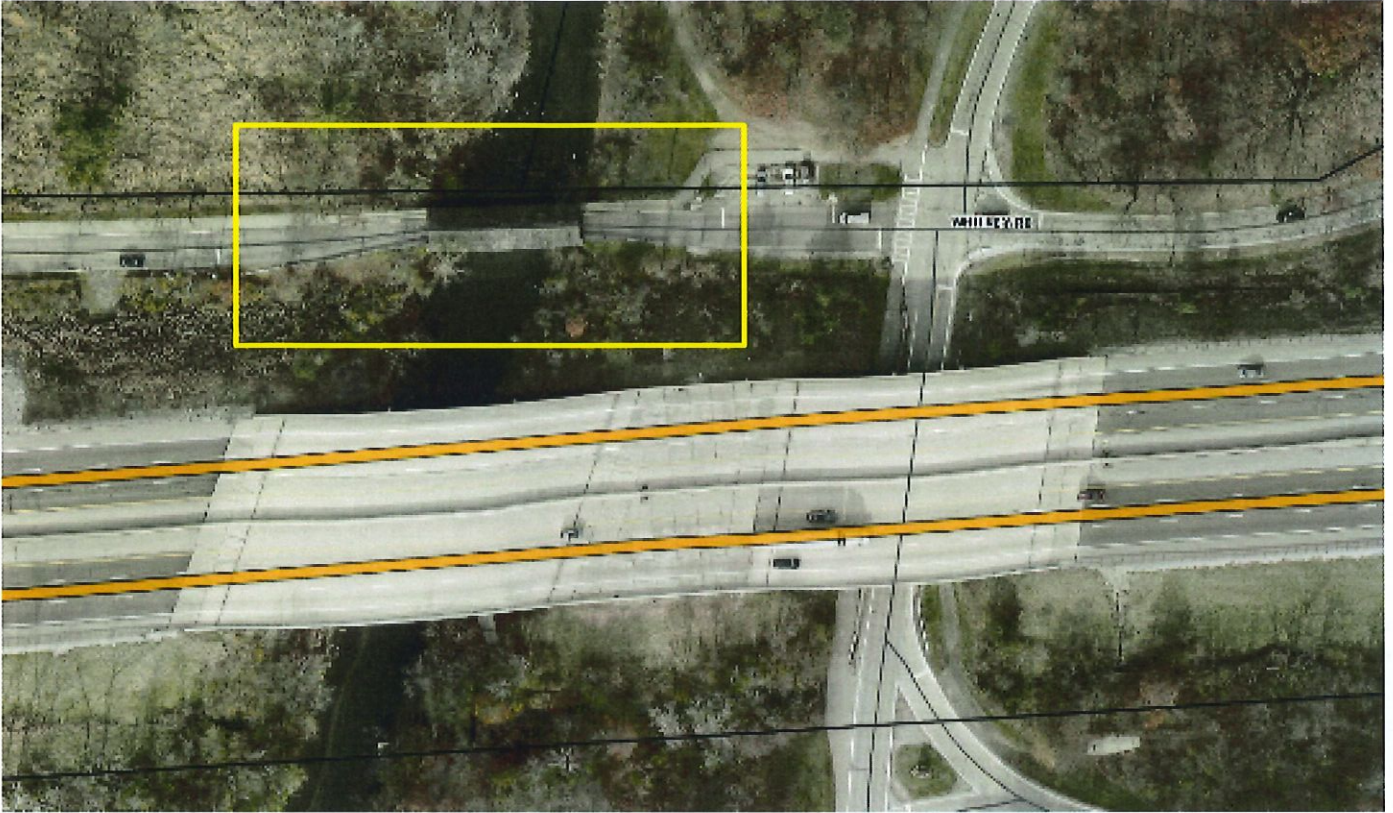


Exhibit B

Insurance Requirements

Strongsville, shall purchase and maintain at its own expense, or cause to be purchased and maintained, throughout the term of this Agreement, the insurance as specified below. All insurance required hereunder shall apply to and cover loss or liability caused by, arising from, or resulting from the goods, products or services performed or required to be performed, provided or required to be provided as follows.

Commercial General Liability Insurance including without limitation, contractual liability coverage, products and completed operations coverage, and coverage described below, insuring Strongsville against all claims for bodily injury (including death), property damage and personal injury arising out of use and occupancy of the premises or ways adjacent thereto by Strongsville or from the conduct of Strongsville. Such insurance shall have a limit of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage, One Million Dollars (\$1,000,000) per occurrence for personal injury, and Two Million Dollars (\$2,000,000) General Aggregate.

Commercial Auto Liability Insurance including without limitation, coverage for vehicles owned, non-owned, or hired by Strongsville, with combined single limits of not less than One Million Dollars (\$1,000,000) bodily injury and property damage.

Employer's Liability Insurance coverage insuring against claims for bodily injury (including death and or disease), with limits of liability of not less than One Million Dollars (\$1,000,000) bodily injury by accident, each accident, One Million Dollars (\$1,000,000) bodily injury by disease, each employee, and One Million Dollars (\$1,000,000) bodily injury by disease, policy aggregate.

Excess/Umbrella: The General Liability insurance limit, Auto Liability insurance limit and Employers Liability insurance limit requirements may be satisfied by the purchase and maintenance of any combination of primary, Excess and Umbrella insurance.

Professional Liability Insurance, if Services or Work performed or provided include activities that could result in or give rise to a Professional Liability (Errors and Omissions) claim or loss, then Strongsville shall purchase and maintain Professional Liability insurance with a limit of not less than \$1,000,000 per claim; \$2,000,000 annual aggregate, insuring against claims for damages by reason of any act, error or omission committed or allegedly committed by the Strongsville, provided that if such Professional Liability insurance is written on a claims-made form, then such coverage shall be maintained for a period of not less than thirty-six (36) months from the date of completion of the Services or Work under these Contract Documents and shall have a retroactive date of not later than commencement of such Services or Work.

Worker's Compensation; Strongsville shall at all times during the term of this Agreement subscribe to and comply with applicable Workers' Compensation laws of the State of Ohio and pay such premiums as may be required thereunder. Certificates evidencing such coverage shall be submitted to Cleveland Metroparks upon the effective date of this Agreement and at such other times as Cleveland Metroparks may request.

Third-Party Over Claims. In any and all claims against Strongsville, or Cleveland Metroparks, the indemnification obligations under this Agreement shall not be limited in any way by any limitation on the amount or type of damage compensation or benefits payable under workers' compensation acts, disability benefits or other employee benefit acts.

Mutual Waiver of Subrogation. Cleveland Metroparks and Strongsville each hereby waive, discharge and release any and all rights of recovery, subrogation, claim or cause of action, as well as each party's insurer's rights of recovery, subrogation, claim or cause of action, against the other, for any loss or damage that may occur on the premises that is insured against under the terms of any Property insurance policy, or which could have been

insured against under the Property insurance required to be purchased pursuant to this Agreement, whichever is broader. The foregoing waiver shall only apply to the extent such damage or loss is covered by such Property insurance, it being understood and agreed that the foregoing waiver, discharge, and release shall not apply to any deductible or retention existing under any Property insurance policy purchased and maintained by either Cleveland Metroparks or Strongsville, or any self-insurance of Cleveland Metroparks.

Additional Insured. Cleveland Metroparks, who by reference, shall include Cleveland Metroparks' officers, elected or appointed officials, employees, agents, and volunteers, shall be named as an additional insured on Strongsville's Commercial General Liability policy, Automobile Liability policy, Excess/Umbrella Liability policy.

Evidence of Insurance. Strongsville shall submit to Cleveland Metroparks within ten (10) calendar days after signing this Agreement, and not more than thirty (30) days prior to commencement of the services and products hereunder, Acord form certificates evidencing the effectiveness of the insurance policies required of Strongsville herein. Strongsville shall, within thirty (30) days of Cleveland Metroparks' request during the term of this Agreement, provide Cleveland Metroparks with a complete copy of all insurance policies purchased and maintained by Strongsville pursuant to this Agreement. Annually for a period of three (3) years following the expiration of this Agreement, Manager, upon written request from Cleveland Metroparks, shall promptly provide Cleveland Metroparks with Acord form certificates of insurance evidencing the effectiveness of the insurance coverages required pursuant to this Agreement, and if requested by Cleveland Metroparks, a complete copy of all insurance policies then in effect pursuant to this Agreement. All certificates provided pursuant to the foregoing shall reflect all insurance coverages required herein and specifically refer to this Agreement and the existence and form of additional insured status required to be granted to Cleveland Metroparks.

Contents of Insurance Policies. Strongsville's insurance policies shall contain a clause that provides that such policies may not be cancelled, non-renewed or materially changed until at least thirty (30) days after written notice of such cancellation, non-renewal or change in coverage to Cleveland Metroparks.

Selection of Insurance Company. All insurance policies required under this Agreement shall be placed with insurance companies listed in the latest edition of "Best's Insurance Guide and Key Ratings" with a policy rating of at least A and a financial size category of X.

No Limitation. The types and limits of insurance to be purchased and maintained by Strongsville pursuant to this Agreement shall not be deemed to constitute a limitation of Strongsville's liability or indemnification obligations under this Agreement or otherwise existing or arising.

Notice of Occurrence. Upon either parties' knowledge of any occurrence, event, incident, or claim involving, resulting in, causing, or relating to any injury, damage or destruction to persons, property or the Project, that Party shall immediately provide the other Party with written notice of such occurrence, event, incident or claim(s) with reasonable detail.

Failure to Comply. Failure to comply with any aspect of this Section shall be grounds for immediate termination of this Agreement.