

Metro Park Development Agreement

An Agreement Between Metro Parks, the City of Columbus, the Village of New Albany and Plain Township to Establish a New Metro Park in Northeast Franklin County

This Metro Park Development Agreement (the "Agreement") is made and entered into on or as of the ___ day of _____, 2007 (the "Effective Date") by and between the Board of Park Commissioners of the Columbus and Franklin County Metropolitan Park District, a political subdivision duly organized and validly existing under the laws of the State of Ohio ("Metro Parks"), the Board of Trustees of Plain Township, the legislative authority of and for Plain Township, a political subdivision duly organized and validly existing under the laws of the State of Ohio ("the Township"), the Village of New Albany, a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio and its Charter (the "Village"), and the City of Columbus, Ohio, a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio and its Charter (the "City" and, collectively with Metro Parks, the Township and the Village, the "Parties" and each a "Party").

WHEREAS, the Parties shall cooperate in creating a new metro park (the "Metro Park") within the Park Zone, as hereinafter defined, and the Parties shall have the goal of establishing a Metro Park comprising approximately 1,200 acres for Metro Parks to acquire, own, develop, operate and maintain said Metro Park; and

WHEREAS, the Metro Park shall be designed to protect and restore valuable natural resources; preserve open space in a rapidly developing area; provide opportunities for passive outdoor recreation, wildlife observation, and environmental education; and be linked by multi-use trails to nearby parks and community resources; and

WHEREAS, this Agreement defines the park concept, location, acquisition, development and operating requirements that will guide how the Metro Park will be established; and

WHEREAS, the Parties shall cooperate in good faith with each other in establishing the Metro Park; and

WHEREAS, this Agreement has been authorized and approved by **(insert ordinance and resolution language)**;

NOW THEREFORE, the Parties covenant, agree and obligate themselves as follows:

1. Metro Park Concept, Design and Development. The Parties hereby agree to establish and develop the Metro Park in the area of Plain Township designated as the

"Park Zone." The Park Zone is that area depicted on Exhibit A, attached hereto and made a part hereof, consisting of the entire unincorporated area of the Township as of the Effective Date of this Agreement located north of Walnut Street and west of Peter Hoover Road. The Parties shall have the goal of Metro Park comprising approximately 1,200 acres within the Park Zone. The Metro Park may be expanded to include trail corridors extending from the Metro Park to properties outside of the Park Zone. The Parties will cooperate on establishing connecting trails in order to minimize expenses and regulatory issues as the trails cross roads and political boundaries. In the future, Metro Parks may also acquire other properties outside of the Park Zone for inclusion in the Metro Park.

The Metro Park shall be a natural area park designed for passive outdoor recreation (i.e. picnicking, walking, hiking, etc.), environmental education, open space preservation, wildlife observation and natural area management. Metro Parks shall create an environment that promotes conservation and biodiversity. At all times relevant herein, at least 80% of the Metro Park shall be preserved in its natural state and no buildings or other structures shall be developed or constructed thereon except trails and related improvements similar to those which are customarily found in other parks controlled, owned or operated by Metro Parks. Park development for the remainder of the Metro Park may include, but is in no way limited to, picnic facilities, parking lots, restrooms, play equipment, a combination of developed, accessible, and primitive trails, a nature education facility, a maintenance facility, and a ranger station/park office, or other appropriate park facilities as determined by Metro Parks.

Metro Parks shall be responsible for determining the manner in which the Metro Park is acquired, designed, developed and maintained. Metro Parks will designate an advisory committee to assist in developing a concept for the Metro Park (the "Advisory Committee"). The Village, the City and the Township shall each be permitted to designate a representative to serve as a member of the Advisory Committee. Given that much of the land in the designated area has been utilized for farming, it is anticipated that a habitat restoration improvement program will need to be undertaken to enhance the natural resource base. Restored wetlands will be incorporated into the park design, including the possibility of a wetland mitigation bank. The end result would be a "traditional Metro Park", much like Sharon Woods Metro Park or Blendon Woods Metro Park.

2. Term. The term of this Agreement (the "Initial Term") shall be for a period of fifteen (15) years, commencing on the Effective Date and shall, upon timely prior written notice, terminate at midnight, _____. Unless all legislative authorities of the Parties affirmatively act to terminate this Agreement within one (1) year prior to the expiration of the Initial Term or any subsequent five year term provided for in this Section, this Agreement shall automatically be renewed for an additional period of five (5) years, and shall continue to be automatically renewed thereafter for similar five (5) year periods at the end of each renewal period with no limit upon the number of such renewals (the "Renewal Term"). The provision herein for automatic extension of this Agreement recognizes that the accrual of benefits to the Parties from this Agreement may take decades and that the construction of water and sanitary sewer service facilities along with other possible capital improvements provided for elsewhere is of permanent

usefulness and duration. The “Term” of this Agreement shall include the Initial Term and any Renewal Term.

3. Funding Commitments. The Parties agree to provide the funding specified below to assist with the formation of and the property acquisition for the Metro Park:

(a) The City, Village and Township, as set forth below, will together contribute an amount totaling Ten Million Dollars (\$10,000,000.00) to Metro Parks for the purposes of land acquisition by Metro Parks and Metro Parks will contribute Three Million Dollars (\$3,000,000.00) that may be used for land acquisition or development of the Metro Park, (collectively, the “Initial Funding Commitment”). Such contributions shall be made according to the schedules set forth below.

(b) The Initial Funding Commitment shall be divided and made as follows:

(i) The City shall pay Five Million Dollars (\$5,000,000.00), representing its share of the Initial Funding Commitment, and shall also pay an additional Two Million Five Hundred Thousand Dollars (\$2,500,000.00) of the Initial Funding Commitment on behalf of the Township. Accordingly, and subject to the further provisions of this paragraph (i), the City shall pay a total of Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) of the Initial Funding Commitment. Notwithstanding any other provision of this Agreement, the City’s payment obligations under this paragraph (i) shall be limited to the moneys in the Rocky Fork Blacklick Tax Increment Financing Fund (the “TIF Fund”) created pursuant to Columbus City Council Ordinance No. 2656-2003 passed December 8, 2003, and do not constitute an indebtedness of the City within the provisions and limitations of the laws and the Constitution of the State of Ohio, and the City shall not be obligated to levy taxes or excises in support of its payment obligations under this paragraph. On each June 1 and December 1 (each a “Payment Date”) after the effective date of this Agreement and until the City’s payment obligations under this paragraph have been satisfied, the City shall pay all moneys then on deposit in the TIF Fund to Metro Parks. To the extent those payments by the City (exclusive of any interest as provided below) do not equal or exceed the cumulative amounts on attached Exhibit B (the “Target Amount”) by the dates shown on that schedule, the difference between the cumulative amount paid by the City (exclusive of interest) and the Target Amount (the “Deficiency Amount”) shall bear interest at the Interest Rate provided below from the first day after each Payment Date until the Deficiency Amount has been paid. “Interest Rate” means, as of each Payment Date and thereafter until the next Payment Date, the most recent annual rate of interest announced by *The Bond Buyer 11 Bond GO Index*

preceding the Payment Date, calculated on the basis of a 360-day year consisting of twelve 30-day months. City payments under this paragraph shall be applied first to the payment of any accrued and unpaid interest calculated as provided in this paragraph. Any expenditure of the City pursuant to this paragraph (i) is subject to the expenditure restrictions and appropriation requirements of Sections 27 through 31 of the Charter of the City and to future ordinances of City Council authorizing each expenditure and certification by the City Auditor of the availability of such funds. Each year, the City shall deduct from the TIF Fund, prior to making payments to Metro Parks in accordance with this Agreement, an amount to be determined by the City Auditor, but not to exceed Five Thousand Dollars (\$5,000.00), which amount shall be used to pay costs of administering the TIF and this Agreement. These annual deductions will not result in reducing the amount of the total Seven Million Five Hundred Thousand Dollar (\$7,500,000.00) payment. The City will not transfer, encumber, spend or use any monies on deposit in the TIF Fund other than provided in this Agreement until the requirements in this Agreement for payments and expenditures out of that Fund are fully satisfied.

(ii) The Village shall pay Two Million Five Hundred Thousand Dollars (\$2,500,000.00) of the Initial Funding Commitment, either by a cash payment or contribution of property by deed. If paid by cash, the Village will make the payment in accordance with the schedule attached hereto as Exhibit C (add payment schedule). If by land contribution, then the Village shall contribute the following parcel(s) for the listed values: **(list Franklin County parcel numbers and value)**; and

(iii) Metro Parks shall contribute Three Million Dollars (\$3,000,000.00) toward the Initial Funding Commitment with payments of One Million Five Hundred Thousand Dollars (\$1,500,000.00) in 2007 and 2008, respectively.

(c) Any portion of the Initial Funding Commitment paid in cash shall be held by Metro Parks in a separately dedicated fund (the "Fund") and the Fund shall be used solely for the purpose of acquiring property for the Metro Park except that the Initial Funding Commitment contributed by Metro Parks shall be used for land acquisition and operation and maintenance of the Metro Park.

(d) Once the Parties have fulfilled their share of the Initial Funding Commitment, Metro Parks shall acquire, operate and maintain all portions and aspects of the Metro Park without any further or additional funding commitments or contributions from any Party, except as may be made through written agreement.

4. Contributions of Property. The City, Village and Township each have the option of transferring property by deed to Metro Parks throughout the Term of this Agreement. A Party's contribution of property by deed shall be required to meet the following criteria:

(a) Metro Parks must determine in its sole discretion that the property is desirable for acquisition to be used and developed as part of the Metro Park.

(b) Properties must be preapproved by Metro Parks and the Party donating the land as to the acreage and cash value.

5. Land Acquisition. Except for any property contributed as part of the Village's share of the Initial Funding Commitment, selecting, negotiating and purchasing other parcels of property for inclusion into the Metro Park shall be the sole responsibility of Metro Parks. Title to all property acquired for incorporation into the Metro Park shall be held by Metro Parks as the sole owner; provided, however the land obtained by Metro Parks cannot be sold or transferred without the consent of all Parties to this Agreement.

6. Taxes. Metro Parks may apply for an exemption from county real estate taxes for land included in the Metro Park.

7. Mediation. In the event the Parties have a dispute as to any of the terms or applicability of this Agreement, the Parties agree to use their best efforts to resolve the dispute through a mutually acceptable mediation process prior to any Party filing a lawsuit in connection with such dispute. Each Party participating in mediation shall pay its own costs of mediation, including its proportionate share of the compensation and administrative expenses required by the mediator and by the mediation services provider selected by the Parties. If a mediator has not been selected by the Parties within sixty (60) days after one of the Parties has requested that a dispute arising under this Agreement be mediated, then any of the Parties may commence a lawsuit or commence such other method of pursuing such remedies as may be available to any of the Parties.

8. Default. A failure to comply with the terms of this Agreement shall constitute a default hereunder. A Party in default shall have ninety (90) days after receiving written notice from another Party of the default to cure, unless such additional time is reasonably necessary to effectuate such cure. If the default is not cured within such time period, the defaulting Party shall be in breach of this Agreement and a non-defaulting Party may bring an action, in law or in equity, for specific performance of this Agreement, injunctive relief and/or damages and may pursue such other remedies as may be available at law or in equity.

9. Metro Park Operations/Visitor Services. Metro Parks shall be solely responsible for determining the quantity, quality, and nature of services to be offered to

the public who visit the Metro Park. Staffing of the Metro Park shall be based on efficiency and public need, and dedicated staff may not be assigned until Metro Parks determines that it has sufficient funds to develop and operate the Metro Park.

10. Public Relations. It is understood that the Parties involved in this Agreement are public entities and thus are subject to the open meetings and public records requirements of Ohio law. All Parties should work together to ensure that media coverage is positive and accurate.

Metro Parks shall select the name of the Metro Park.

Signage shall be installed within the Metro Park that recognizes the collaborative efforts of the Parties and other entities that may provide financial support toward the creation of the Metro Park.

11. Metro Park Completion/Opening for Public Use. A multi-year schedule may be prepared by Metro Parks as part of the master plan for the development of the Metro Park. It is anticipated that it may take several years to acquire the land and fully develop the Metro Park as contemplated herein. Metro Parks shall allocate certain of its staff and funding to the development of the Metro Park and the Metro Park shall be given a high priority by Metro Parks, but not to the exclusion of any other Metro Parks' development projects.

12. Extension of Sewer and Water. Utility services will only be provided in the Park Zone as shown on the Annexation Territory map, attached hereto as Exhibit A, to support development that is consistent with the adopted land use plan in the Rocky Fork Blacklick Accord that was adopted by Columbus City Council December 15, 2003 and by New Albany Village Council January 20, 2004., The City will not permit any taps to the sanitary sewer line(s) and/or water lines extended into the Park Zone for a period of five years, from the commencement of construction of the first sanitary sewer line relative to sewer service and/or the first water line relative to water service that enters the Park Zone or until 1,000 acres have been purchased for incorporation into the Metro Park, whichever occurs first, except at the request of Metro Parks, the City may extend water and sewer utility services into the Park Zone to serve the development of the Metro Park or Metro Parks may tap into a system extended into the Park Zone. When such a request is made by Metro Parks, Metro Parks shall be responsible for its share of the cost of any such extension or tap into the system. Water and sewer lines may be extended by the City or Village to serve existing residential subdivisions (which Subdivisions are shown on the map attached hereto and incorporated herein as Exhibit D) within the Park Zone, as limited by the Annexation Agreement dated _____.

The Parties understand and acknowledge that the extension of utility services within the Park Zone will be subject to all applicable laws, rules and regulations governing utility extensions in general, including, without limitation, those contained in any adopted Section 208 facilities plan applicable to the Park Zone.

13. Support of Grants Requests. Metro Parks has the authority to apply for any and all grant funding available to assist in the acquisition, operation, development and maintenance of the Metro Park. The Parties agree to cooperate with each other in contributing to the success of applications to obtain grants of funding for land acquisition and facility development in the Metro Park. It is agreed that Metro Parks shall serve as the primary applicant on any grant application for funding for acquisition, maintenance, development or operation of the Metro Park. This Section is not intended to obligate any Party hereto to contribute matching funds or to apply any other form of such Party's economic resources in contributing to the success of applications to obtain grants of funding to perform projects in the Park Zone.

14. Tax Abatement. If during the term of this Agreement, the City or the Village grants any property tax exemption, abatement, or deferral of any property taxes, they shall consider the impact on Metro Parks of the exemption, abatement or deferral, and shall consider structuring the exemption, abatement or deferral agreement to reduce the negative financial impact on Metro Parks.

15. Support of Agreement by Parties. In the event that this Agreement, or any of its terms, conditions or provisions, is challenged by any third party in a court of law, the Parties agree to cooperate with one another and to use their best efforts in defending this Agreement and it shall be the intent of the Parties in so defending this Agreement to seek a judgment or determination that this Agreement is valid and binding and not otherwise against or in violation of applicable Ohio law. Each Party shall bear its own costs in any such proceeding challenging this Agreement or any term or provisions thereof.

16. Immunities Preserved. By entering into this Agreement, none of the Parties intend to relinquish or waive any of the immunities they now have or may hereafter be accorded under state and/or federal laws, including, without the limitation of any such immunities, all those immunities accorded to governmental entities and their officers and employees under O.R.C. Chapter 2744.

17. No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of any Party in other than their official capacity, and no official or member of a legislative authority executing this Agreement on behalf of any Party or any present or future member, officer, agent or employee of any Party shall be liable personally by reason of the covenants, obligations or agreements of the Parties contained in this Agreement.

18. Powers Preserved. This Agreement is not intended to be in derogation of the powers granted to municipal corporations by Article XVIII, Ohio Constitution, or any other provisions of the Ohio Constitution or of the City's or the Village's respective municipal charters or of the Ohio Revised Code; nor is it intended to be in derogation of

the powers granted to townships under any provisions of the Ohio Constitution or of the Ohio Revised Code. The Parties hereby acknowledge their belief as to the lawfulness of this Agreement and agree not to challenge or contest it, or any provision contained herein.

19. Beneficiaries. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors; subject, however, to the specific provisions hereof. This Agreement shall not inure to the benefit of anyone other than as provided in the immediately preceding sentence. This Agreement is not intended to and does not create rights or benefits of any kind for any persons or entities that are not a party to this Agreement.

20. Amendments. This Agreement may be amended only by a writing approved by the legislative authorities of all of the Parties and by means of appropriate legislation authorizing such amendment, if the Parties' codified ordinances or other Ohio law requires such action. Any amendment, in order to be effective, must be authorized by appropriate legislation passed by each of the Parties.

21. Severability. If any term, covenant or condition of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall be unaffected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law. In the event of invalidation of any term, covenant or condition of this Agreement, the Parties shall, upon the written request of any Party, meet within thirty (30) days after receipt of such request, and modify the invalidated provision(s) in such a manner so as to accomplish the purpose and intent of this Agreement, with time being of the essence.

22. Notices. All notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other Party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this Agreement, notices shall be addressed to:

(a) The Township at:

Plain Township, Ohio

Attention: _____

With a copy to:

(b) The Village at:

The Village of New Albany, Ohio

Attention: _____

With a copy to:

(c) The City at:

The City of Columbus, Department of Development
50 W. Gay Street
Columbus, OH 43215
Attention: Director of Development

With a copy to:

(d) Metro Parks at:

Metro Parks
1069 West Main Street
Westerville, OH 43081
Attention: Executive Director

The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, consents, certificates, requests or other communications shall be sent.

23. Counterparts. This Agreement may be executed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.

24. Governing Law and Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the Parties or their respective agents and employees arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Franklin County, Ohio.

IN TESTIMONY WHEREOF, the Township by its _____, the Village by its _____ the City by its Director of Development and Metro Parks by its Executive Director have each hereunto set their signatures as of the Effective Date.

BOARD OF TRUSTEES
PLAIN TOWNSHIP, OHIO

THE VILLAGE OF NEW ALBANY, OHIO

By _____

By _____

Title _____

Title _____

By _____

Title _____

THE CITY OF COLUMBUS, OHIO

METRO PARKS

By _____

By _____

Director of Development

Executive Director

APPROVED AS TO FORM:

City Attorney, City of Columbus

Village Attorney, Village of New Albany

Date: _____

Date: _____

Exhibits to Follow:

Exhibit A: The Park Zone

Exhibit C: The Village Payment Schedule

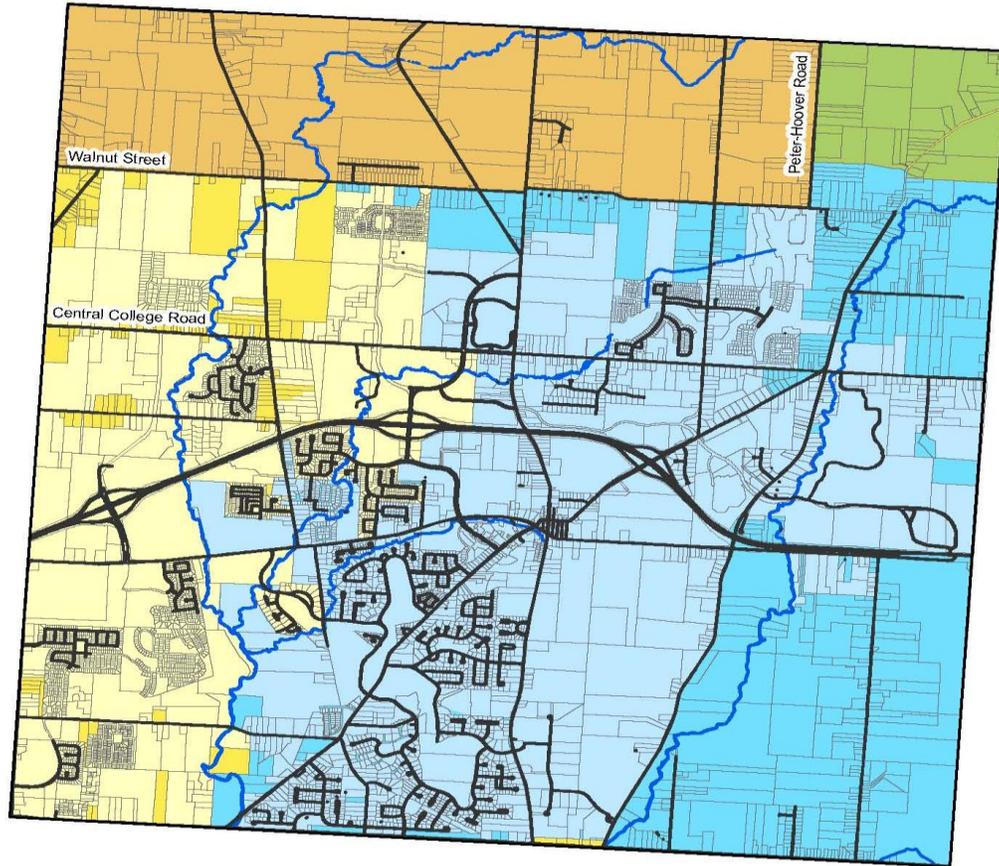
Exhibit B: The City Target Payment Schedule

Exhibit D: Map of Village Exception Areas

Exhibit A

The Park Zone and Annexation Territory Map

Attachment B: Agreement Territory



- Park Zone
- City of Columbus
- City Growth Zone: West
- City Growth Zone: East
- Village of New Albany
- Village Growth Zone

Aug, 06

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Exhibit B

The City Target Payment Schedule

<u>Date</u>	<u>Cumulative Amount</u>
Dec. 31, 2007	\$1,500,000
June 30, 2008	\$2,000,000
Dec. 31, 2008	\$2,500,000
June 30, 2009	\$3,000,000
Dec. 31, 2009	\$3,500,000
June 30, 2010	\$4,000,000
Dec. 31, 2010	\$4,500,000
June 30, 2011	\$5,000,000
Dec. 31, 2011	\$5,500,000
June 30, 2012	\$6,000,000
Dec. 31, 2012	\$6,500,000
June 30, 2013	\$7,000,000
Dec. 31, 2013	\$7,500,000

The above interest provision shall be readjusted if this Agreement or the related Annexation Agreement is executed later than September 30, 2007.

Exhibit C

The Village Payment Schedule

Exhibit D

Map of Village Exception Areas

