



BUSINESS IMPROVEMENT DISTRICTS In Cleveland

Establishing a Business Improvement District
A Step-by-Step Procedures Manual
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Introduction

The City of Cleveland, in partnership with the Cleveland Neighborhood Development Corporation (CNDC) and Downtown Cleveland Partnership (DCP), has developed this reference manual to be used by community development corporations, business associations, and property owners interested in forming a Business Improvement District (BID). It provides the basic information necessary to establish a BID in the City of Cleveland.

As described in this manual, forming a BID is a multi-step process that is dictated by both state and local laws. Following the procedures outlined will help to ensure that the proposed BID complies with the requirements of all applicable laws; however, it is not the purpose of this manual to give legal advice or to substitute for obtaining an attorney. The manual is designed to allow the user to generally understand and carry out both the administrative and legislative steps that need to take place to get a BID up and running. Following the suggested steps will also help to ensure that a BID can be put in place with a minimum of delays and surprises.

As with any manual of this nature, however, it is impossible to cover every scenario that may emerge with each BID proposal. It is in the BID's best interest and strongly recommended to retain its own legal advisor. Furthermore, additional review and analysis by various City departments may be necessary beyond those described in this manual.

Legislative References

For cross-reference purposes, the specific legislative references from the Ohio Revised Code (ORC) are included in parentheses throughout the document wherever State legislation is cited in the manual. This will allow the user to refer to and read the full text of the appropriate section of the statute, where more complete or up-to-date information is desired.

Technical Assistance

For questions related to the content of this manual or technical assistance in carrying out the recommended City procedures, contact Bob Brown of the Cleveland City Planning Department at (216) 664-2210.

Chapter 1: What is a BID?

- **BIDs Defined**
- **The State Law**
- **SIDs v. BIDs**

BIDs Defined

A Business Improvement District (BID) is an economic development tool which allows property owners and merchants within a defined geographic boundary to band together to use the City's assessment powers to assess themselves. This "self-imposed" assessment is used by the property owners to maintain and improve their business district.

The assessment funds are collected by the City and turned over to the BID. The funds are typically used for supplemental services including:

- security
- maintenance
- sanitation
- marketing and promotion, etc.

In some cases, capital improvements are funded, including:

- streetscape enhancements
- landscaping
- decorative lighting, brick pavers, etc.

These services and capital improvements funded by the BID are in addition to those normally provided by the City.

State Law

With the passage of Senate Bill 264 in 1994 (and its subsequent amendment) by the State legislature, Chapter 1710 was added to the Ohio Revised Code which laid the groundwork for the creation of Business Improvement Districts in cities and townships throughout Ohio.

Chapter 1710 works in conjunction with Chapter 727 of the Ohio Revised Code, which provides the regulations and procedures for "traditional" assessments. Prior to passage of Senate Bill 264, Chapter 727 provided the basis upon which municipalities collected assessment funds for public capital improvements and services (i.e. sidewalks, utilities, street lighting, tree trimming, etc.) from benefiting property owners. Chapter 1710 expands the permitted public improvements and services for which assessments can be levied and allows the creation of a non-profit corporation, governed by the board of Directors of a nonprofit corporation, for the purpose of planning and implementing these improvements and services.

Today, Chapter 727 still plays an important role in relation to BIDs in that it provides the underlying basic laws related to implementing and collecting assessments which apply in those instances where Chapter 1710 is silent.¹

SIDs v. BIDs

A district created in Ohio under the authority of Chapter 1710 is legally referred to as a Special Improvement District or "SID." Nationally, such districts are referred to by several different names including "Special Service Areas," "Community Benefits Districts" and more commonly "Business Improvement Districts" or "BIDs." These terms can be used interchangeably.

For purposes of this document, the City of Cleveland has informally adopted the use of the acronym "BIDs" to refer to such districts, given its more widely accepted use nationally.

It should be noted, however, that all districts formally approved by Cleveland City Council and all legislation and other documents prepared for such districts will incorporate the phrase "Special Improvement District" as part of the name.

¹It is important to note that a portion of the law related to assessments is uncodified and can only be located through legal research into case law.

Chapter 2: Who are the key players in establishing a BID?

- ❑ **The City**
- ❑ **The CDC**
- ❑ **The Stakeholders: Property Owners**

The formation of a BID requires consensus-building. There are three entities that need to work together in order to establish a BID: the City, the Community Development Corporation ("CDC") for the area (or another similar group), and the stakeholders. Each entity has its own responsibilities within the formation process.

The City

The City has four main areas of responsibility: review, legislation, contract, and oversight.

- **Review** - The City is responsible for the review and approval of the BID boundaries, the proposed services or improvements and the imposition of the assessment. The In-House BID Committee, made up of the department Directors or their designees (see Chapter 7), reviews the BID services plan. Each Director reviews the activities described in the Plan under their department's jurisdiction. The Division of Assessments & Licenses reviews the proposed assessment.
- **Legislation** - The City is responsible for the required legislative processes needed for the formation of a BID, for the approval of the plan of services or improvements, and to levy the assessment.
- **Contract** - The City is responsible for the drafting of the required contract to enable the City to levy assessments on behalf of the BID and to transfer the assessment funds to the BID.
- **Oversight** - The City is responsible for the collection of the assessments and disbursement of funds to the BID. Inasmuch as the collected assessment funds are "public funds," the City must monitor their expenditure by the BID. By law, the City (in the form of a designee of

the Mayor and a designee of City Council) is appointed to the Board of Directors. As Board members, these designees are able to act as liaisons between the City and the BID.

The Community Development Corporation

The Community Development Corporation's (CDC's) (or another similar group's) responsibilities will vary depending on the role it decides to take. In most cases, the CDC has been working with the stakeholders in the area on the formation of the BID. If this is the case, the CDC should act in the following manner:

- **Liaison** - The CDC should be the entity working as a liaison between the stakeholders and the City in the formation of the BID.
- **Administration** - Until the BID is formed, the CDC will either administer or hire an individual to manage the formation of the BID.

The Stakeholders

In this manual, the term "stakeholders" is used to mean groups or individuals who have some influence in the neighborhood or district, i.e. community groups or block clubs, churches, hospitals, merchants, and/or property owners. The role of the stakeholders can be wide ranging from administering the formation of the BID, to marketing the BID concept on a peer-to-peer level to other stakeholders in the area. However, the interest of the private property owners is critical and essential in order to form a BID because they are the ones who sign the petitions necessary to meet the thresholds mandated in the state law.

Chapter 3: The Big Picture

- **Charting the Course: BID Formation From Start to Finish**
- **Technical Assistance Available from the City**
- **How long will it take to put a BID in place?**

Charting the Course: BID Formation From Start to Finish

The following chart summarizes in checklist format the major steps necessary to establish a BID by each of the three primary actors -- the CDC (or another similar group), the City, and the property owners or merchants' association. The remaining chapters explain each of these steps in greater detail. For quick reference, the chart indicates the appropriate chapter or appendix where full information is provided for a particular step or action.

Technical Assistance Available from the City

The City of Cleveland will provide technical assistance to those groups interested in establishing a BID. The City Planning Commission is the primary department to contact for those seeking assistance from the City. City Planning staff will coordinate with the Economic Development and Community Development departments, as well as with all other affected departments in the City, as necessary.

It is strongly recommended that contact be made with City staff as early in the process as possible. Staff can be made available to explain the benefits of a BID and to provide an overview of the process to establish a BID. This type of information sharing can help members of your organization in making the decision on whether or not to go forward with such a program. City staff can also assist in exploring the financial feasibility of a BID for your business district and in explaining how to prepare a quick estimate of the potential revenues that could be generated.

CHARTING THE COURSE BID FORMATION CHECKLIST

PHAS E	CDC (or other similar group)	CITY	MERCHANTS ASSOCIATION AND/OR PROPERTY OWNERS
I	<p>4 INTRODUCE idea of creation of BID to Board of trustees, merchants group, and/or Council rep</p> <p>4 BEGIN analysis of district problems and needs</p>		
II	<p>4 DETERMINE tentative:</p> <ul style="list-style-type: none"> • boundaries • scope of services • budget for BID <p>4 OBTAIN tax maps/records of properties within borders</p> <p>6 TEST various assessment formulas</p> <p>MEET with City reps to inform them of intent to create BID</p> <p>3</p>	<p>3 REVIEW procedures to establish BID with CDC (or entity representing BID)</p> <p>3 TECHNICAL assistance:</p> <ul style="list-style-type: none"> 4 • property data collection 4 • boundaries 6 • assessment formula 	<p>4 FORM task force to work with CDC to determine tentative boundaries, scope of services</p> <p>BEGIN to develop marketing plan</p> <p>4 to create support for the BID</p>
III			<p>4 CREATE formal steering committee</p> <p>4 FIRST formal contact with property owners as a whole -- mailing, meetings, one on one canvassing</p> <p>4 INITIATE series of community meetings</p>
IV	<p>CONTACT Council rep, if not already done</p> <p>4 SUBMIT final boundary map and list of property owners to City for verification.</p>	<p>4 ENG. & CONSTRUCTION:</p> <ul style="list-style-type: none"> • prepare legal description of BID boundary • verify front footage #'s <p>ASSESSMENTS & LICENSES:</p> <ul style="list-style-type: none"> 7 • verify property values/ ownership/ outstanding assessments 7 	<p>4 ONGOING efforts to "sell" the BID concept</p> <p>4 INFORMAL tracking of property owner support to meet thresholds in State law (60% front footage or 75% land area)</p>
V	<p>7 PREPARE petition for establishment of district and boundary approval</p> <p>PETITION property owners</p> <p>4 PREPARE and initiate process for Article of Incorporation</p> <p>5 PREPARE Services Plan and final budget</p> <p>6 SELECT and calculate final assessment methodology</p>	<p>LAW Department:</p> <ul style="list-style-type: none"> 4 • Review of draft petition 7 • Prepare and introduce legislation approving BID and Services Plan <p>ASSESSMENTS & LICENSES:</p> <ul style="list-style-type: none"> • Verify signatures on petition 7 • Verify threshold for property owner support <p>INFORM in-house committee about upcoming petition</p>	<p>ONGOING efforts to "sell" the BID concept</p>

PHASE	CDC (or other similar group)	CITY	BID (Newly Formed)
VI	7	7 INFORMAL administrative review of plan 7 MEET with In-House BID committee 7 COMMITTEE and/or affected departments determine Protocols – level of base line services	4 ONGOING efforts to “sell” the BID concept APPROVE Protocols -- baseline service determination
VII	PRESENT boundaries and Articles of Incorporation to City Council	REFER to City Planning Commission and/or Council Committees for adoption 8 APPOINT City reps to Board of Trustees	8 After BID is approved by Council: <ul style="list-style-type: none"> • FILE Articles of Incorporation with the State • CREATE BIDs Board of Trustees • HIRE a manager/staff • CONTRACT with CDC (optional)
VIII		6 TECHNICAL assistance: Assessment methodology 7 LAW prepares contract with BID to collect assessment and to accept bidding procedures	5 PREPARE plan of services and final budget 6 SELECT and calculate final assessment methodology
IX			4 ONGOING efforts to "sell" the BID concept APPROVE Protocols--baseline service determination
X		REFER to City Planning Commission and/or Council Committees for adoption	7 SUBMIT plan to Council 7 ENTER into contract with City 7 SECURE first year funding
XI		7 INITIATE legislation for Ordinance to Proceed with assessment	SEND out RFP and solicit bids
XII			CONTRACT for services and perform work
XIII		7 INITIATE legislation to levy assessment 6 LEVY the assessment and transfer funds to BID	8 PREPARE annual financial reports

The BID Formation Checklist provides an overview of the technical support the City can provide and the appropriate phases in the process that such assistance will be available.

For more information contact Bob Brown at:

Cleveland City Planning Commission – 664-2210
Chapter 3: The Big Picture

How long will it take to put a BID in place?

Several factors could affect the amount of time it takes to establish a BID including:

- Staff or volunteers available to coordinate the process;
- Private sector leadership -- support from key area stakeholders;
- Level of consensus on need for proposed BID funded services or improvements; and
- Length of time needed to get through the local government approval/two petition process.

Nationally, experience in other cities has shown that the average time it takes from the inception of the idea to the time the BID is up and running is approximately 18 months.

Chapter 4: Getting Organized

- "Selling" the Idea of a Business Improvement District
- Preliminary Planning: Assessment and Analysis
- Establishing The Boundary Of A BID
- Drafting BID Documents

"Selling" the Idea of a Business Improvement District

What are some of the benefits of a comprehensive program to sell the BID concept to property owners?

- Builds consensus among property owners who will be included in the BID;
- Educates constituents about BIDs;
- Creates a feeling of participation in a district-wide effort; and
- Identifies the BID as an effort to improve status quo, as a solution or enhancement, not simply an increase in the property owner's tax bill.

Who takes the lead in "selling" the BID concept?

- The process may be initiated by the local merchants' association, a group of property owners, and/or an organization working on their behalf, i.e., a CDC. Property owners are key in helping to sell the idea of the BID to their peers.
- It may be feasible to hire a public relations firm or planning consultant to assist with this process.
- Regardless of who may be the driving force behind the effort to sell the BID concept, a key component of a successful process is building consensus.

When should the process begin?

- It is never too early to begin educating people about the benefits of a BID.
- Timing is an important factor—efforts to get a BID in place may be more effective in response to a problem or crisis (real or perceived).
- The process may take different forms: at the early stages of BID discussions, efforts may be directed to a CDC's Board of Directors or a merchants' group to form a core group of supporters, or BID task force, for subsequent marketing efforts. Later, efforts to sell the BID concept are directed to affected property owners or business owners and take on a peer-to-peer approach to build consensus to levy the assessment and implement the BID's plan of services or improvements.

How does the BID task force start the process?

- First, form a BID task force that will include key property owners, business operators, and others with an interest in forming a BID. These members should be committed to the economic well-being of the district and representative of the various interests that will be asked to pay the assessments to the District.
- The more inclusive the group, the more effective it will be in building support for the BID.
- Private sector champions are critical to the success of selling the concept of a BID.

What does the BID task force do?

- The role of the task force changes throughout the process. At first, members of the task force are advisors and information gatherers. Once it is determined that the BID is viable, the task force designs and implements the program to sell the BID concept which will lead to the presentation of a District Plan and Budget to City Council for approval.
- The first educational efforts should be directed to the task force. The task force should be "armed with information" and able to discuss what a BID is, success stories of existing BIDs, how a BID will impact district, etc.
- Data about the current status of District will be useful to help task force members discuss the benefits of the BID with their peers.
- The task force may be helpful to determine study area boundaries, identify services needed in the BID, define and possibly direct early planning for the District plan, and/or draft initial budget numbers.

Throughout the process, representatives of the BID task force should plan on being available to participate, as necessary, in hearings that are scheduled before committees of City Council and the City Planning Commission for approval of the BID and related plan of services or improvements.

What "selling" techniques can be used to help explain the benefits of a BID?

- **Peer to Peer:** One-to-one peer discussions, property owner to property owner or business owner to business owner, is probably the best method. Usually, the entire marketing effort culminates in a door-to-door lobbying campaign, as petition signatures for the BID boundaries, plan and budget are collected.
- **Group Sessions:** Small group sessions to targeted key groups, such as a group of interested owners, will begin to expand network of "proselytizers". As the base for support grows, so will the number of property and business owners available for further marketing efforts.
- **Community Forums:** Community forums will probably create the most energy. A community forum presents a key opportunity for education. It is a good opportunity to present "experts" to help sell the BID, highlight the team driving the process and perhaps bring other partners, such as the councilperson, into the process.
- **Meeting Schedule:** Create a schedule of meetings and what will be discussed at each session to ensure all affected property owners and business owners are contacted and information is disseminated appropriately.

What types of materials are useful?

- Information illustrating existing successful BIDs such as newsletters, videos, brochures, meetings with BID staff, and newspaper or magazine articles.
- Materials describing the existing condition of the district such as maps, data analysis, and special studies (i.e., security, merchant surveys).
- Materials developed to explain the proposed district such as maps and budget numbers.
- General wisdom is to keep materials simple and straightforward.

In addition to stakeholders, what other audiences should the BID "selling" campaign target?

- City Council members;
- Residents in district/nearby district; and
- Properties that are located within district boundaries but are not assessed unless they choose to be, i.e., churches and government-owned properties.

Preliminary Planning: Assessment & Analysis

Why analyze the district's problems and needs?

- Any type of information-gathering activity increases the awareness of the specific characteristics of the study area, dispels myths and misperceptions by presenting hard facts, and assists in marketing the concept of a BID.
- Analysis of data will present a clear picture of the current status of the district and help determine the plan of services or improvements for the proposed BID.

What types of information should be gathered as part of the BID planning process?

- Studies such as retail market analyses, property owner/business owner surveys to determine needs and issues of concern, traffic counts, safety reports, etc.
- Tax maps/records of properties within proposed boundaries
- Property inventory database
- Tentative scope of services
- Tentative budget

Test various assessment formulas to determine if potential revenues can cover the proposed budget.

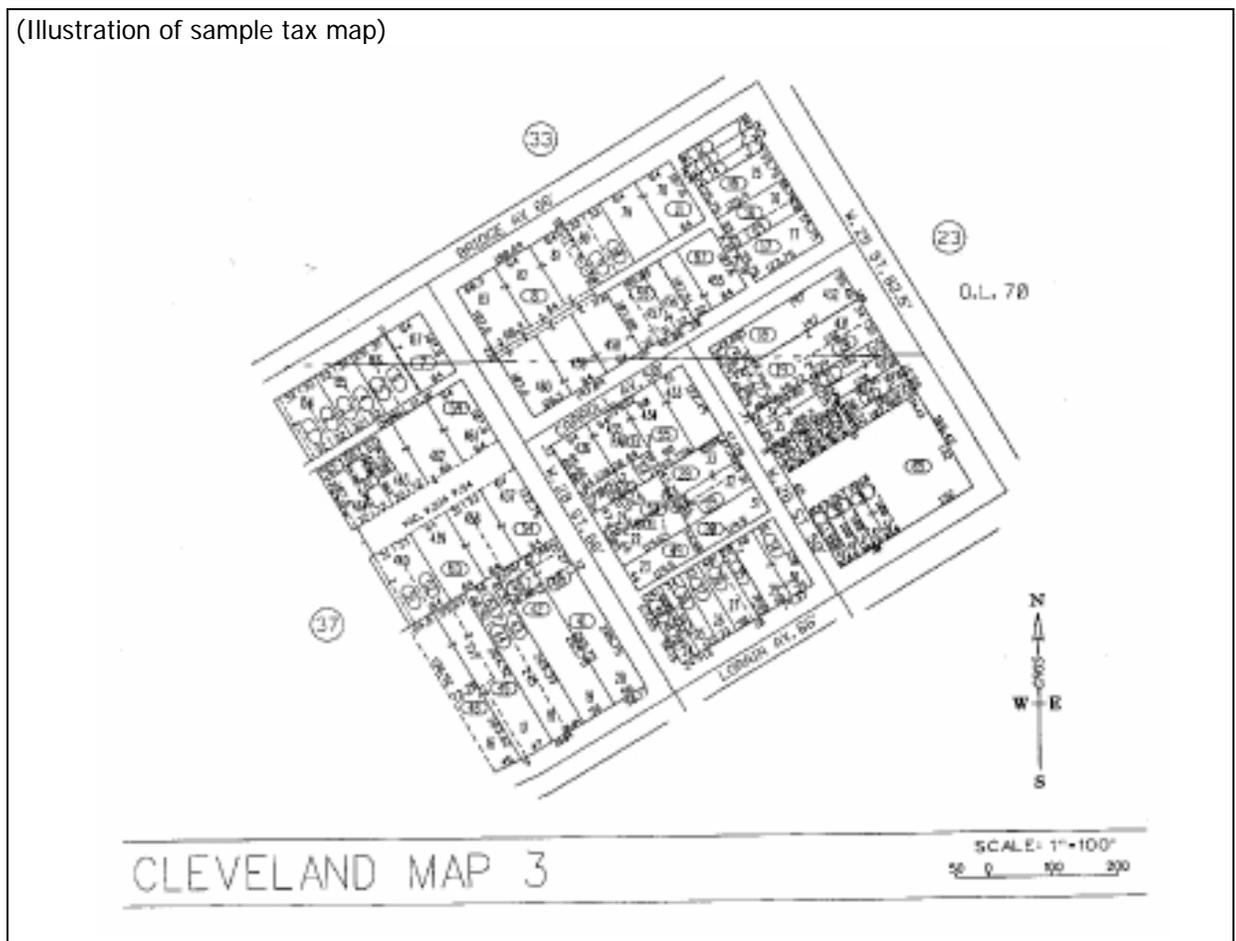
How are tax maps and/or records obtained?

- Tax maps and property data for permanent parcels located within a proposed district boundary are available through the Cuyahoga County

Auditor's office located in the County administrative offices at 1219 Ontario Street or at <http://auditor.cuyahoga.oh.us>. Computer terminals are also available to look up property data for each parcel within the district. Copies of the maps and parcel data may be purchased for a nominal fee.

- Parcel and building base maps, based on 1996 County tax maps, are also available from the City of Cleveland Planning Commission through a Geographic Information System (GIS) mapping program. The GIS base maps provide a good starting point for preliminary planning purposes.
- These maps may require some updating of parcel lines and building footprints if any lot splits, consolidations, new construction, or demolitions have occurred within the proposed district boundaries since 1996. This can be accomplished through research at the Cuyahoga County Auditor's office and through field checks.

(Illustration of sample tax map)



What is a property inventory database?

- Perhaps the **most important** information to be gathered and analyzed, information on the owner of the property and the property characteristics, including assessed value, lot and building square footage and frontage can be found in the property inventory database. The database can also include other information needed by the BID task force, such as mailing addresses and phone numbers of property owners, etc.
- A property inventory database should be stored on a computer spreadsheet so that data can be manipulated easily. A sample spreadsheet format is located in Appendix 4.

How is a property inventory database used?

- Development of an appropriate assessment formula: Since the database is stored in a spreadsheet format, different assessment scenarios can be applied and estimates of potential assessment revenues can be calculated.
- Tracking of petition supporters. The state law requires that petitions be signed by property owners representing a minimum of either 60% of the total front footage or 75% of the land area within the proposed district as shown on the County Auditor's records. The database can be used to determine if these state-mandated thresholds have been met.
- Recording administrative details, such as attendance at meetings, contacts with the task force, and changes in ownership.
- Accuracy of the database and consistency with the records of the County is very important as the database will later be used for purposes of verification of ownership, front footage or land area, each time an official action is taken on behalf of the BID, i.e., filing the BID formation petition, Articles of Incorporation, etc.
- ***Also note that State law requires that the property data submitted at the time of petition filing, or any other official action on behalf of the BID, must be consistent with the data on record with the Cuyahoga County Auditor's office no more than 60 days prior to filing the petition or other action. Therefore, staff should plan on updating information collected during the preliminary planning phase by double-checking all property data against the County records within this State-mandated time frame.***

(Illustration of spreadsheet)

LAKESIDE INDUSTRIAL DISTRICT													
Proposed Business Improvement District Target Area													
PROPERTY INVENTORY													
PARCEL NUMBER	PROPERTY ADDRESS	OWNER NAME		MAILING ADDRESS			LOT DIM.	LOT SQUARE F	ASSESSED VALUE		TAXES		
									LAND	STRUCTURE	TOTAL		
102 04 002	3001 Lakeside Ave E	CLEVELAND CITY OF	3001	Lakeside Ave E	Cleveland	OH	44114		27830	40290	430750		
102 04 003	Lakeside	Price, Frank	2701	Lakeside Ave E	Cleveland	OH	44114	78408	68600	113400	182000	6275.87	
102 04 004	Interbelt	CLEVELAND CITY OF		Interbelt	Cleveland	OH	44114						
102 04 005	Interbelt	CLEVELAND CITY OF		Interbelt	Cleveland	OH	44114						
102 04 006	Memorial Shoreway	CLEVELAND CITY OF		Memorial Shoreway	Cleveland	OH	44114						
102 04 007	E 38 St	BEVERAGE DISTRIBUTORS INC		E 38 & King Av	Cleveland	OH	44114	11700	10260		10260	353.79	
102 04 008	Lakeside Ave E	Price, Frank	2701	Lakeside Ave E	Cleveland	OH	44114	11064	3700	13650	23350	805.18	
102 04 009	Lakeside Ave E	Price, Frank	2701	Lakeside Ave E	Cleveland	OH	44114	47480	41300	66360	109660	3781.39	
102 05 001	E 33 To E 40	COIRHIL CORP		E 33 To E 40	Cleveland	OH	44114	47480	41300	66360	109660	3781.39	
102 05 002	3317 King Ave	BEVERAGE DISTRIBUTORS INC		E 38 St & King Ave	Cleveland	OH	44114		3610	25480	28090	1003.1	
102 05 003	1176 E 38th St	GR2 PROPERTIES CO	52	Collver Rd	Cleveland	OH	44116	18684	20900	25650	46550	1605.18	
102 05 004	1176 E 38th St	GR2 PROPERTIES CO	52	Collver Rd	Cleveland	OH	44116	18684	20900	25650	46550	1605.18	
102 05 005	1176 E 38th St	GR2 PROPERTIES CO	52	Collver Rd	Cleveland	OH	44116	18684	20900	25650	46550	1605.18	
102 05 006	3935 E 38 St	AMERICAN EXCELSIOR CO		PO Box 816368	Dallas	TX	75281	23651	13780	176200	245000	8448.28	
102 05 007	E 38	TEMPCRAFT PLASTICS INC	3960	S Marqinal Rd	Cleveland	OH	44114	14751	123150	335850	525000	18103.5	
102 05 008	E 38	OHIO STATE OF		E 38									
102 05 010	3960 S Marqinal Rd	LAKESHORE RLT Y INC	3960	S Marqinal Rd	Cleveland	OH	44114	146336	123640	335360	525000	18103.5	
102 05 011	3960 S Marqinal Rd	LAKESHORE RLT Y INC	3960	S Marqinal Rd	Cleveland	OH	44114	146336	123640	335360	525000	18103.5	
102 05 012	E 38 St	CLEVELAND CITY OF		E 38 St	Cleveland	OH	44114	431950	144480	88280	232860		
102 05 013	3329 King Ave	BEVERAGE DISTRIBUTORS INC		E 38 & King Ave	Cleveland	OH	44114		71190	152850	224040	7725.53	
102 05 014	E 40 St	CLEVELAND CITY OF		E 40 St	Cleveland	OH	44114						
102 05 015	3301 King Ave	BEVERAGE DISTRIBUTORS INC		Exit 38 King Ave	Cleveland	OH	44114	3160	8020		8020	276.55	
102 05 016	3701 King Ave	BEVERAGE DISTRIBUTORS INC		E 38 & King Av	Cleveland	OH	44114		10570	50960	61530	2121.72	
102 11 001	Lakeside Ave	Price, Frank	2701	Lakeside Ave E	Cleveland	OH	44114	11000	3630		3630	332.07	
102 11 002	Freeway	CLEVELAND CITY OF		Freeway		OH							
102 11 003	Lakeside	CONSOLIDATED RAILWAY CORP		Lakeside									
102 11 004	2600 Hamilton Ave	GLI REALTY CO		PO Box 660362	Dallas	TX	75266	82200	73140	235870	315010	10862.4	
102 11 005	Freeway	OHIO STATE OF HG Y		Freeway		OH							
102 11 006	Freeway	OHIO STATE OF HG Y		Freeway		OH							
102 11 007	Freeway	OHIO STATE OF HG Y		Freeway		OH							
102 11 008	Freeway	No Owner Map		Freeway		OH							
102 11 009	Freeway	CLEVELAND CITY OF		Freeway		OH							
102 11 010	Freeway	OHIO STATE OF HG Y		Freeway		OH							
102 11 011	Freeway	CLEVELAND CITY OF		Freeway		OH							
102 11 012	Freeway	OHIO STATE OF HG Y		Freeway		OH							
102 11 013	Freeway	CLEVELAND CITY OF		Freeway		OH							
102 11 014	2703 Saint Clair Ave NE	GRAND DEVELOPMENT CO	3039	Bank St	Valley View	OH	44125	11840	16590	41510	58100	2003.44	
102 11 015	2651 Saint Clair Ave NE	V F Holdings: An Ohio	6200	Rockside Woods Biv	Independence	OH	44131	6250	12390	18520	31510	1086.55	
102 11 016	2625 Saint Clair Ave NE	V F Holdings: An Ohio Gen Part	6200	Rockside Woods Biv	Independence	OH	44131		16170	30590	46760	1612.41	
102 11 017	2601 Saint Clair Ave	V F HOLDINGS INC AN OHIO GEN P	6200	Rockside Woods Biv	Independence	OH	44131		9240		9240	316.53	
102 11 018	2601 Saint Clair Ave	26TH STREET CORP THE	2601	Saint Clair Ave	Cleveland	OH	44114	19800	27720	36680	64400	2220.63	
102 11 019	2601 Saint Clair Ave	26TH STREET CORP THE	2601	Saint Clair Ave	Cleveland	OH	44114	19800	27720	36680	64400	2220.63	
102 11 020	3100 Hamilton Ave	ZUCKER BLDG CO	3100	Hamilton Ave	Cleveland	OH	44114		129010	619490	808500	27873.3	
102 11 021	2737 Hamilton Ave	Bazsichs, William M-Trs	451	Stallor #T Cover	Cleveland	OH	44115		50300	185960	236260	8146.3	
102 11 022	E 33	ZUCKER BUILDING COMPANY	3100	Hamilton Ave	Cleveland	OH	44114	132431	32720	162790	295510	8930.69	
102 12 001	3316 King Ave	Rubin, Joan E	27376	Belgrave Rd	Pepper Pike	OH	44124		7980	8370	31890	4026.0	1388.28
102 12 002	1209 E 33rd St	Rubin, Joan E	27376	Belgrave Rd	Pepper Pike	OH	44124		7980	8370	31890	4026.0	1388.28
102 12 003	3301 Lakeside Ave E	Helm, William J	3316	King Ave	Cleveland	OH	44114	4361	4200	22050	26250	905.17	
102 12 006	3300 Lakeside Ave E	Palmer, Marjorie J	3301	Lakeside Ave E	Cleveland	OH	44114	17580	15400	63700	79100	2727.58	
102 12 007	3232 Lakeside Ave E	NORBERT W STRNAD INC	1240	E 38th St	Cleveland	OH	44114	5198	7280	24960	32240	1111.72	

How is a property database created?

- Much of the database is created through extensive research, using both computer databases and primary research of County records and maps.
- Property information is available on a subscription basis through METROSCAN, a CD-ROM-based program offered through Transamerica Information Management. This data can be exported to most spreadsheet or database programs. Monthly updates are provided to subscribers. This program provides a good starting point for the property database. Additional information and technical assistance related to the METROSCAN program is available through the Cleveland City Planning Commission and Cleveland Neighborhood Development Corporation.
- Property information available through computer databases must be verified against the information on record with the Cuyahoga County Auditor's office. This is particularly important given that property information submitted for any action by the BID, including initial formation, must be consistent with that on record with the County within a time frame of 20 days, as described above. This verification is accomplished through direct records research at the County offices.

How is a tentative scope of services determined?

- Data collected as part of the preliminary planning process will be invaluable in helping to formulate a tentative scope of services. For example, surveys of property and business owners could be specifically designed to ask questions that will determine needed services or improvements.
- The BID task force, discussed in the previous section, can also play a major role in formulating a tentative scope of services. As advisors and "information-gatherers," task force members will be knowledgeable about the district and services or improvements that are likely to be desired and supported by area stakeholders.
- A tentative scope of services could be recommended by the BID task force based on research conducted and data collected during the initial planning stages. The task force as a whole should generally agree on the draft scope of services prior to presentation to area stakeholders.
- If the task force represents a good cross-section of the area stakeholders, it will be in a good position to recommend an initial scope of services that is reflective of the needs of the district.

How is a tentative budget calculated?

See Chapter 5

Why test assessment formulas?

See Chapter 6

As the planning process continues, how can input from stakeholders be obtained?

This step may be best coordinated by an outside facilitator, generally perceived as neutral. Methods to use include:

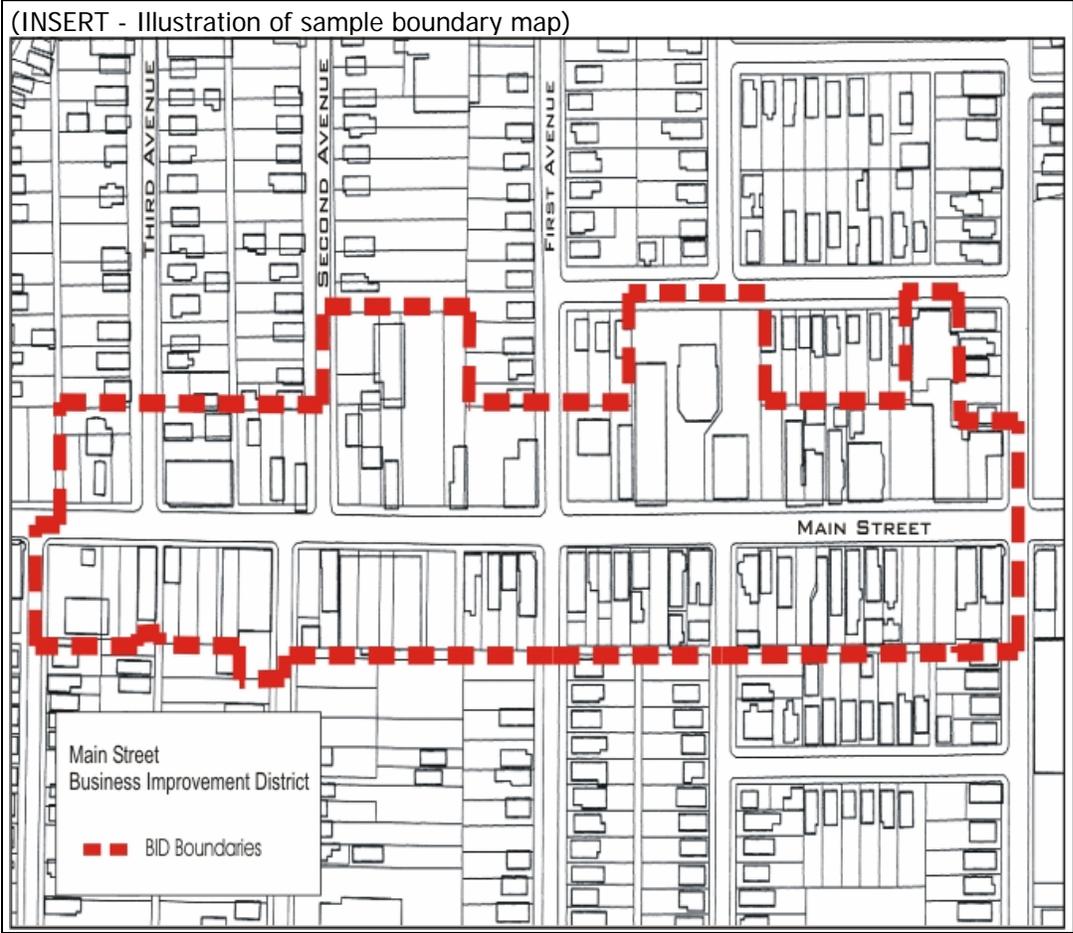
1. Focus groups made of small groups of stakeholders with a facilitator asking key questions;
2. Direct-mail survey form delivered to each stakeholder;
3. One-on-one meetings between a stakeholder and a member of the task force; and
4. Forums or large group meetings that try to reach consensus among participants.

Establishing The Boundary Of A Business Improvement District

What factors should be considered in selecting a BID study area boundary?

- Shape and location
 - State law (ORC §1710.02) requires that properties within the BID be contiguous. (Note that properties that are intersected by street rights-of-way are still considered contiguous for purposes of determining BID boundaries.)
 - Boundaries cannot split parcels. They must follow either parcel lines or right-of-way lines.
- Relation to other district or organizational boundaries -- such as Business Revitalization Districts (BRDs), Historic Landmark Districts, CDC service areas, other adjacent or nearby BIDs. Note, a parcel cannot be part of two BIDs unless the property owner files a specific written consent with the Clerk of City Council.
- Geography - natural features or boundaries such as changes in grade, major streets or highways, railroad crossings, etc. may serve as BID boundaries.
- Land use and zoning -- the area should be predominantly commercial or industrial in land use and zoning.
- Budget -- potential revenues generated versus cost of proposed services as related to the size of the proposed district.

Taking these factors into consideration, establish a "study area" that includes the largest potential desired boundary.



How do you move from a "study area" to a proposed BID boundary?

Several issues should be taken into consideration in refining the proposed study area into a formal boundary recommendation:

- City support;
- Service delivery;
- Properties that will benefit from the BID services; and
- Property owner support – who is likely to support the BID?

What is the City's role in refining the boundaries?

The City administration must introduce and City Council must pass legislation to approve the BID boundary. Therefore, it is important that they

understand and support the proposed boundaries. If refinements are suggested as a result of informal discussions and review by the City, the BID task force should consider adjustments to the proposed boundaries prior to formal submission of petitions.

- Meet with City representatives to discuss proposed boundary;
- City Planning coordinates in-house review with BID Committee;
- City comments/concerns provided to BID task force; and
- BID task force adjusts boundaries, if necessary, prior to formal submission to City Council.

What are the service delivery implications?

- Demonstrate ability to provide BID services effectively;
- Avoid irregular boundaries that skip mid-block areas or portions of a block; and
- Attempt to include both sides of major streets.

These factors are particularly important for services such as security and street maintenance. Ideally entire blocks, and both sides of a street, would be cleaned or under surveillance by security. From a practical standpoint it would be difficult and undesirable to provide services in a scattered fashion.

Who will benefit from BID services?

State law (ORC §727.03) requires that all benefiting property owners pay to the extent they are benefited. For example, a "marketing" program would benefit all commercial property owners within a district. Therefore in selecting the boundaries, the Task Force should strive to include all properties that are likely to benefit from proposed services.

How does property owner support affect the boundary decision?

State law (ORC §1710.02(E)) requires that property owners representing 60% of the front footage or 75% of the land area within the proposed district sign a petition supporting the creation of the BID and its boundaries.

The BID property database discussed in this chapter includes information on land area and front footage for each parcel within the BID study area. The recommended spreadsheet format (Appendix 4) is designed to allow the Task Force to automatically calculate if the state thresholds are being met as

changes in the boundary are considered based on property owner support at given points in time during the BID formation process.

If front footage is used to meet the State threshold, front footage includes any property line abutting a street, alley, public road, place, boulevard, parkway, park entrance, easement, or other public improvement.

What should be done if the thresholds cannot be met for the desired BID boundary?

- Start small as a pilot area (see note below);
- Build support from non-participants after establishing a track record;
- Enlarge boundary after successful pilot area trial period; and
- Attempt to keep boundaries as regular as possible from a service delivery perspective for smaller pilot area.

Note: The BID task force should be cautioned that the strategy of starting smaller as a pilot area has a major disadvantage in that enlarging the boundary at a later date would involve duplicating all the BID formation steps. This would include re-petitioning property owners, passage of a new resolution by City Council, amending the Articles of Incorporation or reincorporating, etc. This expansion could only be done after the first assessment period ends (typically three to five years), unless the original BID legally dissolves before the period ends. To avoid this duplication of effort, it is advisable to pursue the largest desired boundary in the initial BID formation.

Drafting BID Documents

After the marketing and planning process for the BID are well underway, drafting of the formal documents necessary to establish the BID should begin. These include:

- BID formation petition;
- Articles of Incorporation;
- Code of Regulations; and
- Comprehensive Services Plan.

The City of Cleveland Law Department will review the drafts of all necessary formal documents to ensure that the proposed text is acceptable to the City.

This review should take place prior to circulation to property owners, and in advance of submission to City Council of the legislative package to establish the BID. This review is not a substitute for a BID retaining its own legal counsel.

The samples included in this manual may not address specific issues unique to each proposed BID. Therefore, the group spearheading the BID formation process should consider retaining legal counsel early in the process to assist in preparing the necessary documents.

The BID Formation Petition

The non-profit entity shall submit to the City Council and the Mayor its Articles of Incorporation, including amendments, along with its BID formation petition. The BID formation petition is the document signed by supportive property owners within the proposed BID boundary requesting creation of the BID. Collectively, the signed petitions are used to determine if the thresholds of property owner support required by the State law (ORC §1710.02(E)) have been met. The petition must incorporate the following basic elements:

- A copy of the Articles of Incorporation; and
- A copy of the Code of Regulations or by-laws.
- **Signatures from the owners of at least 60% of the front footage of real property from within the proposed BID; or**
- **Signatures from the owners of at least 75% of the total area of all real property located within the proposed BID.**

The ownership of the front footage and total area of the proposed BID shall be reflected in the official records of the County Recorder and the County Engineer at least 60 days prior to the non-profit entity's filing the BID Petition.

A listing of parcels within the proposed BID may be included as an attachment to supplement the written description and map. During the time that the petitions are being circulated, lot splits or consolidations could occur. If the listing was the only description of the boundary, such changes would invalidate the petitions signed with outdated parcel information.

It is important that the BID petitions are prepared and circulated after a final proposed boundary has been agreed to by all parties. Any changes in the proposed boundary after petitions have been signed would invalidate the petitions and they would have to be re-drafted and re-circulated.

Keep in mind that the boundary description for a particular BID must be consistent in all required documents.

A sample petition is included in Appendix 1.

For any BID formation petition to be valid, it is important that it be executed by an authorized person. Therefore, the sample includes an instruction sheet which describes the different potential forms of ownership and identifies the required signatures for each. A single petition can be signed for multiple parcels that are owned by the same property owner as long as the parcels are all held in the exact same name according to County records and the individual parcels are all clearly listed on the petition.

The only person who can sign the BID formation petition is the owner of record. Instructions for executing BID petitions are included in Appendix 1.

Articles of Incorporation

A nonprofit development corporation must be established to govern the BID and must prepare and adopt Articles of Incorporation that meet the requirements of Chapter 1702 and 1710 of the Ohio Revised Code.

- The nonprofit corporation must be organized as provided in Chapter 1702 of the ORC, and the Articles of Incorporation are required to be approved by resolution of the Cleveland City Council. A copy of the approving resolution must be filed along with the Articles of Incorporation with the Secretary of State.
- In addition to meeting the requirements for the articles of incorporation set forth in Chapter 1702 of the ORC, the Articles of Incorporation for non-profit corporations governing a BID must meet the requirements of ORC §1710.02 and must include:
 - The name of the district, which must include "Cleveland" as part of the name;
 - A description of the territory within the district, which shall be specific enough to enable property owners to determine if their property is located within the district;
 - A description of the procedures by which the Articles of Incorporation may be amended, **including a provision for the approval of all amendments, by resolution, from the Cleveland City Council**

and filing the approved amendment and approving resolution with the Secretary of State; and

- The reasons for creating the district, plus an explanation of how the district would be conducive to the public health, safety, peace, convenience and welfare of the district.

The adopted Articles of Incorporation must be filed with the Secretary of State after the City of Cleveland passes legislation establishing the district. The legislative process is described in more detail in Chapter 7.

The Code of Regulations

The Code of Regulations serve as the bylaws of the newly formed non-profit corporation established to govern the BID. The Code of Regulations must include the following basic elements:

- the location of the corporation's principal office, which must be located in the District;
- provisions for member meetings and voting;
- the number of directors and election procedures;
- powers, meetings and committees of the Board of Directors;
- identification of initial officers, terms of office and duties;
- liability and indemnification provisions; and
- procedures for amendments.

Comprehensive Service Plan

See Chapter 5

Chapter 5: Developing A Comprehensive BID Services Plan

- Outline of Required Plan Elements
- Comprehensive Services Plan

Required Comprehensive Services Plan Elements

State law (ORC § 1710.06) provides for the development and adoption of one or more service plans for public improvements or public services to the BID. This plan must be approved by the members of the BID (by a vote of owners representing 60% of the front footage or 75% of the total land area) and by Cleveland City Council. The comprehensive services plan is a descriptive tool of how the BID will operate and what services will be conducted within its boundaries. In order for the City to understand exactly what the BID is about, the following items need to be included as part of the comprehensive services plan.

1. Purpose of the BID

- Describe the purpose of the BID
- Briefly describe the characteristics of the district, i.e.:
 - Site characteristics, i.e., building conditions, vacancy rate, infrastructure;
 - Commercial mix, i.e., type and size; and
 - Demographics of customer base and residential neighborhood, if applicable.

2. The legal name of the BID, including:

- List of Executive Committee and initial Members of the Board of Directors;
- Articles of Incorporation;
- Code of Regulations; and
- Articles of Incorporation certified by the Secretary of State, state of Ohio

3. Boundaries

- A description of the service area.

4. Type of Services and/or Improvements to be provided

- Detailed description of services and/or improvements;
- Proposed hours of operation, if applicable; and
- Estimated costs.

5. BID Administration

- Describe how the BID will be managed; and
- Explain staffing.

6. Budget

- Detail BID's operational budget;
- Document the amount of revenues to be generated from the proposed Assessment; and
- List other funding sources, if applicable.

7. Method and Period of Assessment

- Describe assessment formula, and
- Provide timetable for the collection of assessment.

8. Term of the Plan

- Provide the period of time the proposed services are to remain in effect.

Once the plan is adopted by the BID and City Council, no material deviations can be made from the services or improvements proposed in the plan.

Chapter 6: Financing the BID

- ❑ **Estimating BID Assessment Revenues**
- ❑ **BID Revenues v. BID Budget**
- ❑ **Calculating the BID Assessment**
- ❑ **The Length of the Assessment Period**
- ❑ **Collecting the Assessment**
- ❑ **Timing of Collection**

Estimating BID Assessment Revenues

One of the first exercises for a group that is interested in forming a BID is to estimate the amount of money a BID could generate. To do this, you need to have an idea of the general area your group would like to see become a BID (Chapter 4 - Establishing the Boundary of a BID) and calculate the revenues that can be generated using the assessment formulas (see next section "Assessment Formula Options"). Bradley Segal, of the Progressive Urban Management Associates, has extensive experience in providing CDCs and municipalities technical assistance in the formation of BIDs. Segal advises groups to use "rules of thumb" to assist in the estimation of the revenues generated by a BID. The rules of thumb are as follows:

- Property owners will generally not support an assessment for desired services if it exceeds 5% to 10% of their current annual property taxes.
- Nationally, BID assessments range from \$0.10 to \$0.25 per square foot of building space per year, with assessments generally lower for high-density downtown districts and higher for low-density neighborhood districts.

BID Revenues vs. BID Budget

After you have an idea of the type of revenues that can be generated by a BID, begin to look at the type of services you would like to provide. The

types of services that are allowed by law include, but are not limited to: marketing, security, and street and sidewalk cleaning. Infrastructure improvements are also allowable; however, such improvements are often very expensive. BIDs are advised to wait until they have been operating a while before taking on infrastructure improvements.

A budget can be devised for these services or improvements by requesting estimates from different providers and companies that might be interested in contracting with the BID. Until the BID is formed, Request for Proposals (RFP) cannot be sent out. Instead, the group should send out Requests for Expression of Interest (REIs) as a way to establish cost estimates or informally seek cost estimates by contacting various service providers.

The budget should also include the estimated costs to administer the BID. In addition to staffing, this should include the City's reimbursable costs that will be billed to the BID related to levying and collecting the assessment (i.e., costs for printing notices, mailing, temporary staffing, etc.). Consult with the Commissioner of Assessments and Licenses to estimate these costs.

Do your estimated revenues generate enough funds to pay for your proposed services? If yes, great! If not, your group needs to go back to the drawing board and either reexamine your service area or decrease the amount of services provided. Keep in mind, that not every area is capable of supporting a BID.

Calculating The Bid Assessment

How are individual property owner's assessments determined?

- State law (ORC § 727.01, as modified by ORC § 1710.06 (C)) dictates how the assessment is calculated.
- The assessment for each property is determined using a proportional formula based on the following options:
 - A percentage of the tax value of the property assessed
 - Front footage
 - Benefits or services/improvements received
 - Combination of the above, provided the assessment is uniformly applied

How is the proportional formula applied?

Depending on the option selected, the total assessed value or front footage for all properties in the district must be calculated. Then the percentage that each property represents of the total is calculated. The total cost of the improvements or services are then distributed proportionately to all the benefiting properties within the district using the percentage of the total that each property represents. Examples of how to calculate estimates of the assessment are included in Appendix 3. The City's Division of Assessments and Licenses will calculate the actual assessment.

The front footage or assessed value of exempt properties are not included when calculating the total for the district, unless such exempt properties request to be included in the BID as explained below.

In the case of front footage, the State law (ORC § 1710.02 (E) and ORC § 1710.06 (B)) defines what is considered frontage for purposes of BIDs. When calculating the assessment by the front footage method, front footage includes property abutting a street, alley, public road, place, boulevard, parkway, park entrance, easement, or other public improvement.

On the other hand, when assessing by the extent of the benefits received, only the exact area benefited is taken into account. Thus, if a corner property with an alley behind it is only receiving services, such as sidewalk cleaning, on one of the three frontages, only that frontage would be used in determining an assessment calculated by cost per foot.

The front footage method of assessment cannot be used if any properties within the BID boundary do not have frontage that will benefit from the BID services or improvements. In this case, another method of calculating the assessment must be used so that all benefiting properties will be treated equally and will pay a fair share of the total cost of the services or improvements.

Are residential properties included in the assessment?

- All benefiting properties must pay their proportional share of the assessment. Therefore, if the services offered by the BID benefit residential properties within the BID boundary, then these properties must be assessed.
- For example, a private security patrol operating in a mixed-use area containing commercial businesses, apartments, and single-family residences would benefit both commercial and residential properties.

Are any properties excluded from paying an assessment?

- Properties owned by federal government and state government are categorically excluded.
- Local government properties and churches (defined as houses of worship) are excluded, unless they choose to be included.

Can properties owned by local government or churches choose to participate in the BID and pay an assessment?

- Yes.
- Must pass a board resolution stating intent to be part of the BID and to pay the assessment.
- Must also sign the petition.
- Exempt properties that choose to be part of the BID and to pay an assessment cannot put a self-imposed limit on the dollar amount of assessment. They must participate fully or not at all.

Does the law establish a cap on the amount of an assessment for each property owner?

- According to State law (ORC §727.03), the combined assessments on any individual property cannot exceed 33 1/3% of the market value of the property (including improvements) over a five-year period preceding the passage of the assessment ordinance. This includes any assessment, such as for sidewalks, tree maintenance, sewers or other capital improvements, BIDs, etc. The market value is that value on record with the County Auditor at the time of the passage of the assessment ordinance.
- Any properties that meet or exceed this maximum cannot be assessed by the BID. The City's Division of Assessments & Licenses will determine if any properties are at or near this maximum.
- Future capital improvement assessments that may affect the cap on individual properties will be researched by the In-House BID Committee for each proposed district.

Assessment Period

- Most BIDs in Ohio have an assessment period of five years.
- The proposed term may be shorter or longer than five years depending on the services identified by the Comprehensive Services plan. For example, if the plan includes capital improvements with a 10-year life, the plan term could reflect that period.

Weigh your options and determine what makes the most sense for your group.

Collecting the Assessment

After the appropriate legislation is passed authorizing the collection of assessments (See Chapter 7), the City's Division of Assessments and Licenses will send out a bill to each property owner requesting voluntary payment(s) of their assessment. If the property owner pays his assessment at this time, the funds are transferred directly to the City's Division of Assessments and Licenses. In turn, the City transfers the funds that have been collected to the BID.

However, if a property owner elects not to pay the City on a voluntary basis the City, the assessment is levied on his property tax bill issued by the County. Once the assessment becomes part of the county tax bill, the owner has the option of paying the bill in two installments, as with all other property taxes which are billed in January and June. Property owners have a legal right to defer payment until the County billing, which in essence spreads the cost of the assessment over a longer time period. If the property tax bill remains unpaid, the property will ultimately be foreclosed upon.

The BID administrators should look at delinquency rates of property owners within the BID in advance to get an indication of who is not likely to pay on time and to take into account the effect this could have on the BID cash flow.

Timing of Collection



The County places the initial BID assessment on the tax bill in January. Therefore, any property owner who did not pay his assessment to the City's Division of Licenses and Assessment will be assessed on his property tax bill in January. However, the City needs to file its information with the County in September of the previous year in order for the assessment to make the next January bill. This timing is critical, because if the City cannot submit the information to the County by September, the assessment will not be assessed on the tax bill until January of two succeeding calendar years.

The assessment billing cycle should be designed to allow unpaid assessments to be referred to the County by September of each year. Ideally, bills would be issued by the City no later than mid-August to allow adequate time for the unpaid assessments to be filed by September.

Chapter 7: The City Approval Process

- The In-House BID Committee
- Legislative Procedures
- BID and Assessment Legislation
- Streamlining the Process
- Contracting for Collection of the Assessment

The In-House BID Committee

As referenced in Chapter 2, the City of Cleveland has established an In-House BID Committee comprised of Directors from several key departments, or their staff representatives, as follows:

- Department of Economic Development
- Department of Community Development
- City Planning
- Department of Finance
 - Division of Assessments and Licenses
- Department of Law
- Department of Public Service
 - Engineering and Construction/Surveys
 - Streets
 - Waste Collection
- Department of Public Safety
 - Police
 - Fire
- Department of Parks, Recreation & Properties
 - Park Maintenance
 - Urban Forestry

The primary purpose of the Committee is to review each BID proposal and to advise the City Administration. The Committee's review focuses on the proposed BID boundaries, comprehensive services plan and budget.

The in-house review process is coordinated by lead staff assigned from the Department of Economic Development and City Planning. The makeup of the Committee may change for each BID proposal, depending on the types of services or improvements included in the BID plan.

The appropriate Committee members will also work with the Department of Economic Development to establish a "protocol" or base level of services that will continue to be provided by the City once the BID is up and running. The "protocols" may also address other matters of concern between the specific City department and the BID.

The BID formation chart included in Chapter 3 identifies the steps in the BID formation process in which the Committee actively participates.

Legislative Procedures

The Petition Process

The petition allows for the formation of a BID. The petition itself includes a map and/or legal description of the BID boundaries and the Articles of Incorporation and Code of Regulations for the BID. The petition is signed by each property owner for the parcels they own within the district. An example of a petition is included in Appendix 1. The City of Cleveland's Law Department will review the draft petition to ensure that the petition language is acceptable to the City.

After the group establishing the BID receives signed petitions from property owners representing 60% of the front footage of the district or 75% of the land area, the BID can submit the petition to the City Council to begin the legislative process. The Survey Section of the Division of Engineering and Construction will review the petition to confirm the front footages or land area. The Division of Assessments and Licenses will review the petition to assure the appropriate property owners have signed the petitions.

After initial formation of the BID, the State law (ORC §1710.03(B)) permits a property owner to appoint a proxy in writing to act for the member. Such proxies must be submitted to the City to provide evidence of the appropriate authorized person acting on behalf of the BID property owner. Prior to BID formation, such proxies are not permitted. Attached to the petition is the BID Services Plan, therefore, by the execution of the petition, the property owners are accepting the services to be provided by the BID as well as the budget. The Division of Licenses and Assessments will review the petition and Comprehensive

Services Plan to assure the appropriate valuations and assessment methodologies have been used.

To facilitate the review process for any petition or other action requiring a signature by BID members, the City will require that a listing of parcels within the proposed BID be submitted to Council at the same time the petition is submitted. This listing should include ownership data, front footage, square footage, and/or assessed value for each parcel in the BID, as appropriate for the action being taken as shown on the records of the County within 20 days of the date of submission of the petition.

During the review by the divisions of Engineering and Construction and Licenses and Assessments, City staff will look for obvious errors. The BID is expected to be more familiar than the City regarding ownership of properties within the district and will therefore be held responsible should any liability arise because a signature is invalid or unauthorized.

The State law (ORC §1710.02(E) and §1710.06(B)) provides a 60-day period for the approval or rejection of a BID petition by City Council. It should be noted, however, that if Council fails to act within the 60 day-period, approval cannot be inferred.

BID and Assessment Legislation

The flow charts in Figures I, II, III and IV illustrate the major steps in the legislative process related to the BID formation and the collection of the assessment.

As shown in the charts, the following legislative actions will be required as part of the process:

- Resolution accepting the BID formation and related boundaries
- Resolution accepting the BID plan of services and budget
- Legislation authorizing contract with BID to collect the assessment
- Resolution of Necessity for BID assessment
- Resolution to accept report of Board of Assessment Equalization (if necessary)
- Ordinance to Proceed for assessment
- Ordinance to Levy Assessment

Contracting For Collection Of The Assessment

Why?

The City of Cleveland is required by state statute to authorize the formation of the BID, the Comprehensive Services Plan, and the assessment procedures. In addition to the authorization requirements, the City of Cleveland collects the assessment. The City must enter into a contract with the BID to provide this collection service and to pay any assessment funds it collects to the BID.

What is covered by the contract?

- The collection of the assessment by the Department of Finance's Division of Licenses and Assessments.
- Reimbursable Costs
 - BID reimburses City for out-of-pocket expenses to levy and collect assessment. Bidding Procedures, as drafted by the BID and approved by the City.
- Indemnification of the City:
 - City is held harmless for the actions of the BID.
 - Reversal of assessment by the courts.
- Insurance
 - BID shall maintain comprehensive public liability insurance and broad form contractual liability insurance.
- "Protocols"
 - Base level of services agreement that defines on-going responsibilities of City and BID.
 - May vary for each BID on a case-by-case basis.
- Permanent Job Creation and MBE/FBE Requirements
 - Applicable to BID Staff and Contractors -- best efforts to achieve:
 - o 33 1/3% minorities and 50% City of Cleveland residents for new permanent jobs.
 - o 33 1/3% MBE, 10% FBE for all contracts awarded
- Financial Accountability and Other Reports
 - Financial Statements as requested by the Director of Finance.
 - Detailed Operating Budget at beginning of each fiscal year.
 - Annual Report -- Summary of District Activities in narrative form.
- Default Provisions

The above is a list of possible requirements in the contract. A sample

contract is included in Appendix 2. The City reserves the right to add necessary provisions. For example, the sample contract does not address BID plans which include capital improvements. Additional provisions would need to be added to the contract for such plans and would be drafted by the Law Department on a case-by-case basis.

Who prepares the contract?

The City of Cleveland Law Department drafts the contract.

When?

The contract is negotiated prior to going to Council and executed before assessments are billed.



Chapter 8: BID Administration

- ❑ The BID Board of Directors
- ❑ Staffing and Running the BID
- ❑ Relationship with the City

The BID Board of Directors

Note: Portions of the following section have been excerpted from Special Improvement Districts "Innovation Through Special Assessment" by Lee A. Chilcote, Esq.

Powers:

- Has broad powers that may be exercised in connection with developing and implementing plans for public improvements or public services. These plans may include: hiring employees and professional services; contracting for insurance; purchasing or leasing office space and office equipment, etc.
- Has the full power to plan, design and implement a public improvement or public services plan, which include: hiring architectural, engineering, legal, appraisal, insurance and planning services; contracting for the management, protection and maintenance of public and private facilities; conducting court proceedings to carry out the provisions of Chapter 1710; paying damages resulting from the provision of public improvement or public services and implementing the plans therefore. Chapter 727 contains certain limitation concerning the right to pay damages; paying costs of issuing, paying and redeeming bonds and notes. These provisions would include the right to pay interest on bonds or notes issued in anticipation of the collection of assessments.

Duties:

- Each director, officer and employee is a "public official," "public employee," or "public servant" but does not hold a "public office."
- No director, officer, or employee may have an unlawful interest in a public contract, meaning that the contract must be determined to be upon competitive terms.
- No director, officer, or employee is required to file disclosure statement with the Ohio Ethics Commission.

Composition:

- Composed of a minimum of five directors, one of whom shall be the municipal executive and one a member of City Council (or representatives appointed by the municipal executive and the City Council) and the remainder of whom shall be members of the district.
- Initial election of directors may occur at the first meeting of the members after its creation, but all subsequent elections must be held at a November meeting of the membership.
- Board must elect a chairman, vice chairman, secretary and treasurer, each of whom serves at the board's pleasure. A director may be elected to more than one office of the board, except that the director elected as treasurer shall not be elected to any other office of the board.
- The chairman would preside at meetings of both the Board and the BID and perform other duties as directed by the Board.
- The vice chairman would preside at the meetings of the Board and the BID when the chairman is absent and perform other duties of the chairman in the event of absence, disability or vacancy in the chairman's office.
- The secretary would be required to keep all records of the BID and perform other duties as the Board directs.
- The treasurer would be required to manage the BID's funds.

On-going Operations:

- Notice of the time, date, place, and agenda for any meeting of the board of directors shall be given by written notice to each director. The board may act by a majority of those present and authorized to vote where proper notice has been served.
- Plans adopted by the Board of Directors must be submitted to the City and the Mayor for comment. If in response to the comments the board chooses to amend its plans, it must do so in accordance with the steps outlined in the Code of Regulations.
- Must adopt written rules prescribing competitive bidding procedures.
- May establish dollar limits or specify parties to a contract.
- The Board of Directors may meet as often as necessary, but at a minimum of once a year for the annual meeting.
- Meetings of the BID must be open to the public under the Open Meetings Law. The members must establish rules by which any person may determine the time, place and purpose of a meeting.
- All records of a BID are treated as public records under the Public Records Law, except that records of organizations contracting with a BID would not be considered public records solely by reason of contract with a BID.

Staffing and Running the BID

- Generally, at least one professional full-time manager is hired to prepare plans and budgets and implement on-going programs of services and promotions.
- Other types of staff support sometimes include (usually on a part-time basis) secretarial and marketing personnel.
- A decision must be made, presumably by the Board of Directors, whether services should be let to a private contractor or delivered in-house by the management organization.
- Most districts rely on contracting for services, i.e., sanitation, security, maintenance and marketing.
- Measuring results should also be an important aspect of district management, either through informal feedback or surveys.

Relationship With the City

- Once the BID is up and running, an on-going relationship should be established with the City.
- The most direct relationship results from the requirement of the State law (ORC § 1710.04 (A)) to include representatives of the Mayor and City Council as members of the BID Board of Directors.
- Other areas that will require continued close coordination with the City include the monitoring and collection of the annual assessments. The BID will be responsible to update and submit periodically to the City information in the property database that affects the calculation of the assessment and billing of property owners.
- It is in the best interest of the BID to ensure that accurate information is maintained, as the City can only transfer to the BID those funds that it collects. Outdated information could result in significant delays in the flow of funds.
- The BID must provide to the Commissioner of Assessments and Licenses an updated listing of property owners, frontage and assessed valuations, as appropriate, on record with the County 20 days prior to formal submission to City Council for any action on behalf of the BID.
- By March 1 of each year, the treasurer is required to submit to each member of the BID and to the Mayor, Finance Director, and Clerk of Council a report of the BID's activities and financial condition for the previous year.

Appendices

- **Appendix 1: Sample Petition**



- **Appendix 2: Sample BID Contract**



- **Appendix 3: Assessment Methodology**



- **Appendix 4: Sample Property Inventory**



APPENDIX 1: Sample Petition



P E T I T I O N

**TO APPROVE THE CREATION OF THE CLEVELAND _____ DISTRICT
AND
TO APPROVE THE _____ OF THE DISTRICT**

City of Cleveland, Ohio
_____, 2004

To the Mayor and the Council of the City of Cleveland, Ohio:

We petition the City to approve the creation of the Cleveland _____ District as a special improvement district under Ohio Revised Code Chapter 1710, containing the boundaries described in the map attached as Exhibit A, for the purpose of developing and implementing plans for public improvements and public services that benefit the District.

We are the owners of [60% or more of the front footage of property that abuts upon any street, alley, public road, place, boulevard, parkway, park entrance, easement, or other existing public improvement] [75% or more of the area of real property] located within the Cleveland _____ District, excluding [in either case], as required by law, any properties owned by the federal and state governments and any properties owned by a church or by city and county governments unless the church or city or county specifically requested in writing that its designated property be included in the District.

A list of all of the properties included in the proposed Cleveland _____ District (identified by permanent parcel numbers shown on the tax records in the Cuyahoga County Recorder's office) is attached as Exhibit B. Excluded from the property comprising the District, as required by law, are any properties owned by the federal and State governments and any properties owned by a church or by city and county governments unless the church or city or county specifically requested in writing that its designated property be included in the District.

The proposed Cleveland _____ District is to be governed by the Cleveland _____ District Development Corporation, an Ohio nonprofit corporation to be formed pursuant to Chapters 1702 and 1710 of the Ohio Revised Code. The proposed Articles of Incorporation and Code of Regulations for that corporation are attached as Exhibit C.

We approve the _____ Plan of the District in the form attached as Exhibit D (the "Plan"). The Cleveland _____ District Development Corporation is to provide, or contract for the provision of, the services described in the Plan. The City is to levy special assessments upon the properties in the District to pay for the costs of the services described in the Plan.

We petition the Council of the City to approve the Plan. We request that our properties be assessed for the Plan by a percentage of the tax value of the land assessed] [in proportion to the benefits]. [We agree that the tax value of our land to be assessed shall be determined by the tax value shown on the most current records available at the Cuyahoga County Recorder's office on the date the assessing ordinance is passed by the Council of the City.] We request that the assessment be payable in [20] semi-annual installments payable in advance of the services to be provided by the Plan. Attached to this Petition as Exhibit E is a schedule of the assessments. We acknowledge that the actual assessments will include an additional amount for the costs expended by the City in levying and collecting the assessments.

In consideration of the Plan, we agree to pay any amounts incurred or owed by the City in any action challenging the City's levy of the assessments at the times set forth in the Plan. We further acknowledge and agree, in consideration of the services of the Plan, that the assessment of our properties does not exceed the benefit to be received from the Plan by each of the properties to be assessed for the Plan, that no other property other than those properties shown on Exhibit B will receive special benefits from that Plan for which any such property should be assessed, that the undersigned will pay promptly all special assessments levied against the properties pursuant to this petition as they become due, and that the determination by the Council of the special assessment against the properties pursuant to and in accordance with this Petition will be final, conclusive and binding upon the undersigned, its successors, assigns and any grantees of the properties or any portion thereof.

The undersigned property owners consent and request that subject to the terms hereof these special assessments be levied and collected without limitation as to the value of the property assessed, and waive all the following relating to the Plan and the special assessments described herein:

- (1) any and all rights, benefits and privileges specified by Sections 727.03 and 727.06 of the Revised Code that may be deemed applicable to the Plan and thereby restrict these special assessments to 33-1/3% of the actual improved value of the properties as enhanced by the Plan;
- (2) any and all resolutions, ordinances and notices required for the Plan, including the notice of the adoption of the resolution of necessity and the filing of estimated special assessments, the equalization of the estimated special assessments, any increase in the cost of labor and materials over

the estimated cost, and the passage of the assessing ordinance, including but not limited to notices authorized and required by Sections 727.13, 727.16, 727.17, 727.24 and 727.26 of the Revised Code; and

- (3) any and all irregularities and defects in the proceedings.

The undersigned property owners further request that all legislation required to be enacted pursuant to Chapter 727 of the Revised Code to permit the Plan to commence immediately be enacted at one Council meeting and consent to the enactment of such legislation at one meeting.

A. Property: Address:

Permanent Parcel No.:

B. Name of Owner:*

C. Name, title and signature of authorized representative of owner: *

*Please refer to the enclosed instructions for signing the Petition.

EXHIBIT A

[Map to be added]

EXHIBIT B

[List of property owners to be added]

EXHIBIT C

[Proposed Articles of Incorporation
and Code of Regulations to be added]

ARTICLES OF INCORPORATION
OF
CLEVELAND _____ DISTRICT DEVELOPMENT CORPORATION

The undersigned, desiring to form a nonprofit corporation pursuant to Chapter 1702 and Chapter 1710 of the Ohio Revised Code ("ORC"), do hereby adopt the following Articles of incorporation:

ARTICLE ONE
NAME OF CORPORATION

The name of this corporation is the Cleveland _____ District Development Corporation ("Corporation").

ARTICLE TWO
LOCATION OF PRINCIPAL OFFICE

The place where its principal office will be located is the City of Cleveland ("City"), Cuyahoga County, Ohio.

ARTICLE THREE
NAME OF SPECIAL IMPROVEMENT DISTRICT

The name of the special improvement district formed by the Corporation under ORC Chapter 1710 shall be the Cleveland _____ District.

ARTICLE FOUR
PURPOSES

The Corporation is organized and shall at all times be operated exclusively for charitable, educational and scientific purposes and lessening the burdens of government within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended ("Code") including, without limiting the foregoing, the following:

(a) To govern the Cleveland _____ District as a special improvement district created pursuant to ORC Chapter 1710.

(b) To encourage and participate in projects and programs that will maintain, improve and build the District as a viable _____ and thereby contribute to the development of the City, County and State.

(c) To undertake, in cooperation with the City and others, the acquisition, construction and installation of public improvements and the delivery of public services,

including without limitation public improvements and public services that will be funded from special assessments levied on the properties in the District.

(d) To encourage and participate in programs to preserve the aesthetic, architectural, and historic character of the District.

(e) To engage in any lawful act or activity for which corporations may be formed under ORC Chapter 1702 and amendments thereto, as may be deemed appropriate by the Directors of the Corporation, and to exercise any powers or rights now or hereafter conferred on nonprofit corporations under the laws of the State of Ohio which are in furtherance of any of the purposes for which the Corporation is formed and which do not conflict with the provisions of ORC Chapter 1710.

(f) To make distributions to organizations that qualify as exempt organizations under Section 501(a) of the Code by virtue of being described in Section 501(c)(3) of Code.

ARTICLE FIVE
REASONS FOR CREATING DISTRICT

The Cleveland _____ District is being created by property owners in the District in an effort to strengthen the economic vitality, livability and commerce of the District. The District is intended to facilitate programs, services and improvements that will

_____, which will, in turn, be conducive to the public health, safety, peace, convenience and welfare of the District.

ARTICLE SIX
MEMBERS

Each owner of real property within the District, other than the State of Ohio and the United States of America, will be a member of the District ("Members"), subject however to the requirement in ORC Chapter 1710.01 that any county, municipal corporation or church owning property in the District must request in writing that its property be included in the District. Members shall have such voting rights as are described in the Code of Regulations of the Corporation.

ARTICLE SEVEN
TERRITORY OF THE DISTRICT

The Territory of the District shall be the geographic area shown on the map attached as Exhibit A. That area generally consists of that portion of the City of Cleveland, Ohio which is bounded on the North by _____; on the South by _____; on the East by _____; and on the West by _____.

ARTICLE EIGHT
DIRECTORS

(a) The following persons shall serve as Directors of the Corporation until the initial election of Directors, which shall occur at the first meeting of the entire membership of the District after its creation.

(b) The Board of Directors of the Corporation shall consist of not less than five individuals, one of whom shall be appointed by Council of the City of Cleveland and one of whom shall be the Mayor of the City, or alternatively if so designated by the Mayor to serve in her stead, an employee of the City involved with its planning or economic development functions who shall serve at the pleasure of the Mayor, and the remainder of whom shall be Members elected by the Members, or in the case of Members that are not natural persons, designees of such Members elected by the Members.

ARTICLE NINE
AMENDMENTS

These Articles may be amended as follows: (A) only by the affirmative vote of a majority of the total votes eligible to be cast by the Members in attendance at a meeting, approving such amendments or amended articles; (B) after receipt of approval of such amendment or amended articles by resolution of the Council of the City; and (C) upon filing of such amendment or amended articles and a certified copy of such resolution with the Ohio Secretary of State.

ARTICLE TEN
CERTAIN RESTRICTIONS ON ACTIVITIES

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its Members, Directors, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation or consideration for services rendered and goods acquired and to make payments and distributions in furtherance of the purposes set forth in Article Four hereof. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any other activities not permitted to be carried on (A) by a corporation exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, or (B) by a corporation described in Section 1702(c)(a) of the Code, contributions to which are deductible under Section 170(a) of the Code.

ARTICLE ELEVEN
DISSOLUTION

Upon the dissolution of the Corporation, all assets remaining after paying or making provision for the payment of all the liabilities of the Corporation shall be distributed exclusively for one or more purposes of this Corporation or to one or more other charitable, religious, educational or scientific organizations that is or are exempt from income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code or shall be distributed to the federal government, or to the State or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by the Court of Common Pleas of Cuyahoga County exclusively for such purposes or to such organization or organizations as said Court shall determine, which are organized and operated exclusively for such purposes. Upon dissolution of the District, any assets of the District, after payment of all obligations of the District, shall be deposited in a special account in the treasury of the City of Cleveland to be used for the benefit of the territory that made up the District, if and to the extent required by ORC Chapter 1710.

IN WITNESS WHEREOF, the undersigned have executed this instrument on this _____ day of _____, 200_.

CODE OF REGULATIONS
OF
CLEVELAND DISTRICT DEVELOPMENT CORPORATION

ARTICLE I
OFFICE

The principal office of the Cleveland _____ District Development Corporation (the "Corporation") shall be at such place in Cleveland, Ohio as may be determined and designated from time to time by the Board of Directors of the Corporation.

ARTICLE II
MEETING OF MEMBERS

Section 1. Annual Meeting; Initial Meeting. The annual meeting of Members of the District each as defined in the Corporation's Articles of Incorporation, for the purpose of electing Directors of the Corporation and for the transaction of such other business as may properly come before the meeting shall be held in November of each year at such place and on such date and at such hour as shall be determined by the Board of Directors. However, the initial election of Directors may occur at the first meeting of the Members after the creation of the District. That first meeting shall be held within 30 days following filing of the Articles with the Secretary of State of Ohio (which shall occur following approval of those Articles by the Council of the City of Cleveland).

Section 2. Special Meetings. Subject to the requirements of Ohio Revised Code ("ORC") Section 121.22, special meetings of the Members may be called by the Chairperson of the Board of Directors by action at a meeting, or by any three Directors acting without a meeting, and shall be called by the Secretary upon written request of Members entitled to exercise twenty-five percent or more of the voting power of the Members. No business other than that specified in the notice shall be considered at any special meeting except with the unanimous consent of all Members entitled to receive notice of such meeting.

Section 3. Notice of Meeting. A written or printed notice of each annual or special meeting stating the time and place and the purpose or purposes thereof shall be mailed postage prepaid to each Member as shown in the most current records available in the Cuyahoga County Auditor's office as of a date not more than 60 days prior to that mailing. Notice shall be mailed not more than twenty days nor less than seven days before any annual or special meeting. Notices shall be mailed to the tax mailing address used by the Cuyahoga County Auditor unless the Member has requested in writing that notices be served at another address. Notice of adjournment of a meeting

need not be given if the time and place to which it is adjourned are fixed and announced at such meeting.

Section 4. Quorum. At any meeting preceded by proper notice, the Members present in person and the Members represented by a proxy or designee of the Member properly appointed pursuant to ORC Section 1710.03 and present in person, shall, if such Members constitute at least 25% of the total votes eligible to be cast by Members, constitute a quorum for all purposes, except when a different number is required by law. At any meeting at which a quorum is present, all questions and business which shall come before the meeting shall be determined by the vote of Members entitling them to exercise a majority of the voting power of those Members present in person or by proxy or designee at the meeting, except when a different proportion is required by law.

Section 5. Proxies and Designees. A Member may file a signed written statement with the Secretary of the Corporation appointing a proxy at least three days prior to any meeting at which a vote is to be taken. A Member may also select a designee to carry out the Member's rights and responsibilities by filing a signed written designation form with the Secretary of the Corporation, indicating the name and address of the Member, the name and address of the designee, and the expiration date, if any, of the designation, and may authorize the designee to vote on the Member's behalf at any meeting of the Members. Any person so appointed as a proxy shall be a natural person but need not be a Member. A designee need not be a Member and may be a natural person, corporation for profit, nonprofit corporation, business trust, estate, trust, partnership or association. However, any Member that appoints a non-natural person as a designee shall provide to the Secretary of the Corporation the name or names of one or more natural persons what are authorized to act for the designee and a certified resolution of the governing body of the designee or other evidence acceptable to the Secretary supporting the authority of those natural persons to vote on behalf of that designee and to execute written agreements, consents, waivers and releases on behalf of the designee.

Section 6. Voting. At any meeting of Members, each Member shall, except as otherwise provided by law or by these regulations, be entitled to the number of votes equivalent to the aggregate amount of assessed valuations of all real property in the District owned by such member. The identification of all assessed valuations of real property owned by each Member shall be determined by the Corporation from the most current records available at the Cuyahoga County Auditor's office within 60 days prior to the meeting. Members may review these calculations at or prior to the meeting to determine the number of votes they will be entitled to cast at the meeting.

Section 7. Identification of Members. The identification of each Member shall be determined by the Corporation from the most current records available at the Cuyahoga County Auditor's office within 60 days prior to the meeting. Members that

are not natural persons shall provide to the Secretary of the Corporation the name or names of one or more natural persons who are authorized to act for the Member and a certified resolution of the governing body of the Member or other evidence acceptable to the Secretary supporting the authority of those natural persons to vote on behalf of the Member and to execute written agreements, consents, waivers and releases on behalf of that Member.

Section 8. Record Date for Member Determination. Subject to Section 7 of this Article, the Board of Directors shall determine the record date for the determination of who is a Member, who is entitled to notice, and the number of votes to which each Member is entitled. Any changes in the records of the Cuyahoga County Auditor between such record date and any meeting of Members shall not affect such determination.

Section 9. Open Meetings. Pursuant to ORC Section 121.22 (F), the Members shall, by rule, establish a reasonable method by which any person may determine the time, place and purpose of its meetings. All meetings of the Members shall be open to the public, subject to the exceptions in ORC Section 121.22 (G). The Members may adopt other rules to assure compliance with ORC Section 121.22.

ARTICLE III **DIRECTORS**

Section 1. Number of Directors. The number of Directors of the Corporation shall initially be _____. The number of Directors may be fixed or changed by resolution at any annual meeting of Members, or any special meeting of Members called for that purpose, adopted by the vote of Members entitled to exercise a majority of the voting power of the Members in attendance at that meeting who are present in person or by proxy or designee, but the number of Directors shall at no time be less than five, and no reduction shall have the effect of removing any Director prior to the expiration of his term of office. In the event the Members fail to fix the number of Directors to be elected, the number elected shall be deemed to be the number of Directors fixed.

Section 2. Appointed and Elected Directors. As described in the Articles, one Director shall be appointed by the Council of the City of Cleveland and one Director shall be the Mayor of the City of Cleveland, or alternatively, if so designated by the Mayor to serve in her stead, an employee of the City of Cleveland involved with its planning or economic development functions who shall serve at the pleasure of the Mayor ("Appointed Director"). The remainder of the Directors shall be Members ("Elected Directors").

Section 3. Election of Directors. Elected Directors shall be elected initially at the first meeting of the Members after the creation of the District and thereafter shall be

elected only at the November meeting of the Members (unless otherwise permitted by law or except as provided in Section 4 of this Article III). Such election shall be by ballot whenever requested by any Member entitled to vote at such election, but unless such a request is made, the election may be conducted in any manner approved at such meeting.

Section 4. Term of Office. Each Elected Director shall hold office for a term of three (3) years (except that, in order to provide for rotation of Directors, initially or whenever necessary, a Director may be elected for a shorter or longer term) and until his successor is elected and qualified, or until his earlier resignation, disqualification, removal from office, or death. The Elected Directors shall be classified with respect to their terms of office by dividing them into three cycles, each consisting as nearly as possible of one-third of the whole number of Directors. The Appointed Directors shall serve a continuous term.

Section 5. Director as a Member. Each Elected Director must be a Member or designee of a Member appointed pursuant to the authorization of ORC Section 1710.03 and in any case must be a natural person. In the event that a Member ceases to own property in the District, that former Member (and any designee appointed by that former Member) shall be disqualified as an Elected Director and shall cease to be a Director effective as of the date that such Member ceased to own property in the District.

Section 6. Withdrawal of Designation. If the designee of a Member is serving as a Director and the Member withdraws the designation, that individual shall be disqualified as an Elected Director and shall cease to be a Director effective as of the date that the Secretary receives written notice from such Member that the designation has been withdrawn.

Section 7. Vacancies. The remaining Directors, though less than a majority of the whole authorized number of Directors, may, by the vote of a majority of their number, fill any vacancy in the Board of Directors until an election to fill such vacancies is held by the Members. Any vacancy in the Board of Directors (whether or not the same has been temporarily filled by the remaining Directors) may be filled by the Members at any annual meeting of the Members called for that purpose, and any Director elected at any such meeting of Members shall serve until the expiration of the original term or until his successor is elected and qualified.

Section 8. Proxies and Designees. A Director may file a signed written statement with the Secretary of the Corporation appointing a proxy at least three (3) days prior to any meeting at which a vote is to be taken. A Director may also select a designee to carry out the Director's rights and responsibilities by filing a signed written designation form with the Secretary of the Corporation, indicating the name and address of the Director, the name and address of the designee, and the expiration date,

if any, of the designation, and may authorize the designee to vote on the Director's behalf at any meeting of the Directors. Any person so appointed as a proxy or designee need not be a Director.

Section 9. Compensation. The Directors shall not receive salaries, fees or compensation for their services as Directors or their attendance at any meeting or committee meeting of Directors. The Board of Directors may adopt a policy to reimburse Directors for their reasonable out-of-pocket expenses incurred in the performance of their duties as Directors.

Section 10. Resignation. Any Director may resign at any time by giving notice to the Board of Directors or the Chairperson or Secretary, and such resignation shall be deemed to take effect upon its receipt by the person(s) to whom addressed, unless some other time is specified therein.

ARTICLE IV

POWERS, MEETINGS AND COMMITTEES OF THE BOARD OF DIRECTORS

Section 1. Powers of the Board. Except as otherwise provided in the Chapters 1710 and 1702 of the Ohio Revised Code, or in the Articles, in respect of action required to be taken, authorized or approved by the Members, all the capacity of the Corporation shall be vested in and all its authority shall be exercised by the Board of Directors.

Section 2. Meetings of the Board. The annual meeting of the Board of Directors shall be held immediately following the adjournment of each annual meeting of Members. Regular meetings of the Board of Directors shall be held on the dates established by the Board of Directors. Special meetings of the Board of Directors may also be held at any time upon call of the Chairperson or any two Directors. Meetings of the Board of Directors shall be held at the principal office of the Corporation, unless the Board of Directors determines that a meeting shall be held at some other place within the City of Cleveland, Ohio and causes the notice thereof to so state.

Section 3. Notice of Meetings. Written notice of the time, date, place, and agenda for each meeting of the Board of Directors shall be given to each Director at his last known address by certified mail, personal service or electronic device prior to the date of said meeting. If possible, the notice shall be served at least one week prior to the meeting.

Section 4. Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business, provided that whenever less than a quorum is present at any time or place appointed for a meeting of the Board, a majority of those present may adjourn the meeting from time to time without notice, other than by announcement at the meeting, until a quorum shall be present. The act of a majority

of Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 5. Bylaws of the Board. The Board of Directors may adopt bylaws for the government of its actions consistent with the Articles and these Regulations.

Section 6. Committees. The Board of Directors, by resolution adopted by a majority of the whole Board, may appoint three or more Elected Directors to constitute an Executive Committee of the Board or to constitute additional or other committees of Directors. The Board of Directors may delegate to any such committee any of the authority of the Board of Directors, however conferred, other than that of filling vacancies among the Directors or in any committee of the Directors or the election of officers. Between meetings of the Board of Directors, the Executive Committee shall have the full powers of the Board of Directors. Each such committee shall serve at the pleasure of the Board of Directors and shall be subject to the control and direction of the Board of Directors. An act or authorization of an act by any such committee within the authority delegated to it by the resolution of the Board of Directors by these regulations shall be as effective for all purposes as the act or authorization of the Board of Directors. The Board of Directors may likewise appoint other members of any committee who are not Directors who shall act in an advisory capacity but who shall have no vote upon any matter of business before the committee.

Section 7. Advisory Board. The Board of Directors, by resolution adopted by a majority of the whole Board, may create an Advisory Board to the Board of Directors for such purposes as the Board of Directors shall determine. Any Advisory Board shall have no power, right, or authority with respect to the Corporation or the Board. If the Board creates an Advisory Board, the Board shall determine all matters and details with respect to any Advisory Board, including, without limitation, the number of members of the Advisory Board who will be members of the Advisory Board, how long any member of the Advisory Board will serve, and when the Advisory Board will meet.

Section 8. Open Meetings. Pursuant to ORC Section 121.22 (F), the Directors shall, by rule, establish a reasonable method by which any person may determine the time, place and purpose of meetings of the Board of Directors and committees of the Board. All meetings of the Board of Directors and committees of the Board shall be open to the public, subject to the exceptions in ORC 121.22 (G). The Directors may adopt other rules to assure compliance with ORC Section 121.22.

ARTICLE V **OFFICERS**

Section 1. General Provisions. The Board of Directors shall elect from the Directors a Chairperson, a Vice-Chairperson, a President, a Secretary and Treasurer. The Chairperson may also act as President of the Corporation. Any two or more of

such offices other than that of Chairperson and Vice-Chairperson, or Treasurer and any other office, may be held by the same person. The Corporation may also have such other officers and assistant officers as the Directors deem necessary. Such other officers or assistant officers do not have to be Directors. By designating a person to serve as an officer of the Corporation, the Directors shall be deemed to have considered such office necessary and to have established such office in accordance with this Section.

Section 2. Compensation. No Officer shall receive salaries, fees or compensation for serving as an Officer or for attending any meetings. The Board of Directors may adopt a policy to reimburse Officers for their reasonable out-of-pocket expenses incurred in the performance of their duties as Officers.

Section 3. Term of Office. The Officers of the Corporation shall hold office during the pleasure of the Board of Directors, and unless sooner removed by the Board of Directors following the date of their election and until their successors are chosen and qualified. The Board of Directors may remove any Officer at anytime with or without cause, by a majority vote. A vacancy in office, however created, shall be filled by the Board of Directors.

ARTICLE VI DUTIES OF OFFICERS

Section 1. Chairperson. The Chairperson shall have such duties as may from time to time be required of him by the Board of Directors, which duties so required may include, without limitation thereto, general supervision, administration and direction of all the Corporation's affairs subject to the direction of the Board of Directors. He shall preside at all meeting of Members and Directors. The Chairperson may sign all authorized deeds, mortgages, bonds, contracts and other obligations, in the name of this Corporation.

Section 2. Vice-Chairperson. The Vice-Chairperson shall perform all duties of the Chairperson, in case of his absence or disability, together with such other duties as the Board of Directors may from time to time prescribe. The authority of the Vice-Chairperson to execute contracts, deeds, notes, mortgages, bonds, other obligations and other papers in the name of the Corporation shall be coordinate with like authority of the Chairperson.

Section 3. Secretary. The Secretary shall keep minutes of all the proceedings of the Members and Board of Directors, and shall make proper record of the same, which shall be attested by him, sign all contracts, deeds, notes, mortgages, bonds, and other papers executed by the Corporation requiring his signature; give notice of meetings of Members and Directors; keep such books as may be required by the Board of Directors

and perform such other and further duties as may from time to time be required of him by the Board of Directors.

Section 4. Treasurer. The Treasurer shall have general supervision of all finances. He shall receive and have in charge all money, bills, notes, deeds, leases, mortgages, insurance policies and similar property belonging to the Corporation, and shall do with the same as may from time to time be required by the Board of Directors. He shall cause to be kept adequate and correct accounts of the business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, and stated capital, together with such other accounts as may be required, and, on the expiration of his term of office shall turn over to his successor or to the Board of Directors all property, books, papers and money of the Corporation in his hands. He shall perform such other duties as may be assigned to him by the Board of Directors or required by law.

Section 5. President. The President shall be the chief executive officer of this Corporation unless otherwise determined by the Directors and shall have general supervision over the property, activities and affairs of the Corporation. The President shall (i) supervise and manage the major activities of this Corporation, (ii) develop an annual operating and capital budget for review and approval by the Directors, (iii) have the authority, within budgetary constraints, to hire, evaluate and terminate all other employees of the Corporation, (iv) submit such recommendations to the appropriate committee of the Board as he or she deems necessary or advisable for the management and operation of this Corporation, and (v) have such other powers and duties as may be prescribed by the Board of Directors. The President may sign all authorized deeds, mortgages, bonds, contracts and other obligations, in the name of this Corporation. The President shall report to and be subject to the direction of the Board of Directors and the Executive Committee.

ARTICLE VII

LIMITATION OF LIABILITY AND INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS

Section 1. No person shall be liable to the Corporation for any loss or damage suffered by it on account of any action taken or omitted to be taken as a Director, officer, employee or agent of the Corporation, if such person (a) in good faith exercised or used the same degree of care and skill as a prudent man would have exercised or used under the circumstances in the conduct of his own affairs, or (b) in good faith took, or omitted to take, such action in reliance upon advice of counsel for the Corporation or upon the books and records of the Corporation, upon reports made to the Corporation by an officer or employee or by any other person selected for the purpose with reasonable care by the Corporation, or upon financial statements or written reports prepared by an officer or employee of the Corporation in charge of its accounts or certified by a public accountant or firm of public accountants, or (c) in good

faith considered the assets to be of their book value or followed what he believed to be sound accounting and business practice.

Section 2. The Corporation will indemnify each Director and officer of the Corporation and may indemnify any employee and agent of the Corporation to the maximum extent permitted under Section 1702.12(E) of the Ohio Revised Code, including amendments thereto, or any comparable provisions of any future Ohio statute.

ARTICLE VIII **PROVISIONS IN ARTICLES OF INCORPORATION**

This Code of Regulations is at all times subject to the provisions of the Articles of Incorporation, as amended from time to time.

ARTICLE IX **AMENDMENTS**

This Code of Regulations may be amended or repealed at any meeting of the Members by the affirmative vote of a majority of the total votes eligible to be cast by the Members in attendance at that meeting.

EXHIBIT D

[Proposed _____ Plan of the District
to be added]

EXHIBIT E

[Schedule of Assessments to be added]

INSTRUCTIONS FOR EXECUTION OF PETITION

It is very important that this document be executed correctly. Please read these instructions carefully.

The name of the owner must be correct. Please double-check and correct.

Certain information would allow us to better serve you and get the information correct the first time. Please note any requests for information below. If there would be no inconvenience in providing the information, it would be very much appreciated.

CORPORATION:

Only an OFFICER of the Corporation can execute this Document. Next to the name of the person who executes this Document for the Corporation, please write WHETHER THE PERSON IS THE PRESIDENT, VICE PRESIDENT, TREASURER, SECRETARY, etc. of the Corporation.

DOUBLE-CHECK THE NAME OF THE CORPORATION. Is it correct on the Document?

PARTNERSHIP:

Only a PARTNER of the partnership can execute this Document.

DOUBLE-CHECK THE NAME OF THE PARTNERSHIP. Is it correct on the Document?

INFORMATION: Could you please provide the date of the Partnership Agreement?

LIMITED PARTNERSHIP:

Only a GENERAL PARTNER or an OFFICER of a GENERAL PARTNER can execute this Document. Next to the name of the person who executes this Document for the Limited Partnership, please write WHETHER THE PERSON IS A GENERAL PARTNER or if the person is an OFFICER of the GENERAL PARTNER, please write WHICH OFFICER the person is.

DOUBLE-CHECK THE NAME OF THE LIMITED PARTNERSHIP. Is it correct on the Document?

INFORMATION: Could you please provide the date of the Limited Partnership Agreement.

TRUST:

Only a TRUSTEE of the Trust can execute this Document.

DOUBLE-CHECK THE NAME OF THE TRUST. Is it correct on the Document?

INFORMATION: Could you please provide the date of the Trust Agreement.

"SAMPLE"

Instructions for Execution of the Bid Petition

In order for the BID petitions to be valid, it is important that they are executed correctly. Therefore, please read and follow these instructions carefully.

After signing the document, return only the petition and signature page.

1. The name of the owner must be consistent with that on record with the Cuyahoga County Auditor's office. Please double check for accuracy.
2. The petition must be notarized or attested (for corporations) to verify accuracy and authenticity of the signature.
3. Several different forms of ownership exist, each requiring specific information for the proper execution of the petition. Please provide the appropriate information and signatures as described below for the type of ownership applicable to the property for which the petition is being submitted:

CORPORATION

- Only an authorized OFFICER of the corporation can execute the petition document.
- Please indicate whether the person is the President, Vice-President, Treasurer, Secretary, etc. of the Corporation.
- Double check the accuracy of the name of the Corporation on the document.
- Be sure the corporate secretary completes the required attestation before a notary.

GENERAL PARTNERSHIP

- Only a PARTNER of the partnership can execute this document.
- Double check the accuracy of the name of the partnership on the document.

LIMITED PARTNERSHIP

- Only a GENERAL PARTNER or an authorized OFFICER of a GENERAL PARTNER can execute this document.
- Please indicate next to the signature of the person executing this document for the LIMITED PARTNERSHIP, if the person is a GENERAL PARTNER. In the case of a corporate GENERAL PARTNER, please indicate which OFFICER of the corporation is the signator and have the corporate secretary attest to the validity of the signature before a Notary.

LIMITED LIABILITY COMPANY

- Only an authorized MEMBER, MANAGER or OFFICER of a GENERAL PARTNER can execute the petition
- Please indicate next to the signature of the person executing this document for the Limited Liability Company what is the person's title..

CO-OWNERS

- The document must be signed by each owner.

TRUST

- Only the TRUSTEE of a Trust can execute this document.

APPENDIX 2: Sample BID Contract



"SAMPLE"

AGREEMENT

Between

THE CITY OF CLEVELAND

And

THE CLEVELAND _____ DISTRICT
DEVELOPMENT CORPORATION

THIS AGREEMENT is made and entered into this _____ day of _____, 2004, between the City of Cleveland ("City"), a municipal corporation of the State of Ohio, through its Director of Economic Development and its Director of Finance, pursuant to and in accordance with the authority of Ordinance No. _____, passed by the Council of the City on _____, and the _____ District Development Corporation ("District"), an Ohio non-profit corporation.

RECITALS:

A. The District is a special improvement district, organized under Chapter 1710 of the Revised Code.

B. The District has submitted a comprehensive Plan for Services dated _____, to the City, attached as Exhibit A, subject to the modification of certain dates as set forth in Article 9 hereof (the "Plan").

C. Having approved the Plan, the City consent to levy special assessments for services described in the Plan under the terms and conditions set forth herein.

IN CONSIDERATION of the foregoing and the payments and mutual promises herein, the parties hereto agree as follows:

ARTICLE 1. TERM

The term of this Agreement shall commence upon execution by the parties hereto and shall expire when the parties have completed their respective obligations hereunder, subject, however, to earlier termination as provided herein.

ARTICLE 2. ASSESSMENT OBLIGATION

Pursuant to Ordinance No. _____, passed by the Council of the City on _____, the City through its Commissioner of Assessments and Licenses, shall invoice property owners for the assessments within 30 days of passage (the "Invoice Date") of the ordinance and on the anniversary of the Invoice Date. The invoice for each of five annual assessments shall state that the assessment is due July 15 and that the property owner may pay the annual installment in one lump sum payable on July 15 of each year, or in four installments payable January 15, March 15, May 15, and July 15. The Commissioner shall mail the invoice to the affected property owners not later than 30 days prior to each July 15, and the Commissioner shall send reminder notices not later than 30 days prior to each January 15, March 15, May 15, and July 15. Notwithstanding the foregoing, the reminder notice for the installment due January 15, 2004 shall be sent not later than February 13, 2004 and shall constitute the reminder notice as to both the January 15, 2004 installment and the March 15, 2004 installment; the installment due January 15, 2004 shall be due March 15, 2004. Should any property owner fail to pay the annual assessment on or prior to the date certification must be made to the County, the City shall file the unpaid special assessments with the County, on or before the second Monday in September, in the same fashion and using the same standard of care as the other special assessments of the City.

ARTICLE 3. PAYMENT OBLIGATION

The City shall establish a special revenue fund (the "Fund") to which the revenue collected by the City pursuant to the special assessment described in the Plan shall be credited. The City shall hold the special assessment revenues in a manner consistent with the City's Charter, all other applicable laws and regulations, the City's investment policy and general practices for the keeping of public funds. Subject to Section B of Article 13 of this Agreement, within 30 days of receipt of the special assessment revenues, at the option of the City, the City shall mail a check to the District or shall authorize a wire transfer to the District, which check or wire transfer shall contain the special assessment revenues received, less any deductions applied on account of refunds, mathematical errors, correction of bookkeeping or posting errors, retainer of up to 10% as security for litigation risks described in Article 11, and the City's reimbursable costs, as defined in Article 6.

ARTICLE 4. CITY'S FINANCIAL OBLIGATION LIMITED

The City shall not be liable for any amounts other than the special assessment revenues collected pursuant to the Plan. The parties agree that in no event shall the City be required to pay revenues to the District or its members using public money, other than funds raised by the assessment contemplated herein, whether raised by taxation or otherwise.

ARTICLE 5. FINANCIAL ACCOUNTABILITY AND OTHER REPORTS

Within 30 days of request, the District shall submit to the Director of Finance such financial statements as the Director of Finance shall request. At least 45 days prior to the beginning of each fiscal year, the District shall submit a detailed operating budget to the Director of Finance and the Director of Economic Development.

The District shall keep and maintain, in accordance with generally accepted accounting procedures, separate ledgers and books of account, including books containing original entries. All records required to be prepared or maintained by the District hereunder shall be kept at the District's business office and shall be maintained by the District for at least three years after the date of termination of this Agreement.

The City, its employees, the State Auditor, or an independent auditor designated by the City shall have the right to inspect the records of the District during normal business hours and, upon 24 hours' prior notice, to audit books of account and other records of the District which the City determines are necessary and proper in determining the District's compliance with the Plan. This paragraph shall survive the termination of this Agreement.

During the term of the assessment, the District shall submit annual reports, by the first day of March of each year, to the Mayor, Director of Finance, Director of Economic Development, and Clerk of Council of the City of the District's activities and financial condition for the previous year. Such reports shall be in narrative form and shall describe the past, present and future-planned activities of the District relating to the Plan.

ARTICLE 6. REIMBURSABLE COSTS

The City shall be reimbursed first from the Fund by offset out of the next-billed special assessment revenues or, if there is not sufficient special assessment revenue, the City shall be otherwise reimbursed by the District, those out-of-pocket reimbursable costs expended by the City in levying and collecting the assessment, as permitted by law, including, but not limited to, costs of printing and mailing notices, service by publication and, hiring temporary employees to supplement the staff of the City. The City shall not charge the Fund or the District for any allocable portion of the salaries of full-time permanent City employees.

ARTICLE 7. SECURITY

The District will use a private security company or companies to provide the security services described in its public service portion of the Plan. The District will retain only private security companies licensed as security guard providers under Chapter 4749 of the Revised Code. The District shall require any security company it retains to use only security personnel that are registered with the Ohio Department of Commerce under R.C. Chapter 4749.

The private security companies will provide only basic security services and not law enforcement services. The District and the security companies it employs will not be regarded

as a law enforcement agency for any purpose. This Agreement shall not be construed to confer law enforcement powers upon any person.

A written protocol between the City's Division of Police and the District is attached hereto and by this reference made a part hereof, addressing matters of mutual concern regarding the provision of security services under the Plan.

ARTICLE 8. INSURANCE

The District shall at all times during the term of this Agreement maintain comprehensive public liability insurance and property damage insurance insuring the District and naming the City as additional insured, as shall protect itself and the City from claims for damage for bodily injury, including accidental death, as well as from claims for property damage which may arise from the exercise of any right or the performance of any obligation under this Agreement, whether such exercise or performance is by the District, its subcontractors, or anyone directly or indirectly employed by either of them.

The policy or policies required hereunder shall have the following limits:

1. Not less than \$1,000,000.00 for bodily injuries, including accidental death, in the aggregate for all personal on account of one occurrence involving injury to more than one person.
2. Not less than \$1,000,000.00 for broad form property damage insurance.

The policy or policies required hereunder shall provide as follows: "The insurer agrees to send written notice by certified mail to the Director of Law of the City of Cleveland at least 10 days prior to cancellation or reduction of, or any change in, the coverage specified by this policy."

Upon execution of this Agreement, the District shall provide to the City an exact copy of the policy or policies required hereunder and the endorsement naming the City as additional insured. The policy or policies shall, as to form, coverage and carrier, be satisfactory to the Director of Law.

ARTICLE 9. CHANGES IN PLAN

Except where there is a conflict with this Agreement and the Plan (in which case this Agreement shall control), the Plan shall govern the provision of services by the District for ___ calendar years, beginning _____ and ending _____. Except as provided in this Article, the District shall comply with this Agreement and the Plan in all material respects. No

material deviation from the Plan may occur without the express consent of Council.

ARTICLE 10. EQUAL EMPLOYMENT OPPORTUNITY

A. Employment Discrimination Prohibited

District shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, age, disability, ethnic group or Vietnam-era or disabled veteran status. District shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to race, religion, color, sex, sexual orientation, national origin, age, disability, ethnic group or Vietnam-era or disabled veteran status. "Treated" means and includes without limitation the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off and terminated. District agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the hiring representatives of District setting forth the provisions of this Equal Opportunity Clause.

District shall state in all solicitations or advertisements that District is an Equal Opportunity Employer for employees placed by or on behalf of District.

District shall send a notice, which advises any labor union or worker's representative of District's commitments under the Equal Opportunity Clause, to each labor union or representative of workers with which District has a collective bargaining agreement, other contract or understanding.

City acknowledges that District may hire contractors to perform work on the Project. To the extent that any of the requirements and obligations apply to contractor, or subcontractors hired to perform work on the Project. District shall notify them of those requirements and obligations and include a copy of the City's Equal Opportunity Clause contained in the first paragraph of this subsection B and the two paragraphs that follow it, all appropriately modified to apply to the contractor, in each contract, and shall take any appropriate action as a means of enforcing the provisions of the Equal Opportunity Clause. Any contractor or subcontractor hired by District, must supply any information required for compliance with Cleveland's Fair Employment Wage Law.

The District shall, as applicable, comply with the requirements of the following Executive Orders:

- (i) Executive Order 11246, as amended by Executive Orders 11375 and 11086, regarding equal employment opportunity, and the implementing regulations at 41 CFR Chapter 60, all of which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national

origin in all phases of employment during the performance of construction pursuant to this Agreement, and that the contractors and subcontractors performing construction work shall take affirmative action to ensure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection of training and apprenticeship;

(ii) Executive Orders 11625 and 12432 concerning Minority Business Enterprise;

(iii) Executive Order 12138, as amended by Executive Order 12608; and

(iv) Concerning Women's Business Enterprise.

District shall not discriminate against any applicant for its services, commercial units or housing because of race, religion, color, sex, sexual orientation, national origin, age, disability, ethnic group or Vietnam-era or disabled veteran status. District shall not limit its services, commercial units or housing or give preference to persons on the basis of race, religion, color, sex, sexual orientation, national origin, age, disability, ethnic group or Vietnam-era or disabled veteran status.

District shall take all appropriate action with respect to any subcontractor as a means of enforcing the provisions of the Business Enterprise Code. District agrees to refrain from subcontracting any part of this Project or modification hereto to a contractor not holding a valid certificate or statement of deemed compliance as provided for in the Business Enterprise Code.

District will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, written notice advising the labor organization or workers representative of this commitment under the Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

B. Verification of Compliance of the City

District shall permit access by the Director of the OEO or her designated representative to any relevant and pertinent reports and documents to verify compliance with the Equal Opportunity Clause and the regulations or the City's Equal Opportunity Office. If applicable, District shall maintain copies of its annual EEO-1 report, which contain records of its employment opportunity together with changes, if any, made in its affirmative action plan. District shall make this report available to the City upon the City's request. All such materials

provided to the OEO Director or her designated representative by District shall be confidential under Chapter 149 of the Ohio Revised Code and under applicable federal law.

District shall not obstruct or hinder the Director of OEO or her representative in the fulfillment of the duties and responsibilities imposed by the Equal Opportunity Clause, and the regulations of the City's Equal Opportunity Office. The City will not conduct any inspection or investigation of District's equal opportunity or affirmative action reports or documents except to verify compliance with the Equal Opportunity Clause, the regulations of the City's Equal Opportunity Office and the prohibitions against discrimination.

District shall ensure that each subcontract will include this Equal Opportunity Clause and District will notify each subcontractor, material person and supplier that they must agree to comply with and be subject to all applicable provisions of the Business Enterprise Code. District shall take all appropriate action with respect to any subcontractor as a means of enforcing the provisions of the Business Enterprise Code.

District agrees to refrain from subcontracting any part of this Agreement Project or modification hereto to a contractor not holding a valid certificate or statement of deemed compliance as provided for in the Business Enterprise Code, Cleveland Codified Ordinances Chapter 187.

The District agrees to send to each labor organization or representative of workers with which the District has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the District's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

ARTICLE 11. OTHER SECURITY FOR POSSIBLE REFUND OF ASSESSMENT

In the event that litigation is pending challenging the constitutionality of Ohio Revised Code Chapter 1710 or otherwise challenging the legality of the assessments levied to pay costs of the Plan, the City may retain, as reasonable security for the performance by the District of its defense and indemnification obligations under this Agreement, an amount up to 10% from payments to be made pursuant to Article 3 of this Agreement following the determinations made pursuant to this Article 11. Prior to retaining any special assessment collections for this purpose, the City will provide to the District copies of the written claims or pleadings and any other materials available to the City with respect to such litigation and will afford the District an opportunity to review those materials and to meet with the Director of Law of the City to review the merits of the litigation and the reasonableness of any retainage

proposed by the City. A written statement will be provided to the District following such meeting setting forth the City's determination with respect to the amount of retainage to be made and the reasons for such retainage.

ARTICLE 12. COMPETITIVE BIDDING

The District shall follow the competitive bidding procedures, attached as Exhibit C. No amendment or modification to such procedures shall be made without prior written consent of the Director of Economic Development.

If and to the extent Revised Code Section 727.24 applies to the contract to be entered into, the District shall not enter into such contract for such labor or materials until Revised Code Section 727.24 has been fully complied with.

ARTICLE 13. DEFAULTS AND REMEDIES

If the District fails to fulfill in a timely and proper manner any term or condition contained in this Agreement, or if the District shall violate any of the covenants or stipulations in this Agreement or the Exhibits or other attachments to this Agreement, the City shall have the right to exercise concurrently or successively any of or more of the rights or remedies set forth in paragraphs (a) – (b) below. City shall give the District written notice of the District's failure or violation and the District shall have 30 days to remedy the failure or violation.

The City shall have the additional right to exercise concurrently or successively any one or more of the rights or remedies set forth in paragraphs A) – F) below, if any of the following events occur: 1) the District becomes insolvent or ceases to pay its debts as they mature or voluntarily files a petition seeking reorganization of, or the appointment of a receiver, trustee, or liquidator for it or a substantial portion of its assets to effect a plan or other arrangement with creditors, or is adjudicated bankrupt, or makes a voluntary assignment for the benefit of creditors, or (2) an involuntary petition is filed against the District under any bankruptcy, insolvency or similar law seeking the reorganization of or the appointment of any receiver, trustee or liquidator for it, or of a substantial part of the property of the District, or a writ or warrant of attachment or similar process issued against a substantial part of the property of the District, and such petition is not dismissed, or such writ or warrant of attachment or similar process is not released or bonded within 30 days after the filing or levy:

- (a) Wholly or partially terminate this Agreement and the rights given to the District in it;
- (b) Temporarily or permanently withhold or reduce funds not yet paid to the District;
- (c) Recover funds previously paid to the District;
- (d) Disallow all or part of the cost of noncompliant activity;
- (e) Wholly or partially suspend the Agreement;

- (f) Exercise any and all additional rights the City may have in law or equity; provided, however, that all assessments collected by the City and all amounts in the Fund shall be applied for the purpose for which the assessment was made, which is to pay for the services described in the Plan, less reimbursable costs described in Article 6, and refunds of assessments made in accordance with Revised Code Section 727.38.

If City chooses any of the remedies outlined, that remedy is effective immediately upon notice to the District of the remedy chosen by the City.

No action or inaction by the City at any time of any of the terms or conditions of this Agreement shall be deemed or construed as a waiver of those terms or conditions or of other terms or conditions in this document or of the timely and proper performance of any terms or conditions in this document. No waiver shall be valid against the City unless reduced to writing and signed by an officer of the City empowered to execute the waiver.

In the event that the District defaults in the performance of its obligations under this Agreement, and the City takes action, following written notice to the District and failure by the District to remedy such default within the time provided, the District shall pay all fees, expenses and charges incurred by City in the enforcement of the District's obligations under this Agreement and the exercise of any of its rights or remedies, including the fees and out-of-pocket expenses of legal counsel employed by the City. If, and only if, a court renders a final judgment that the District was not in breach of this Agreement at the time of the enforcement, this paragraph shall be null and void.

ARTICLE 14. DEFENSE AND INDEMNIFICATION OBLIGATIONS

The District shall defend the City for and against all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, attorneys' fees or disbursements of any kind or nature whatsoever which may be imposed upon, incurred by, or asserted against the City if the act or omission occurred or is alleged to have occurred by reason of the City's approval of the District or performing any of the City's obligations under this Agreement, whether such actions are pursuant to the Plan, are in any way relating or allegedly relating to or arising or allegedly arising out of this Agreement, or whether such action taken or not taken or allegedly taken or not taken by the City under this Agreement.

The District, upon the filing of any petition filed in the office of the Clerk of Council shall be deemed to represent and warrant to the City that the signature on such petition is genuine and duly authorized and that, if the signature on such petition is invalid, the signer of such petition shall be liable for all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, attorneys' fees or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the City by reason of such invalid signature. This provision shall survive the termination of the Agreement.

In case any claim shall be made or action brought against the City in respect of which indemnity may be sought against the District, the City shall timely notify the District in writing, transmit a copy of the written claim or pleading or otherwise reasonably inform the District as to the nature of such claim or action and, in the event that the City proposes to retain outside counsel to represent the City, the name of such counsel, who shall be reasonably satisfactory to the District. In no event shall the District provide counsel for the City who is not satisfactory to the Law Director, in his reasonable opinion. To the extent their interests are not adverse to one another, the City and the District agree to cooperate in the making of any investigation and defense of any such claim. The City shall consult with the District prior to entering into any settlement of claim, and the District shall not be liable for any settlement made without its consent, which consent shall not be unreasonably withheld. The District shall, however, be liable for any amount determined by a court of last resort to be due from the City for any matter in which indemnity may be sought. If the District is a party to the action, the District may have the right to retain separate counsel in any such action and to participate in its own defense thereof.

The District shall reimburse, hold harmless and indemnify the City for and against all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, attorneys' fees or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the City acting pursuant to the Plan, in any way relating to or arising out of this Agreement, any action taken or omitted by the City under this Agreement, any court-determined refund or reassessment or any refund obligation under Section 727.38; provided, however, that the District shall not be liable for any portion of such liabilities, obligation, losses, damages, penalties, actions, judgments, suits, costs, expenses, attorney's fees or disbursements directly resulting from the City's actions or omissions in violation of law which amount to recklessness or willful misconduct, or (except for any refund obligation under Section 727.38) the duties and obligations of the District imposed upon the District by the City solely by reason of this Agreement. The parties acknowledge that the prospective levy of assessments prior to performance of services in accordance with the Plan is undertaken at the request of the District and not as a requirement of the City and that any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense, attorneys' fees or disbursement of any kind or nature whatsoever which is imposed or incurred by or asserted against the city as a result thereof shall be fully indemnified by the District or its members.

The obligations under this Article 14 shall survive the termination of this Agreement.

ARTICLE 15. FORCE MAJEURE

Except as otherwise provided herein, neither the City nor the District shall be deemed to be in default or breach of this Agreement by reason of failure to perform any one or more of its obligations hereunder if, while and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of governmental authority, floods, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which are not within its control; provided that any obligation to pay

funds, charges or other money payments required by this Agreement which have been incurred prior to the force majeure event or following its cessation shall continue.

ARTICLE 16. TIME FOR DOING ANY ACT

If the time for doing any act required under this Agreement falls on a Saturday, Sunday or legal holiday, then performance of any act required under this section shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

ARTICLE 17. ADJUSTMENT OF ASSESSMENTS

The parties agree that the assessments levied under Article 5 herein are estimated assessments. The District hereby covenants that within 30 days of the end of the assessment period, it shall submit to the Mayor and Clerk of Council a detailed financial report accounting for all assessment dollars received and spent to enable the city to determine if the assessment must be adjusted in accordance with Revised Code Section 727.38. If an additional assessment or a refund is necessary, the director of Finance covenants to seek legislative approval of such action at the earliest practicable time. If a refund of assessment is required under Section 727.38, the District shall be liable for payment of such refund immediately upon passage of any legislation ordering payment of such refund.

ARTICLE 18. RESERVATION OF RIGHTS

Nothing contained in this Agreement shall restrict the City's powers, rights and duties granted by law over the process of levying assessments or other City actions. Nothing contained in this Agreement shall confer upon the District any right to control or direct the process of levying assessments or other City action.

The City hereby reserves the right to order a reassessment under Revised Code Section 727.39 if, in the City's sole discretion, the City determines such reassessment is necessary.

ARTICLE 19. NO-THIRD PARTY BENEFICIARIES

The parties agree that there are no third-party beneficiaries to this Agreement.

ARTICLE 20. ASSIGNMENT

Neither party shall assign all or any part of this Agreement.

ARTICLE 21. ENTIRE AGREEMENT

This Agreement, including Exhibits and all other documents referenced herein, constitutes the entire agreement between District and the City and supersedes all other

proposals, oral and written, between the parties on this subject. In the case of a conflict between this Agreement and the Plan, this Agreement (including the attached Protocols) shall prevail. This Agreement shall not be changed, discharged or extended except by written instrument executed by both parties pursuant to the laws of Ohio, the ordinances and Charter of the City. The following documents attached hereto are hereby incorporated into and made a part of this Agreement:

1. Exhibit A - - The Plan dated _____
2. Exhibit B - - Equal Opportunity Clause
3. Exhibit C - - Competitive Bidding Rules
4. Ordinance No. _____
5. Protocol between the City Planning Commission and the District
6. Protocol between the Department of Parks, Recreation and Properties and the District
7. Protocol between the Department of Public Safety and the District
8. Protocol between the Department of Public Service and the District

ARTICLE 22. MISCELLANEOUS

A. Applicable Law. This Agreement shall be governed by the laws of the State of Ohio.

B. Cumulation of Remedies. All remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

C. Severability. Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other of its provisions.

D. Notice
s. Any notice or other communication hereunder which may be proper or necessary to be served shall be in writing and such notices or payments required to be made shall be served or made by regular mail, postage prepaid, to the following addresses or to such other address as either party shall by written notice to the other hereafter designated for such purposes.

To the City: Director of Economic Development
601 Lakeside Avenue, Room 210
Cleveland, Ohio 44102

with a copy to: Director of Finance
601 Lakeside Avenue, Room 104,
Cleveland, Ohio 44102.

To the District: _____

Cleveland, Ohio 441_____.

E. Waiver. No term or provision hereof shall be deemed waived or no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.

F. Headings. The headings of sections and paragraphs to the extent used herein, are used for reference only, and in no way define, limit or describe the scope or intent of any provisions hereon.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the date of year first above written.

CITY OF CLEVELAND

By: _____
_____, Director
Department of Economic Development

By: _____
_____, Director
Department of Finance

**THE CLEVELAND _____ DISTRICT
DEVELOPMENT CORPORATION**

By: _____

Title: _____

Taxpayer Identification Number

The legal form and correctness of the within instrument is hereby approved.

Director of Law

Date: _____

APPENDIX 3: Assessment Methodology



Assessment Methodology

The following steps outline the process to calculate an estimate of an individual property owner's BID assessment using the proportionate method based on either "assessed value" or "front footage".

Note that the Division of Assessments and Licenses will calculate the actual assessment for each property within the BID at the time that legislation is introduced to City Council to levy the assessment. The methodology provided here is only for the purpose of testing the effects on individual property assessments as different services and related budgets are being considered during the planning stages.

Proportionate Methodology: Assessed Value

1. Determine the total assessed value (land and building) for each individual property within the proposed BID based on the records at the Cuyahoga County Auditor's Office.
2. Calculate the combined total district assessed value for all properties within the district by summing individual values determined in Step 1.
3. Divide the total district assessed value by each individual property assessed value to calculate the percentage of total district assessed value for each property.
4. Determine total estimated total annual cost of proposed BID services and/or improvements.
5. Multiply the percentage of total district assessed value determined for each property in Step 3 time the total annual cost of BID services and/or improvements to determine the proportionate share of the total cost to be paid annually for each property.

The following example illustrates the application of the assessed value methodology:

1. Property A Assessed Value (land and building) - \$100,000
2. BID Total District Assessed Value * = \$1,000,000
3. Property A Percentage of Total District Assessed Value = $\$100,000 / \$1,000,000 = .10$ or 10%
4. Total Annual Cost of Proposed BID Services = \$60,000
5. Property A Annual Assessment (proportionate share of Total Cost)= $\$60,000 \times .10 = \$6,000/\text{yr}$

Proportionate Methodology: Front Footage

Front Footage could also be used to determine an individual property owner's assessment by replacing front footage for assessed value in the same steps outlined above.

The State law (ORC § 1710.02 (E) and ORC § 1710.06 (B)) defines what is considered frontage for purposes of BIDs. When calculating the assessment by the front footage method, front footage includes property abutting a street, alley, public road, lane, boulevard, parkway, park entrance, easement or other public improvement.

The following illustrates an example using the front footage method:

1. Property A Front Footage = 200 feet
2. Total Front Footage in proposed BID * = 10,000 feet
3. Property A Percentage of Total District Front Footage = $200 / 10,000 = .02$ or 2%
4. Total Annual Cost of Proposed BID Services = \$60,000
5. Property A Annual Assessment (proportionate share of Total Cost) = $\$60,000 \times .02 = \$1,200/\text{yr}$

* Exclude properties from totals for the district that are exempt from the assessment according to the State law.

APPENDIX 4: Sample Property Inventory



