

ORDINANCE NO. 2023 - 009

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A CONSTRUCTION MAINTENANCE AND USE AGREEMENT BETWEEN THE CITY OF KENT AND SUMMIT METRO PARKS (SMP) FOR AN OFF-ROAD BIKE/HIKE TRAIL CONNECTION, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent desires to enter into a Freedom/Portage Trail Connection Construction Maintenance and Use Agreement with Summit Metro Parks (SMP) for an off-road bike/hike trail connection to be built between the Freedom Trail and Portage Bike & Hike Trail along Middlebury Road; and

WHEREAS, the proposed trail will include a new trail bridge crossing of the CSX's railroad tracks; and

WHEREAS, the project is being sponsored, managed and funded by SMP, but will be constructed in the City and partially within the right-of-way on Middlebury Road. No funding is required from the City.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio,

SECTION 1. That Council does hereby authorize the City Manager, or his designee, to enter into a Construction Maintenance and Use Agreement with Summit Metro Parks (SMP) for an off-road bike/hike trail connection, and is more fully described in Exhibit "A" attached hereto and incorporated herein.

SECTION 2. 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 of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of 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, health, safety and welfare of the residents of this City, for which reason and other reasons manifest to this Council, this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: February 15, 2023
Date


EFFECTIVE: February 15, 2023
Date

ATTEST: Amy Wilkens
Amy Wilkens
Clerk of Council

Jerry T. Fjala
Jerry T. Fjala
Mayor and President of Council

I, AMY WILKENS, CLERK OF COUNCIL FOR THE CITY OF KENT, COUNTY OF PORTAGE, AND STATE OF OHIO, AND IN WHOSE CUSTODY THE ORIGINAL FILES AND RECORDS OF SAID COUNCIL ARE REQUIRED TO BE KEPT BY THE LAWS OF THE STATE OF OHIO, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF ORDINANCE No. 2023-009, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON February 15, 2023.

(SEAL)


AMY WILKENS
CLERK OF COUNCIL

Construction, Maintenance and Use Agreement

This Construction and Maintenance Agreement ("Agreement"), made this ____ day of _____, 2022 by and between the City of Kent, Ohio, a municipal corporation organized under the laws of Ohio, having its principal address located at 930 Overholt Road, Kent, Ohio 44320 (the "City") and the Board of Park Commissioners of Summit Metro Parks, a park district created as a body politic and corporate pursuant to Chapter 1545 of the Ohio Revised Code, located at 975 Treaty Line Road, Akron, Ohio 44313 (hereinafter referred to as "SMP").

Recitals:

WHEREAS, SMP maintains and operates 6.2 miles of a multipurpose trail along an unused railroad corridor in Summit County, Ohio known as the Freedom Trail Project ("Freedom Trail");

WHEREAS, the Freedom Trail, operated by SMP, begins near the Portage Hike and Bike Trail, owned and operated by City of Kent, located in the City of Kent, Portage County and the City of Ravenna ("Portage Hike and Bike Trail");

WHEREAS, SMP now desires to connect the Freedom Trail to the Portage Hike and Bike Trail;

WHEREAS, CSX Transportation, Inc. ("CSX"), owns and operates a railroad track that separates the Freedom Trail and the Portage Bike and Hike Trail;

WHEREAS, in order to connect the trails over the railroad track owned by CSX, SMP desires to design and construct a pedestrian multipurpose bridge over the CSX-owned railroad track (the "Project");

WHEREAS, in order to construct the Project, SMP needs access to work and perform construction in the Middlebury Road right-of-way ("ROW");

WHEREAS, the City desires to provide SMP permission to work in the ROW to construct the Project, desires to permit the Project, once constructed, to be located and situated within the ROW, and desires to provide SMP future access to the ROW necessary to maintain the Project; and

WHEREAS, SMP and the City desire to enter into this Agreement to provide for the rights and responsibilities of each party.

NOW THEREFORE, in consideration of the mutual agreements contained herein, the parties do hereby agree as follows:

**Article I
Location**

The Project construction and subsequent maintenance shall occur in the ROW as described and depicted on **Exhibit A**, attached hereto and incorporated herein.

For purposes of constructing the Project, the City hereby grants SMP permission and authority to work on the Project within the ROW, as shown on Exhibit A. The City also hereby grants SMP the permission to locate the Project, once constructed and completed within the ROW as depicted on Exhibit A, and further provides permission and authority to SMP to access the ROW in order to maintain the Project throughout this Agreement.

**Article II
Construction**

The City hereby grants SMP pedestrian and vehicular access and use of the ROW for construction of the Project under the terms and conditions of this Agreement. SMP may access and use the ROW for construction purposes immediately upon execution of this Agreement.

SMP shall obtain City approval on aspects of the Project that will be owned and maintained by the City upon completion of the Project, pursuant to Article III. SMP shall also obtain City approval on aspects of the Project that may interfere with its maintenance of traffic plans and patterns on the ROW during construction. Such approval shall not be unreasonably withheld and shall be given within a reasonable timeframe.

The City understands that secondary damage to the City's ROW may occur due to the construction activity required for the Project. The City and SMP will work together to minimize secondary damage. Secondary damage repair, such as earlier than anticipated paving projects, is not considered to be part of this Project.

The City agrees to allow a construction trailer and/or construction equipment to be staged within the project limits, as described on Exhibit A and as approved by the City, for both SMP and City inspectors and staff for the administration, management and inspection of the Project. The SMP or its contractor shall implement road closures as necessary and approved by the City based on the Project circumstances during construction.

SMP and the City agree to work together to find ways to minimize the construction period of the Project. SMP and the City will work together to provide periodic construction updates to the public, as necessary, through media including but not limited to press releases, website updates, e-mails and brochures. SMP and the City will mutually review and approve the messages to be sent out to the public prior to their release.

SMP will continue to improve, modify, and maintain areas adjacent, and within the boundaries of this Project, as outlined in Article III. The City and SMP agree that both parties will work to coordinate on the Project and minimize conflicts.

**Article III
Maintenance**

SMP, at its sole expense, shall maintain the area of the ROW that it is occupying throughout the construction period in the instance that the work performed by SMP would necessitate such maintenance. This may include maintenance of the following items in the ROW: pavement, utilities, roadway and pedestrian lighting, traffic signals, emergency vehicle access, sidewalks, driveways, lawns and landscaping, pavement markings and signing related to the roadway. Upon completion of the construction, the City shall regain responsibility for maintenance of the ROW. SMP shall only have responsibility for maintenance of the ROW if SMP needs to access the ROW for future maintenance on the Project. The City shall be responsible to plow the roadway within the ROW during and after construction.

Prior to commencement of any work, SMP shall secure, and thereafter maintain, at its sole cost and expense, all necessary licenses and permits required in connection with the use of the ROW and shall comply with all federal, state and local statutes, ordinances, rules or regulations which may affect, in any respect, SMP's use of the ROW.

SMP shall perform non-emergency repairs to the Project in such a manner as to minimize disturbance to the functioning of the ROW. SMP shall use its best efforts to restore the ROW as close to the quality of its prior existing state as possible with similar materials whenever SMP disturbs such in the course of repairing and/or maintaining its Project.

Once the Project is completed, SMP shall maintain, at its sole cost and expense, the following Project items: the trail, bridge, and roadway crossing signs and/or markings related to the trail and/or bridge. Upon completion, the City shall maintain all items associated with the roadway in the ROW, at its sole cost and expense, and any items associated with the ROW, including but not limited to, drainage, curbs, catch basins, storm sewers, guardrails.

The maintenance responsibilities shall remain in full force for the duration of the term of this agreement.

**Article IV
Costs**

SMP shall be solely responsible for and pay all costs associated with this Project, which includes all costs to complete the construction of the Project, including, but not limited to, design, ROW access, construction engineering, construction inspection services, testing services, utility fees, legal fees, and all other incidental items.

**Article V
Term & Renewal**

The term of this Agreement shall be forty (40) years from the execution date of this Agreement ("Original Term"). SMP shall have the option to renew for two (2) consecutive ten (10) year renewal periods, each upon the same terms and conditions as contained in this Agreement

(each a “Renewal Term”). Additionally, if SMP does not provide written notice of termination prior to expiration of the then-current term, the Agreement shall automatically renew for each subsequent Renewal Term.

At the end of the term, if this Agreement is not renewed, SMP has the option to either (1) remove the Project, consisting of the bridge, trail and directional road trail signs; or (2) transfer ownership of the Project to the City, if the City agrees, and the City will own and maintain the Project.

Additionally, at or near the end of the term or when the ROW bridge, as it currently exists at the time this Agreement is entered into (“Current ROW Bridge”), needs to be replaced, both the City and SMP shall reconvene to consider and discuss the following items, including but not limited to: (1) cost sharing of the construction of a new ROW bridge to accommodate the road and a separate bike lane or trail (“New ROW Bridge”); and (2) upgrades to the same to comply with the Americans with Disabilities Act (“ADA”). If construction of a New ROW Bridge is agreed upon, SMP shall be responsible for the cost of removal of the Project bridge.

Article VI Default

In the event SMP shall default in the performance of any obligation hereunder, including the obligation to perform each and every covenant, term and condition contained herein, City may, at any time, serve written notice of SMP’s default under any provision of this Agreement, and if SMP’s failure is not remedied within thirty (30) days of receiving notice of any such default or non-compliance, City may, without limiting any other remedy or rights available under law to the City, terminate this Agreement. In the event the nature of the default prohibits SMP from completing the remedy within thirty (30) days, and SMP has promptly commenced and is diligently pursuing completion of the remedy, City shall, instead of terminating or utilizing any other remedy available to the City, assist and permit SMP to complete such remedy, but in no case shall SMP’s right to cure exceed ninety (90) days. Any violation of any federal, state or local law that has not been cured within the time periods set forth herein shall be considered a default. If during the term of this Agreement, City shall serve more than three (3) notices of default or non-compliance on SMP, and after the curing of said three (3) defaults, City shall, at City’s option, notify SMP that it shall no longer be permitted to the cure period described herein. Thereafter, for the duration of the term of this Agreement, City shall have all rights and remedies available under law.

In the event the City shall default in the performance of any obligation hereunder, including the obligation to perform each and every covenant, term and condition contained herein, SMP may, at any time, serve written notice of the City’s default under any provision of this Agreement, and if the City’s failure is not remedied within thirty (30) days of receiving notice of any such default or non-compliance, SMP may, without limiting any other remedy or rights available under law to SMP, terminate this Agreement or sue for specific performance of the City’s obligations. In the event the nature of the default prohibits the City from completing the remedy within thirty (30) days, and the City has promptly commenced and is diligently pursuing completion of the remedy, SMP shall, instead of terminating or utilizing any other remedy available to SMP, assist

and permit the City to complete such remedy, but in no case shall the City's right to cure exceed ninety (90) days. Any violation of any federal, state or local law that has not been cured within the time periods set forth herein shall be considered a default. If during the term of this Agreement, SMP shall serve more than three (3) notices of default or non-compliance on the City, and after the curing of said three (3) defaults, SMP shall, at SMP's option, notify the City that it shall no longer be permitted to the cure period described herein. Thereafter, for the duration of the term of this Agreement, SMP shall have all rights and remedies available under law.

Article VII Liability

SMP agrees to maintain insurance coverage in the event SMP causes damage to City property in the performance of its rights and obligations under this Agreement. Upon notification from the City of any such damage, SMP shall promptly remedy the same. Additionally, SMP shall maintain general liability insurance at commercially reasonable coverage limits insuring against bodily and property damage of anyone using the Project upon completion.

Article VIII Severability

In the event any one or more of the provisions contained in the Agreement shall be determined to be invalid and the remaining provisions can be given effect, then in such event the remaining provisions shall remain in full force and effect.

Article IX Non-Assignment

The rights, duties and responsibilities of parties under this agreement shall not be assignable by either party without written consent of the other party.

Article X Non-Waiver of Breach

The waiver of a breach of any one or more of the terms, provisions and conditions set forth and included in this Agreement shall not constitute, nor be construed to represent or constitute, the waiver in whole or in part of any subsequent breach of any term, provision or condition contained in this Agreement.

Article XI Integrated Agreement

This Agreement, including exhibits, represents the entire, complete and exclusive understanding and agreement of the parties hereto and reduces to writing all oral negotiations and agreements of the parties and shall not be changed, varied or otherwise amended except in writing, signed by each of the parties hereto.

**Article XII
Notices**

Unless and until otherwise advised in writing in accordance herewith, all notices required to be given under this Agreement shall be in writing sent by certified mail, postage prepaid, as follows:

To SMP: Board of Park Commissioners of Summit Metro Parks
Attn: Mark Szeremet
975 Treaty Line Road
Akron, Ohio 44313
MSzeremet@summitmetroparks.org

With a copy to: Roetzel & Andress
Attn: Natalie Rothenbuecher, Esq.
222 S. Main Street, Suite 400
Akron, Ohio 44308
nrothenbuecher@ralaw.com

To City: City of Kent
Attn: _____
930 Overholt Road
Kent, Ohio 44320

With a copy to: _____

**Article XIII
Article Headings**

The article headings contained herein are inserted only as a matter of convenience and for reference and in no way shall be construed to define, limit or describe the scope or intent of this Agreement, nor in any way to affect the interpretation of any provision of this Agreement.

**Article XIV
Governing Law**

This Agreement is being executed in the State of Ohio and the laws of Ohio shall govern its validity, effect, and performance.

[Remainder of this page intentionally left blank – signatures follow.]

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands on the day and year first written above.

CITY OF KENT

BOARD OF PARK COMMISSIONERS OF
SUMMIT METRO PARKS

By: _____
Its: _____
Date: _____

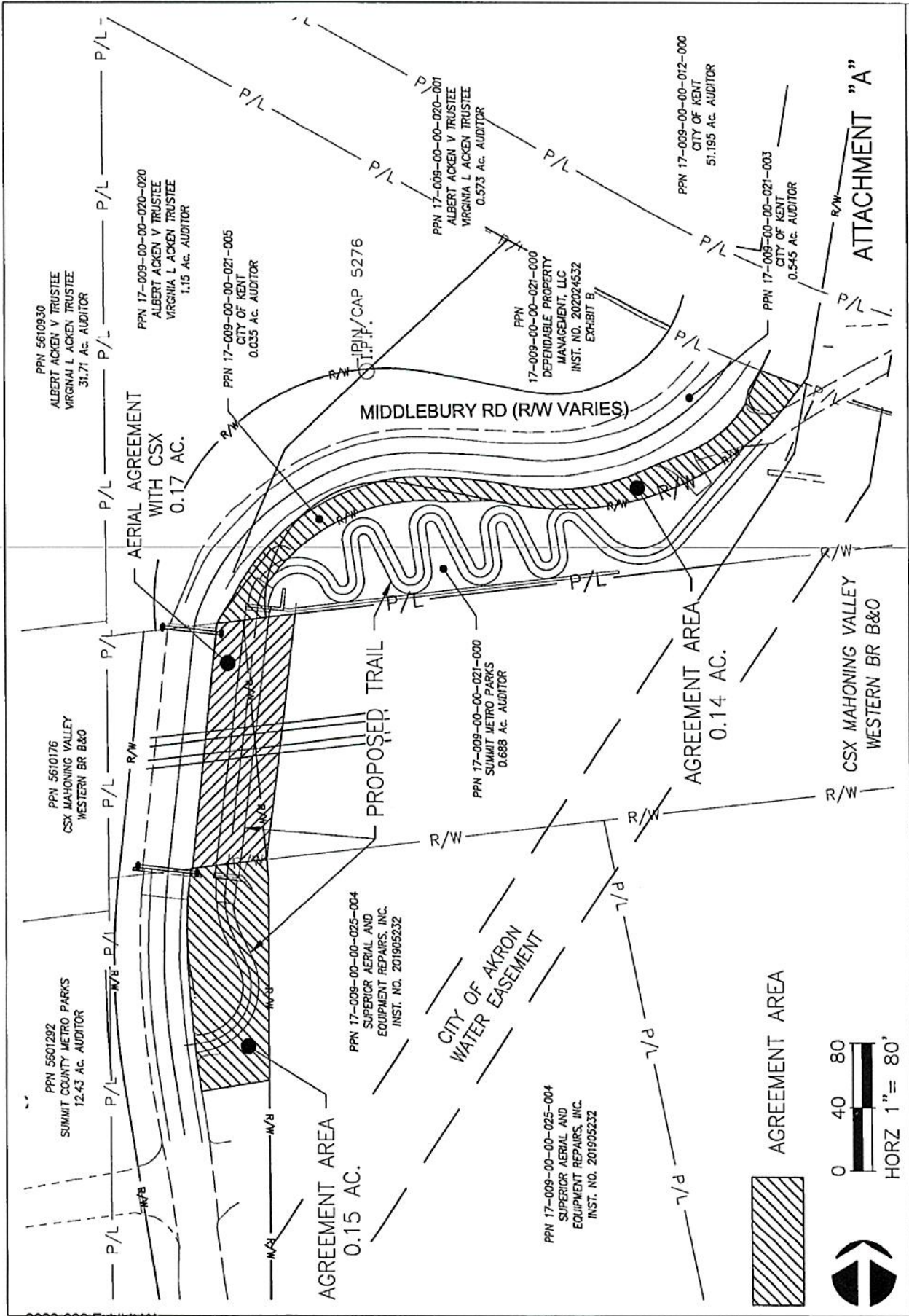
Lisa King, Executive Director

Approved as to form:

By: _____
Its: _____

EXHIBIT A

Right-of-Way Depiction



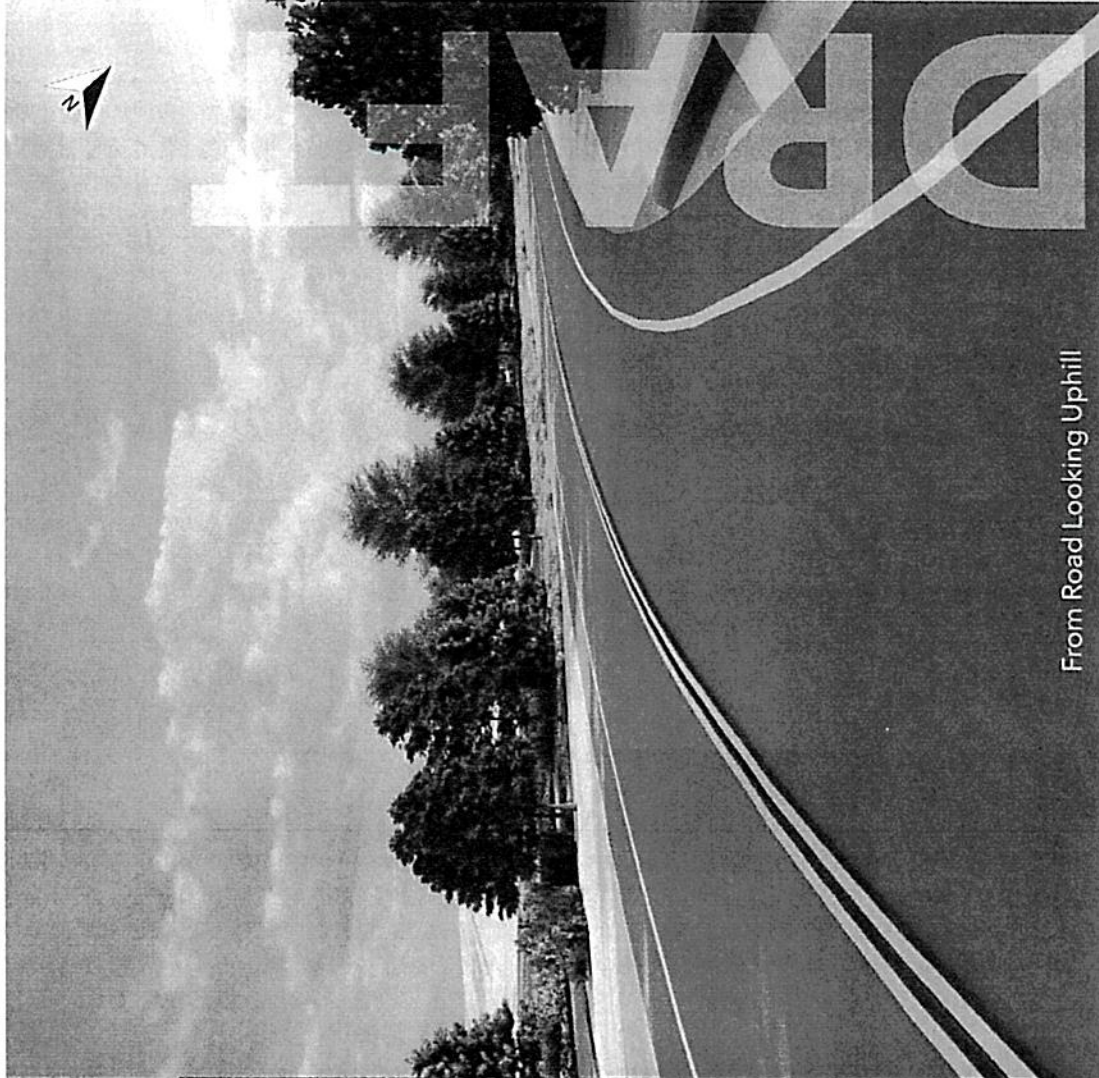
<p>Summit Metro Parks</p>		<p>975 TREATY LINE ROAD AKRON, OHIO 44313 (330) 867-5511</p>
<p>DESIGNED BY: TRS</p>	<p>DRAWN BY: TRS</p>	<p>SCALE: 1" = 80'</p>
<p>FREEDOM TRAIL</p>		<p>DATE: OCTOBER 2022</p>
<p>PORTAGE BIKE & HIKE CONNECTOR</p>		<p>SHEET: 1 OF 1</p>

Summit Metro Park - Freedom/CSX Site



2023-009 Exhibit 'A'

Summit Metro Parks



From Road Looking Uphill

EIMHIT
March 31, 2022

Rendered Views

Summit Metro Park - Freedom/CSX Site

2023-009 Exhibit



From Roadway Bridge

Summit
Metro Parks

Rendered Views

E|N|H|T
March 31, 2022

Summit Metro Park - Freedom/CSX Site

2023-009 Exhibit



From Bottom of Switchback looking Uphill