

Appendix D

Cooperative Management Agreement between Toledo and FWS

COOPERATIVE MANAGEMENT AGREEMENT BETWEEN THE CITY OF TOLEDO, OHIO AND THE U.S. FISH AND WILDLIFE SERVICE

This Cooperative Management Agreement (“Agreement”) is made by and between the City of Toledo (“Toledo”) and the United States Department of the Interior (“DOI”), Fish and Wildlife Service (“FWS”), 5600 American Boulevard West, Suite 990, Bloomington, MN 55437-1173 (herein referred to as the “FWS”) and collectively referred to as the “Parties.”

I. AUTHORITY:

This Agreement between Toledo and the FWS is hereby entered into under the authorities granted in Section 7 of the Fish and Wildlife Act of 1956, (16 U.S.C. 742f (a)(4)) and the Ottawa National Wildlife Refuge Complex Expansion and Detroit River International Wildlife Refuge Expansion Act (“Ottawa Expansion Act”) (Pub. L. 108-23) (117 Stat. 704) and Toledo City Council, Ordinance _____-18 passed _____ of _____, 2018.

II. PURPOSE AND BACKGROUND:

WHEREAS, the Ottawa Expansion Act defines the “Refuge Complex” as the lands and waters described in The Comprehensive Conservation Plan for the Ottawa National Wildlife Refuge Complex dated September 22, 2000, that includes the Cedar Point National Wildlife Refuge (the “Refuge”). The Ottawa Expansion Act authorizes the Secretary of the Interior to enter into cooperative agreements with the State of Ohio or any political subdivision of the State for land located within the boundaries of the Refuge Complex for the purposes of managing land and promoting public awareness of the resources of the Refuge Complex.

WHEREAS, DOI, on behalf of the FWS and the Ohio Environmental Protection Agency on behalf of the State of Ohio (the “Trustees”) under the authority of Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607(f) and Section 311 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1321, are Trustees for natural resources injured by the releases of hazardous substances into or within the Ottawa River Assessment Area, an area defined in Paragraph 5(t) of the Consent Decree (identified below), located in Toledo, Ohio, that includes Sibley Creek and the Ottawa River from River Mile 8.8 to the River’s mouth. The Trustees filed a complaint and consent decree (“Consent Decree”) in the U.S. District Court for the Northern District of Ohio against the City for the recovery of damages for injury to, destruction of, or loss of natural resources under their Trusteeship. As part of the Consent Decree, the City agreed, *inter alia*, to pay the FWS \$50,000 to restore and manage approximately 58 acres of the Toledo Low Service Pump Station Property (“Pump Station Property”) and to enter into a long term agreement with the FWS to manage the Pump Station Property consistent with the Final Natural Resource Restoration Plan and Environmental Assessment for the Ottawa River Assessment Area dated June 27, 2016 (“Ottawa River Restoration Plan”), attached to the Consent Decree as Appendix C.

WHEREAS, the Pump Station Property means that real property, located at 1002 North Yondota Road, Lucas County, Curtice, Ohio with coordinates of 41.674197 latitude and 83.309728 longitude. The Pump Station Property for purposes of this Agreement does not include approximately four acres of a fenced area containing the pump station buildings and equipment and the two lane paved road leading to the fenced area (the “Secured Area”). The Pump Station Property comprises approximately 58 acres and is adjacent to the Cedar Point National Wildlife Refuge. The Pump Station Property is within the Refuge Complex.

NOW THEREFORE, the FWS and the City agree to the purposes set forth herein and subject to the conditions herein. The Pump Station Property is described in Attachment 1 incorporated herein. The Pump Station Property and the Secured Area are shown on the attached map.

IT IS MUTUALLY AGREED AND UNDERSTOOD:

- A. The Pump Station Property is designated to be used for the Toledo Low Service Pump Station Restoration Project (“Pump Station Restoration Project” or “Project”) as set forth in described herein and in the Consent Decree. For the duration of this Agreement, any authorized uses of the Pump Station Property cannot be inconsistent with the habitat restoration requirements described in the Ottawa River Restoration Plan and this Agreement with the exception of work or activities and uses necessary to ensure the mission of the City of Toledo public water system and appropriate U.S. Department of Homeland Security regulations regarding Water Use.
- B. The buildings and equipment located in the secured area are part of the City of Toledo public water system and are used to pump water from an intake in Lake Erie, pretreat the water with an algaecide, direct pretreated water to the Toledo water treatment plant for final treatment and delivery of potable water to regional residents (“Water Use”). The Pump Station Restoration Project will be complementary to and will coexist with the current and future Water Use.
- C. Toledo hereby provides the FWS access to the Pump Station Property for the purposes of managing the Pump Station Property as part of the Refuge Complex, subject to National Wildlife Refuge System and Toledo’s rules and regulations. The Pump Station Property will be cooperatively managed for fish and wildlife habitat where these activities are not in conflict with other Toledo activities, rules, or policies. FWS may not prohibit or otherwise limit Toledo from entering upon, or over, or otherwise using, the Pump Station Property consistent with the current and future Water Use. No public use or access will be allowed on the Pump Station Property except those activities agreed to by both Parties as necessary wildlife management actions essential for the Project restoration and management (e.g., trapping, white-tailed deer hunting).
- D. Except as provided in this Agreement, all of the following activities within the Pump Station Property or that affect the Pump Station Property are strictly prohibited, as determined by the FWS: any activity that interferes, damages or disturbs the integrity or maintenance of the Project; any activity that would degrade or diminish the ecological values of the habitat or its function as a habitat; any activity that causes the release or

exposure to the environment of any hazardous substances at the Project; or any activity that would otherwise interfere with the Project such that it would adversely affect the likelihood of success of the Project. Some non-exclusive examples of activities that may be prohibited based on the foregoing criteria include: soil or habitat disturbance of the wetlands within the Pump Station Property, altering surface hydrology, or degrading wetland conditions.

- E. The City must obtain approval in writing from FWS before any pesticides or herbicides, or other chemical compounds are used or applied to the Pump Station Property. The City shall report any planned release or use to FWS prior to the release or use. The City must provide FWS thirty-day advance written notice of any release or use under this provision to ensure FWS has adequate time to evaluate the natural resource impacts to the Project.
- F. The City will be responsible for maintaining its access to the Secured Area including road maintenance and road side mowing. The security fence and all security needs for the facility will be the sole responsibility of the City.
- G. The City may not undertake any major maintenance or construction projects on the Pump Station Property without prior written notice to FWS.
- H. The City shall allow FWS and its authorized representatives the right to enter the Pump Station Property at reasonable times to perform restoration, monitoring, and management activities. FWS shall have the right to patrol and enforce Refuge regulations in accordance with the National Wildlife Refuge System laws and regulations.
- I. The FWS shall be allowed to perform restoration, monitoring and management activities that may include, but is not limited to the following: (1) maintaining the acreage as wetland, forested wetland habitats, or other habitats as determined by FWS and the Trustees; (2) maintaining, repairing, or constructing new water control structures (*e.g.*, dikes, levees, stoplog structures) that have failed; (3) maintaining native wetland plants through an invasive plant species control program; (4) increasing wet meadow and wetland habitat through selected tree removals, producing open areas suitable for colonization by a federally endangered native plant species, the Eastern Prairie Fringed Orchid, and State species of concern, the Kirtland Snake and the Blanding's Turtle; and (5) sampling or studying endangered species.
- J. The FWS shall work cooperatively with Toledo and its staff in developing mutually-agreed upon management practices that preserve wildlife and fish populations and their associated habitats. A joint operating committee shall be established with representatives from the FWS and Toledo and shall meet periodically, but no less than once per year, to ensure the Pump Station Property is managed in accordance with this Agreement.
- K. Upon Toledo's approval, the FWS may erect and maintain boundary posting and identification and directional signs on the Pump Station Property. The cost of erecting and maintaining said signs shall be borne in whole by the FWS.

- L. Unless determined by FWS to be necessary to Project restoration and management, the FWS shall not remove from the Pump Station Property any merchantable timber, minerals, or other products, or things having commercial value.
- M. Fixtures, equipment, facilities or other property of the FWS constructed or maintained on the said Pump Station Property shall be and remain the property of the FWS, and may be removed at any time prior to the termination of this Agreement or within 180 days after the termination of this Agreement. Except as provided for in this Agreement, including maintaining, repairing, or constructing new water control structures (*e.g.*, dikes, levees, stoplog structures) that have failed, no permanent improvements will be constructed by FWS without consultation with the City and mutually agreed to by both Parties.

III. PROJECT OFFICERS:

Points of contacts for each party shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing.

The principle contact for the FWS concerning this Agreement shall be:

Jason P. Lewis, Refuge Manager
Ottawa National Wildlife Refuge
14000 West State Route 2
Oak Harbor, OH 43449

The principle contact for Toledo concerning this Agreement shall be:

City of Toledo
Director of the Department of Public Utilities
420 Madison Avenue, Suite 1800
Toledo, Ohio 43604
Phone: (419) 245-1800

IV. SPECIAL PROVISIONS:

- A. The FWS does not assume any liability for any fines, claims, damages, losses, judgments, and expenses arising out of or resulting from the existence of hazardous materials on the property, or any act, omission, or activity by Toledo in connection with the activities undertaken on the Pump Station Property. The FWS shall conduct a Phase I Environmental Assessment of the Pump Station Property prior to accepting authority granted under this Agreement. Each Party agrees that it will be responsible for its own acts and the results therein to the extent authorized by law and shall not be responsible for the acts of the other Party and the results thereof. Subject to this Paragraph, FWS's liability shall be governed by the provisions of the Federal Tort Claim Act (28 U.S.C. § 2671, *et seq.*). This provision shall survive the expiration or termination of this Agreement.

- B. Toledo shall indemnify, save and hold harmless, and defend the United States against all fines, claims, damages, losses, judgments, and expenses arising out of, or from, any act of omission of the City, its officers, employees and/or agents arising out of or in any way connected to activities authorized pursuant to this Agreement. This obligation shall survive the termination or this Agreement.
- C. Toledo agrees to cooperate with the FWS in the investigation and defense of any claim that may be filed with the FWS arising out of the activities of Toledo, its officers, employees and/or agents.
- D. All activities pursuant to this Agreement shall be in compliance with the requirements of *Executive Order 11246*, as amended; *Title VI of the Civil Rights Act of 1964*, as amended, (78 Stat. 252; 42 U.S.C. §§2000d et seq.); *Title V, Section 504 of the Rehabilitation Act of 1973*, as amended, (87 Stat. 394; 29 U.S.C. §794); the *Age Discrimination Act of 1975* (89 Stat. 728; 42 U.S.C. §§6101 et seq.); and with all other federal laws and regulations prohibiting discrimination on the grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.
- E. Nothing herein shall be considered as obligating the United States to expend or as involving the United States in any contract or other obligations for payment of money in excess of the \$50,000 provided by the City. No provision of the Agreement shall be construed to require the United States, DOI or FWS to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, in any fiscal year for actions subject to this Agreement.

V. MODIFICATIONS:

Amendments or changes to this Agreement may be proposed by either Party at any time, and will become effective upon written ratification by both. This Agreement shall become effective upon ratification by both Parties and shall remain in full force and effect until cancelled, revoked or terminated as provided herein.

VI. DISPUTES:

In the event of a dispute, the dispute provisions of the Consent Decree apply.

VII. PERIOD OF PERFORMANCE:

This Agreement shall become effective as of the date of the last signature and continue in effect for a minimum of fifty (50) years. This Agreement may be terminated in whole or in part only by written mutual Agreement of the Parties hereto.

THE UNDERSIGNED PARTIES enter into this Agreement, and

IN WITNESS WHEREOF, the Parties hereto have subscribed their names as of the date indicated.

WITNESSES:

THE CITY OF TOLEDO, OHIO

By: _____

Date _____

Wade Kapszukiewicz, Mayor
City of Toledo, Ohio

WITNESSES:

UNITED STATES OF AMERICA

Acting by and through the
Secretary of the Interior

By: _____

Date _____

Tom Melius, Regional Director
Region 3, U.S. Fish and Wildlife Service

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

Department of Public Utilities

Department of Law

Attachments:

Description of the Pump Station Property

Topographic maps showing the location of the Low Service Pump Station Project and its location to the Ottawa River.

The total acreages of the Property/Project, as well as an estimate from aerial photographs and GIS, or other mapping software, of the acreages of various habitat types existing on the property.

Topographic map showing the Secured Area.

Appendix E
Manhattan Marsh List of Properties

MANHATTAN MARSH: CITY OF TOLEDO OWNED PROPERTIES

#	parid	owner	address	city	state	zip	acres
1	1115707	THE CITY OF TOLEDO, AN OHIO MUNICIPAL CO	130 ALPENA ST	TOLEDO	OH	43611	0.1217
2	1115721	TOLEDO CITY OF AN OHIO MUNICIPAL CORPORA	122 ALPENA ST	TOLEDO	OH	43611	0.0758
3	1118474	TOLEDO CITY OF ,AN OH MUNICIPAL CORP	811 ADRIAN ST	TOLEDO	OH	43611	0.1056
4	1115747	TOLEDO, CITY OF AN OHIO MUNICIPAL CORPO	802 SUDER AVE	TOLEDO	OH	43611	0.6793
5	1117261	TOLEDO CITY OF	2006 N MICHIGAN ST	TOLEDO	OH	43611	0.1768
6	1115731	CITY OF TOLEDO AN OHIO MUNICIPAL CORP	829 SANDUSKY ST	TOLEDO	OH	43611	0.1538
7	1115851	THE CITY OF TOLEDO, AN OHIO MUNICIPAL CO	703 SUDER AVE	TOLEDO	OH	43611	0.0935
8	1117241	TOLEDO CITY OF	842 SUDER AVE	TOLEDO	OH	43611	0.1377
9	1117281	TOLEDO CITY OF, AN OHIO MUNICIPAL CORPOR	718 ADRIAN ST	TOLEDO	OH	43611	0.0666
10	1130697	TOLEDO CITY OF	3234 N ONTARIO ST	TOLEDO	OH	43611	1.4094
11	1118477	CITY OF TOLEDO AN OHIO MUNICIPAL CORPORA	827 CLIFFORD ST	TOLEDO	OH	43611	0.4247
12	1117244	TOLEDO CITY OF	844 SUDER AVE	TOLEDO	OH	43611	0.1377
13	1118457	TOLEDO CITY OF ,AN OH MUNICIPAL CORP	813 ADRIAN ST	TOLEDO	OH	43611	0.0803
14	1115727	TOLEDO CITY OF, AN OH MUNICIPAL CORPORAT	2002 N MICHIGAN ST	TOLEDO	OH	43611	0.1538

MANHATTAN MARSH: METROPARKS OWNED PROPERTIES

#	parid	owner	address	city	state	zip	acres
1	1115864	BOARD OF COMMISSIONERS OF THE METROPOLIT	626 ADRIAN ST	TOLEDO	OH	43611	0.3673
2	1115881	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	3318 N MICHIGAN ST	TOLEDO	OH	43611	2.6846
3	1117217	BOARD OF COMMISSIONERS OF THE METROPOLIT	830 SUDER AVE	TOLEDO	OH	43611	0.1377
4	1117231	BOARD OF COMMISSIONERS OF THE METROPOLIT	836 SUDER AVE	TOLEDO	OH	43611	0.0666
5	1117237	BOARD OF COMMISSIONERS OF THE METROPOLIT	840 SUDER AVE	TOLEDO	OH	43611	0.1377
6	1117257	METROPOLITAN PARK DISTRICT OF THE TOLEDO	2008 N MICHIGAN ST	TOLEDO	OH	43611	0.1768
7	1119177	BOARD OF COMMISSIONERS OF THE METROPOLIT	989 PONTIAC ST	TOLEDO	OH	43611	0.1217
8	1120127	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	3191 JOSEPH ST	TOLEDO	OH	43611	0.1217
9	1115701	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	132 ALPENA ST	TOLEDO	OH	43611	0.1273
10	1115724	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	120 ALPENA ST	TOLEDO	OH	43611	0.0459
11	1115737	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	3521 N ONTARIO ST	TOLEDO	OH	43611	0.0758
12	1117194	METROPOLITAN PARK DISTRICT OF THE TOLEDO	820 SUDER AVE	TOLEDO	OH	43611	0.1384
13	1117234	BOARD OF COMMISSIONERS OF THE METROPOLIT	828 SUDER AVE	TOLEDO	OH	43611	0.0666
14	1117251	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	3304 CHAMPLAIN ST	TOLEDO	OH	43611	0.1768
15	1118364	BOARD OF COMMISSIONERS OF THE METROPOLIT	902 ADRIAN ST	TOLEDO	OH	43611	1.2695
16	1119054	BOARD OF COMMISSIONERS OF THE METROPOLIT	854 CLIFFORD ST	TOLEDO	OH	43611	0.2663
17	1119151	BOARD OF COMMISSIONERS OF THE METROPOLIT	917 PONTIAC ST	TOLEDO	OH	43611	0.1768
18	1180449	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	0 MANHATTAN BLVD	TOLEDO	OH	43611	1.472
19	1115717	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	124 ALPENA ST	TOLEDO	OH	43611	0.1056
20	1117277	BOARD OF COMMISSIONERS OF THE METROPOLIT	716 ADRIAN ST	TOLEDO	OH	43611	0.0666
21	1117287	BOARD OF COMMISSIONERS OF THE METROPOLIT	726 ADRIAN ST	TOLEDO	OH	43611	0.1423
22	1118431	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	3318 EDISON ST	TOLEDO	OH	43611	1.1579
23	1119204	BOARD OF COMMISSIONERS OF THE METROPOLIT	3106 JOSEPH ST	TOLEDO	OH	43611	0.27
24	1119221	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	3070 EDISON ST	TOLEDO	OH	43611	0.0666
25	1115847	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	3400 N MICHIGAN ST	TOLEDO	OH	43611	0.0367
26	1115854	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	695 N ONTARIO ST	TOLEDO	OH	43611	0.0935
27	1117207	METROPOLITAN PARK DISTRICT OF THE TOLEDO	720 SUDER AVE	TOLEDO	OH	43611	0.1187
28	1117224	BOARD OF COMMISSIONERS OF THE METROPOLIT	832 SUDER AVE	TOLEDO	OH	43611	0.1377
29	1117254	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	3300 CHAMPLAIN ST	TOLEDO	OH	43611	0.1768
30	1117264	BOARD OF COMMISSIONERS OF THE METROPOLIT	704 ADRIAN ST	TOLEDO	OH	43611	0.1423
31	1117291	BOARD OF COMMISSIONERS OF THE METROPOLIT	730 ADRIAN ST	TOLEDO	OH	43611	0.1423
32	1118361	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	3311 CHAMPLAIN ST	TOLEDO	OH	43611	0.0298
33	1118464	BOARD OF COMMISSIONERS OF THE METROPOLIT	809 ADRIAN ST	TOLEDO	OH	43611	0.2158
34	1119197	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	3114 JOSEPH ST	TOLEDO	OH	43611	0.0666
35	1115734	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	3523 N ONTARIO ST	TOLEDO	OH	43611	0.1583
36	1118444	BOARD OF COMMISSIONERS OF THE METROPOLIT	3334 EDISON ST	TOLEDO	OH	43611	0.0964
37	1119021	BOARD OF COMMISSIONERS OF THE METROPOLIT	3345 EDISON ST	TOLEDO	OH	43611	0.202
38	1119037	BOARD OF COMMISSIONERS OF THE METROPOLIT	844 CLIFFORD ST	TOLEDO	OH	43611	0.4385
39	1119201	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	3108 JOSEPH ST	TOLEDO	OH	43611	0.0344
40	1119947	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	1016 PONTIAC ST	TOLEDO	OH	43611	0.0964
41	1115741	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	3519 N ONTARIO ST	TOLEDO	OH	43611	0.0758
42	1115784	BOARD OF COMMISSIONERS OF THE METROPOLIT	721 SUDER AVE	TOLEDO	OH	43611	1.8727
43	1117227	BOARD OF COMMISSIONERS OF THE METROPOLIT	834 SUDER AVE	TOLEDO	OH	43611	0.1377
44	1117297	BOARD OF COMMISSIONERS OF THE METROPOLIT	711 ADRIAN ST	TOLEDO	OH	43611	0.186
45	1117304	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	725 ADRIAN ST	TOLEDO	OH	43611	2.1231
46	1117364	BOARD OF COMMISSIONERS OF THE METROPOLIT	3311 MICHIGAN ST	TOLEDO	OH	43611	0.3627
47	1118461	BOARD OF COMMISSIONERS OF THE METROPOLIT	817 ADRIAN ST	TOLEDO	OH	43611	0.0964
48	1119131	METROPOLITAN PARK DISTRICT OF THE TOLEDO	3214 EDISON ST	TOLEDO	OH	43611	20.5889 In AREIS, parcel is the same as 1115941.
49	1119157	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	963 PONTIAC ST	TOLEDO	OH	43611	1.412
50	1119268	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	0 BASSETT ST	TOLEDO	OH	43611	3.5577
51	1119977	BOARD OF COMMISSIONERS OF THE METROPOLIT	3221 JOSEPH ST	TOLEDO	OH	43611	0.7691
52	1120004	BOARD OF COMMISSIONERS OF THE METROPOLIT	1015 PONTIAC ST	TOLEDO	OH	43611	1.646
53	1120504	BOARD OF COMMISSIONERS OF THE METROPOLIT	1100 PONTIAC ST	TOLEDO	OH	43611	0.3398
54	1115711	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	128 ALPENA ST	TOLEDO	OH	43611	0.1217
55	1115714	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	126 ALPENA ST	TOLEDO	OH	43611	0.1217
56	1117191	METROPOLITAN PARK DISTRICT OF THE TOLEDO	3515 N MICHIGAN ST	TOLEDO	OH	43611	0.0635
57	1117274	BOARD OF COMMISSIONERS OF THE METROPOLIT	712 ADRIAN ST	TOLEDO	OH	43611	0.1423

58	1118357	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	3311	CHAMPLAIN ST	TOLEDO	OH	43611	0.0918
59	1118417	BOARD OF COMMISSIONERS OF THE METROPOLIT	3302	EDISON ST	TOLEDO	OH	43611	0.2801
60	1118447	BOARD OF COMMISSIONERS OF THE METROPOLIT	3340	EDISON ST	TOLEDO	OH	43611	0.0964
61	1119071	BOARD OF COMMISSIONERS OF THE METROPOLIT	917	CLIFFORD ST	TOLEDO	OH	43611	2.1993
62	1119174	BOARD OF COMMISSIONERS OF THE METROPOLIT	921	PONTIAC ST	TOLEDO	OH	43611	0.1217
63	1120051	BOARD OF COMMISSIONERS OF THE METROPOLIT	3150	SCIOTA ST	TOLEDO	OH	43611	0.3269
64	1115857	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	693	N ONTARIO ST	TOLEDO	OH	43611	0.1599
65	1117201	METROPOLITAN PARK DISTRICT OF THE TOLEDO	822	SUDER AVE	TOLEDO	OH	43611	0.1384
66	1117204	METROPOLITAN PARK DISTRICT OF THE TOLEDO	824	SUDER AVE	TOLEDO	OH	43611	0.1232
67	1117284	BOARD OF COMMISSIONERS OF THE METROPOLIT	720	ADRIAN ST	TOLEDO	OH	43611	0.1423
68	1118424	METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA	3310	EDISON ST	TOLEDO	OH	43611	0.528
69	1118441	BOARD OF COMMISSIONERS OF THE METROPOLIT	817	ADRIAN ST	TOLEDO	OH	43611	0.0987
70	1119224	METROPOLITAN PARK DISTRICT OF THE TOLEDO	900	BASSET ST	TOLEDO	OH	43612	0.12121292
71	1119231	METROPOLITAN PARK DISTRICT OF THE TOLEDO	902	BASSET ST	TOLEDO	OH	43613	0.121212288
72	1117187	METROPOLITAN PARK DISTRICT OF THE TOLEDO	3521	N MICHIGAN ST	TOLEDO	OH	43614	0.009457635
73	1117214	METROPOLITAN PARK DISTRICT OF THE TOLEDO	0	SUDER AVE	TOLEDO	OH	43615	0.004

MANHATTAN MARSH: TOTAL

TOTAL - CITY	3.8167
TOTAL - METROPARKS	49.80438284
TOTAL - ALL	<u>53.62108284</u>

Appendix F
Environmental Covenant

To be recorded with Deed Records - ORC 317.08

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Metropolitan Park District of the Toledo Area (Metroparks or Owner), the City of Toledo (Toledo), the State of Ohio acting through the Ohio Environmental Protection Agency (Ohio EPA) and the United States Department of the Interior acting through the United Fish and Wildlife Service (USFWS), pursuant to Ohio Revised Code (ORC) §§ 5301.80 to 5301.92, for the purpose of subjecting the Property at permanent parcel numbers identified in Exhibit A attached hereto and hereby incorporated by reference herein (hereafter referred to and defined as the “_____ Manhattan Marsh Property”) to the activity and use limitations set forth herein.

Background

Negotiations between Toledo and the natural resource trustees (*i.e.*, USFWS and Ohio EPA (Ottawa Trustees)), in conjunction with the U.S. Department of Justice and the Ohio Attorney General, resulted in a consent decree filed in the United States District Court, Northern District of Ohio, Western Division, captioned (**INSERT**), dated (**INSERT**), 2018. As required by the consent decree, Toledo will convey to Metroparks at least 50 acres of real properties to be conserved as parkland located in the Manhattan Marsh Preserve pursuant to Section 1545.11 of the Ohio Revised Code. Toledo will restore the _____ Manhattan Marsh Property, as further defined in Section 2, below, pursuant to the consent decree, the Manhattan Marsh Restoration Statement of Work and the Manhattan Marsh Restoration Work Plan. The administrative record for this case including the Final Natural Resource Restoration Plan and Environmental Assessment for the Ottawa River Assessment Area is maintained at USFWS Ohio’s office, 4625 Morse Road, Suite 104, Columbus, Ohio.

Now therefore, Metroparks, Toledo, Ohio EPA and USFWS agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.
2. _____ Manhattan Marsh Property. This Environmental Covenant concerns an approximately (**Insert # acres**) acre tract of real property, located in, Lucas County, Ohio, identified as permanent parcel number - - - -, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein (_____ Manhattan Marsh Property). The Environmental Covenant conserves: (*for example, riparian habitat, wooded areas, isolated emergent wetlands, marshes, and aquatic areas as habitat and migration corridors for waterfowl, migratory birds and other wildlife species,*), together hereinafter referred to as “natural resource values” of the _____ Manhattan Marsh Property.
3. Owner. Owner is Metroparks, a park district located within Lucas County, Ohio, created in accordance with Ohio law, and approved by Probate Judge O’Brien O’Donnell on August 1, 1928.
4. Holder. Holder is Toledo.
5. Activity and Use Requirements and Limitations. Pursuant to the Restoration Work Plan approved by the Ottawa Trustees pursuant to the consent decree filed in the United States Consent Decree, *United States, et al. v. The City of Toledo* (N.D. Ohio)

District Court, Northern District of Ohio, Western Division, captioned (INSERT), dated (INSERT) (“the “Consent Decree”), Owner hereby imposes the following activity and use limitations on the _____ Manhattan Marsh Property and agrees to comply with such limitations, unless otherwise agreed to in writing by the Ottawa Trustees:

A. The _____ Manhattan Marsh Property shall be kept in its natural state, *i.e.*, no new buildings, billboards or other structures of any kind, either temporary or permanent, shall be placed or erected on the _____ Manhattan Marsh Property, unless otherwise expressly provided hereunder or in the Statement of Work (SOW) and/or the Restoration Work Plan and/or Work Plan modifications approved by the Ottawa Trustees pursuant to the Consent Decree. Signage that is consistent with the purpose of this Environmental Covenant and whose placement and number do not diminish the natural resource values of the _____ Manhattan Marsh Property are permitted, including (1) educational signage; (2) signs stating the name and address of the _____ Manhattan Marsh Property; (3) signs facilitating directions; and (4) signs identifying the natural resource value of the _____ Manhattan Marsh Property and restricting access to the same.

B. There shall be no filling, excavating, or removal of top soil, sand, gravel, or rock, minerals or other materials on or at the _____ Manhattan Marsh Property, nor any building of roads or change in topography of the land in any manner, other than that caused by the forces of nature, except in accordance with the SOW or Restoration Work Plan and/or Work Plan modifications approved by the Ottawa Trustees pursuant to the Consent Decree. Any new roads or trails constructed on the _____ Manhattan Marsh Property must be of pervious material.

C. There shall be no construction or placement on the _____ Manhattan Marsh Property of new commercial, industrial, or municipal antennas, poles, towers, pipes, conduit lines, or other infrastructure intended for electric power, natural gas, petroleum products, sewage, drainage, telecommunications, or any other utilities; and no sale, transfer, or granting of any interest in the _____ Manhattan Marsh Property for such purposes. However, the Owner reserves the right to maintain and repair telephone, electric, water, wells, or other utility lines or mains on existing easements needed to provide for the needs of the Owner, successors or assigns. The area affected by any repair work for existing infrastructure shall be the minimum necessary to accomplish the task. Upon completion of all construction for such utilities, the area shall be restored to its previous state.

D. The mining or extraction of any mineral, including oil or gas, by any method that disturbs the surface of the land is prohibited. Methods of mineral extraction that are managed so as to have a limited and localized impact on the _____ Manhattan Marsh Property and that do not have a materially adverse effect on the natural resource values of the _____ Manhattan Marsh Property may be permitted upon notice to and approval by the Ottawa Trustees. Owner shall not transfer, encumber, lease, sell, or otherwise separate mineral rights from the _____ Manhattan Marsh Property, except upon notice to and approval by the Ottawa Trustees.

E. Owner shall maintain the _____ Manhattan Marsh Property in order to conserve and enhance the native populations and habitats of fish, wildlife, and plants in accordance with the Restoration Work Plan. The control, management and eradication of animal or plant species on the _____ Manhattan Marsh Property must comply with the State and Federal requirements including the federal Endangered

Species Act, 16 U.S.C. §§1531 to 1599 and applicable manufacturing guidelines. Notice must be given to the Ottawa Trustees prior to implementing any control, management and eradication of any animal or plant species. In the alternative, such notice will not be required for each instance in which the control, management, or eradication is performed in accordance with a plan approved by Ottawa Trustees.

F. No trees, ground cover or other vegetation shall be removed from the _____ Manhattan Marsh Property, except that which is necessary to: maintain foot paths and trails; restore natural habitat areas; promote native vegetation; protect life and property; or comply with the Restoration Work Plan and/or Work Plan or modifications to the Restoration Work Plan and/or Work Plan modifications approved by the Ottawa Trustees pursuant to the Consent Decree.

G. The _____ Manhattan Marsh Property shall at all times be kept free of garbage, trash, and machinery; no other unsightly material shall be allowed to accumulate or be stored thereon.

H. Use of motorized vehicles for recreation, including snow mobiles, all-terrain vehicles or other motorized vehicles, shall not be permitted on the _____ Manhattan Marsh Property. However, motorized vehicles are permitted on the _____ Manhattan Marsh Property to maintain trails on the _____ Manhattan Marsh Property or to comply with the Restoration Work Plan approved by the Ottawa Trustees pursuant to the Consent Decree.

I. Each and every other activity or construction that is inconsistent with the conservation of natural resources or which may endanger, adversely affect, or impair the natural or scenic state of the _____ Manhattan Marsh Property is prohibited.

J. The legal subdivision of the _____ Manhattan Marsh Property, including the recording of a subdivision plan, partition, or any other division of the _____ Manhattan Marsh Property into two or more parcels, is prohibited. The Owner, its successors or assigns shall notify the Ottawa Trustees of any proposed transfer of the _____ Manhattan Marsh Property, or any portion thereof, at least sixty (60) days prior to any such proposed transfer.

6. **Breach.** If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the _____ Manhattan Marsh Property, or any other person, constitutes a breach of the activity and use limitations, Owner, including Transferee, shall notify the USFWS, Ohio EPA and Toledo within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the _____ Manhattan Marsh Property including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. **Running with the Land.** This Environmental Covenant, including the activity and use requirements and limitations set forth in paragraph 5 herein, shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein.

8. **Compliance Enforcement.** In the event of a violation of this Environmental Covenant, a civil action for injunctive and/or other equitable relief may be maintained by the United States on

behalf of the USFWS or the Ohio Attorney General on behalf of Ohio EPA, Toledo or other parties authorized by law pursuant to ORC § 5301.91. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to enforce this Environmental Covenant. Nothing in this Environmental Covenant shall restrict the Ottawa Trustees from exercising their authority under applicable law.

9. Rights of Access. Owner hereby grants to the USFWS, Ohio EPA, Toledo, and their agents, contractors, and employees, at all reasonable times and upon reasonable notice, the right of access to the _____ Manhattan Marsh Property for enforcement of this Environmental Covenant.

10. Compliance Reporting. Owner or any Transferee shall submit to the USFWS, Ohio EPA, and Toledo on an annual basis, written documentation verifying compliance with this Environmental Covenant.

11. Notice upon Conveyance. Each instrument hereafter conveying any interest in the _____ Manhattan Marsh Property, or any portion thereof, shall contain a notice of the activity and use requirements and limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

A. THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE LUCAS COUNTY RECORDER ON, 20 ,IN [DOCUMENT , or BOOK , PAGE ,].

B. Owner shall notify the USFWS, Ohio EPA, and Toledo within ten (10) days after each conveyance of an interest in the _____ Manhattan Marsh Property. Owner's notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the _____ Manhattan Marsh Property being transferred.

12. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto that:

A. The Owner is the sole owner of the _____ Manhattan Marsh Property;

B. The Owner holds fee simple title to the _____ Manhattan Marsh Property which Owner hereby warrants is free and clear of all liens and encumbrances not beneficial to the conservation of natural resources, and is acceptable to the Ottawa Trustees. The _____ Manhattan Marsh Property is subject to the following existing interests or encumbrances: **[Insert any]**;

C. The Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;

D. The Owner has identified all other persons that own an interest in or hold an encumbrance on the _____ Manhattan Marsh Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and,

E. This Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

13. Amendment. This Environmental Covenant may be amended by consent of all of the following: the Owner or a Transferee; the USFWS; the Ohio EPA, and Toledo pursuant to ORC § 5301.90 and other applicable law. The term “Amendment,” as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one activity and use limitation remaining. This Environmental Covenant may be amended only by a written instrument duly executed by the Regional Director of the U.S. FWS, the Director of Ohio EPA, the Director of Public Service of Toledo and the Owner or Transferee of the _____ Manhattan Marsh Property, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the Lucas County Recorder’s Office, and shall provide a file and date-stamped copy of the recorded instrument to the U.S. FWS and Ohio EPA.

14. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

15. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

16. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the _____ Manhattan Marsh Property, with the Lucas County Recorder’s Office.

17. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the _____ Manhattan Marsh Property with the Lucas County Recorder.

18. Distribution of Environmental Covenant. The Owner shall distribute a file- and Date-stamped copy of the recorded Environmental Covenant to: the USFWS; Ohio EPA; and Toledo.

19. Notice. Unless otherwise notified in writing by or on behalf of the current owner, the USFWS, Ohio EPA, or Toledo, any document or communication required by this Environmental Covenant shall be submitted to:

Regional Director
U.S. Fish and Wildlife Service
Region 3
1 Federal Drive
Fort Snelling, Minnesota 55111

DERR Manager
Ohio EPA
50 West Town Street, Suite 700
P.O. Box 1048
Columbus, OH 43216-1049

TOLEDO CONTACT INFO

Director of Public Service
City of Toledo
110 N. Westwood Ave.
Toledo, OH 43607
P: (419) 245-1835
F: (419) 245-1310

With copy to:

General Counsel
City of Toledo
Department of Law
One Government Center, Suite 2250
Toledo,, OH 43604
P: (419) 245-1020
F: (419) 245-1090

Director of Natural Resources
Metropolitan Park District of the Toledo Area
5100 West Central Avenue
Toledo, Ohio 45615-2016
P: (419) 407-9847
F: (419) 482-0684

The undersigned representative of Owner represents and certifies that she/he is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

Metropolitan Park District of the Toledo Area

(signature)

Printed Name and Title

Date

State of Ohio)

) ss:

County of

)

Before me, a notary public, in and for said county and state, personally appeared

, a duly authorized representative of the Metropolitan Park District of the Toledo Area, who acknowledged to me that he/she did execute the foregoing instrument on behalf of the Metropolitan Park District of the Toledo Area.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this

day of , 20 .

Notary Public

Date of My Commission Expiration

OHIO ENVIRONMENTAL PROTECTION AGENCY

Laurie A. Stevenson, Director

Date

State of Ohio)

) ss:

County of Franklin)

Before me, a notary public, in and for said county and state, personally appeared Laurie A. Stevenson, the Director of Ohio EPA, who acknowledged to me that she did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this

day of , 20 .

Notary Public

Date of My Commission Expiration

U.S. Fish & Wildlife Service

Tom Melius, Regional Director, Region 3

Date

State of _____)

) ss:

County of _____)

Before me, a notary public, in and for said county and state, personally appeared Tom Melius, a duly authorized representative of the FWS, who acknowledged to me that he did execute the foregoing instrument on behalf of the FWS.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this

_____ day of _____, 20_____.

Notary Public

Date of My Commission Expiration

CITY OF TOLEDO

Name and Title	Date

State of Ohio)

) ss:

County of)

Before me, a notary public, in and for said county and state, personally appeared _____, the _____ of the City of Toledo, who acknowledged to me that she/he did execute the foregoing instrument on behalf of City of Toledo.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this

_____ day of _____, 20_____ .

Notary Public

Date of My Commission Expiration

Appendix G

Contract Between Toledo and Metroparks

Development Agreement

For the

Manhattan Marsh Restoration Project

Between

City of Toledo

And

**Board of Park Commissioners of the Metropolitan
Park District of the Toledo Area**

This **DEVELOPMENT AGREEMENT** (“**Agreement**”) is made and entered into as of the ____ day of _____, 2019, (“**Effective Date**”) between the City of Toledo, an Ohio municipal corporation (“**City**”), and the Board of Park Commissioners of the Metropolitan Park District of Toledo, Park District, organized and operating pursuant to Chapter 1545 of the Ohio Revised Code (“**Metroparks**”). As used herein, “**Parties**” refers to, collectively, City and Metroparks.

RECITALS

WHEREAS, the parties have jointly planned restoration of the Manhattan Marsh in the vicinity of E. Manhattan Boulevard, Suder Avenue, Bassett Street, and New York Avenue.

WHEREAS, the Manhattan Marsh restoration represents an important opportunity for the City, involving significant investment into north Toledo.

WHEREAS, the Manhattan Marsh restoration will aid the continued development and growth of north Toledo and the general welfare in and around Toledo;

WHEREAS, in order for the Manhattan Marsh restoration to advance and to become a success for the City as a whole, the City and Metroparks will need to cooperate and collaborate with respect to land, infrastructure, and economic issues relating to the Manhattan Marsh Restoration Project;

WHEREAS, the Mayor of the City of Toledo has been authorized to execute this Agreement pursuant to Ordinance No. 132-18 enacted on April 26, 2018, and the Board of Trustees of the Metroparks has approved, by all requisite action, this Agreement and its execution by passage of Resolution _____ on _____, 2017.

NOW THEREFORE, in consideration of the mutual promises, warranties, representations, agreements and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

SECTION 1: DEFINITIONS.

- 1.1. “City” means the City of Toledo, Ohio.
- 1.2. “Consent Decree” or “Decree” means the Consent Decree and all Appendices attached thereto, as well as all plans, reports, or other items or deliverables approved by the Trustees pursuant to this Consent Decree. In the event of a conflict between the Consent Decree and any Appendix hereto, or any plan, report or other item or deliverable approved by the Trustees pursuant to this Consent Decree, this Consent Decree shall govern. A copy of the Consent Decree is attached as Exhibit 1.

- 1.3. “Manhattan Marsh Property” means property composed of a minimum of 50 acres that will be owned by the Metroparks or is currently owned by Metroparks, the Citizens for Buckeye Basin Parks/Manhattan Marsh Preserve, the City of Toledo, or private landowners, and further depicted in attached Exhibit 2.
- 1.4. “Manhattan Marsh Restoration Project” means restoration and maintenance of the Manhattan Marsh Property through controlling invasive plant species within the marsh area, planting native species within the upland marsh, installing nest boxes where appropriate, adding or improving existing water control structure where appropriate, and removing trash and debris from the entire property, all of which is more fully described in the Manhattan Marsh Restoration Statement of Work and Ottawa River Restoration Plan and attached to the Consent Decree as Appendices B and C respectively.
- 1.5. “Metroparks” means the Metropolitan Park District of the Toledo Area, a park district located within Lucas County, Ohio, created in accordance with Ohio law.
- 1.6. “Restoration Work Plan” means the work plan for the Manhattan Marsh Restoration Project, as required by Section III of the Manhattan Marsh Restoration Statement of Work.
- 1.7. “Trustees” means the U.S. Department of the Interior and the Ohio Environmental Protection Agency.

SECTION 2: LAND CONVEYANCES.

- 2.1. **City Parcel Conveyance.** The City shall convey to Metroparks, in fee simple, without fee or charge except as otherwise provided for in this Section 2, the parcels and land, comprising the Manhattan Marsh Property to Metroparks identified in the Consent Decree and attached as Exhibit 1 to this Agreement. The conveyance shall be made free of any City or other encumbrances. Upon conveyance, the Metroparks shall maintain ownership of the Manhattan Marsh Property in perpetuity subject to an environmental covenant approved by the Trustees and the requirements of the Restoration Work Plan.
- 2.2. **Timing of Conveyances.** Conveyances shall be made commencing 90 days after approval of the Restoration Work Plans and 60 days from the date Metroparks notifies the City in writing that all conditions precedent to its plans to proceed with the Manhattan Marsh Restoration Project have been satisfied, including, but not limited to, securing necessary governmental approvals to proceed with the Manhattan Marsh Restoration. All conveyances shall be completed within one year following approval of the Restoration Work Plan.
- 2.3. **Recording Fees.** The Parties shall be responsible for paying recording fees in accord with local custom.

SECTION 3: CITY COMMITMENTS.

- 3.1. **City Contribution.** The City, within sixty (60) days of the Effective Date, shall pay the Metroparks \$241,500.00 for the City's contribution to the costs of the Metroparks' completion of the Manhattan Marsh Restoration Project.
- 3.2. **Paper Streets.** The City agrees to vacate all those streets identified in Exhibit 2, subject to application and approval processes specified under the Charter and Municipal Code of the City of Toledo, and convey to Metroparks under the vacation ordinance or by separate ordinance and deed as owner of an adjoining parcel.
- 3.3. **Fees and Costs for Vacations.** The City agrees to waive the acquisition cost (purchase price based on the value of the vacated area) in connection with the vacations under this Section 3. Metroparks will be responsible for customary application fees, engineering costs, and deed recording fees in connection with the vacations.
- 3.4. **Governmental Process/Funding Support.** The City will use its best efforts to support Metroparks' applications for state and federal government approvals, funding, or grants as requested by Metroparks and consistent with the Manhattan Marsh Restoration Project. The City agrees to facilitate and expedite, to the extent legally permissible and reasonable, Metroparks' applications for plan approvals and permits as required by the City Charter and the Toledo Municipal Code pertaining to the Manhattan Marsh Restoration Project.
- 3.5. **Excavation Bond/Deposit Waiver.** The City shall waive bond and deposit requirements under Toledo Municipal Code Ch. 905 and section 127.05 for street or utility cuts and repairs in and to the City's right-of-way necessary to construction of the Manhattan Marsh Restoration Project.
- 3.6. **City Council Appropriation.** Any commitments and obligations under this Agreement that involve expenditures in future years shall be subject to future appropriations by City Council.

SECTION 4: METROPARKS' COMMITMENTS.

- 4.1. **Consent Decree.** The Metroparks shall provide a copy of the Restoration Work Plan and the Consent Decree, including the Manhattan Marsh Restoration Statement of Work, to each contractor hired to perform the restoration and maintenance work required by the Consent Decree and to each person representing the Metroparks with respect to the restoration and maintenance work, and shall condition all contracts entered into hereunder upon performance of restoration and maintenance work in conformity with the Consent Decree. The Metroparks, or its contractors, shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the restoration and maintenance work required by the Consent Decree. The Metroparks shall be responsible for ensuring that the contractors and subcontractors perform the restoration and

maintenance work contemplated by the Consent Decree in accordance therewith. With regard to the activities undertaken pursuant to the Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the City within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. §9607(b)(3). All restoration work shall be completed within five years after the Trustees' approval of the Restoration Work Plan. All restoration work shall be subject to Trustee approval as provided in the Consent Decree. All maintenance work shall be performed pursuant to the Manhattan Marsh Restoration Statement of Work and the Restoration Work Plan.

- 4.2. **Local Minority, Women & Veteran-Owned Business Enterprise Participation.** Metroparks has an ongoing commitment to minority and women inclusion and diversity in its workforce and among its contractors (the “*Minority and Women Diversity Initiative*”). Metroparks will, in good faith, extend its Minority and Women Diversity Initiative to minority-owned business enterprises (“*MBE*”), women-owned business enterprises (“*WBE*”) and veteran-owned business enterprises (“*VBE*”) in connection with the Manhattan Marsh Restoration to maximize the opportunities for local MBE, WBE and VBE contractors to compete for and participate in contract and subcontract work related to the construction of the Manhattan Marsh Restoration with the goal that participation by MBE, WBE or VBE contractors located within Lucas County or any adjoining county shall constitute collectively at least 15% of the total contracted construction costs. Metroparks agrees to document and share with the City its MBE, WBE and VBE participation in the project.
- 4.3 **Permits and Plan Approvals.** Metroparks agrees to abide by the requirements, related to zoning, plan approvals, building codes, and permits of the City Charter and Municipal Code.

SECTION 5: PUBLIC RECORDS.

- 5.1. **Applicability of Sunshine Law.** The parties each acknowledge that they are subject to Ohio Revised Code (ORC) Section 149.43 (the “Public Records Act”) that requires political subdivisions of the State to grant public access to information about the affairs of government and the official acts of public officials and employees. Disclosure under the Public Records Act is subject to certain exemptions, including an exemption that protects trade secret information from release. “Trade secrets” are protected in the State by operation of ORC sections 1333.61 to 1333.69 of the Ohio Revised Code (the “Trade Secrets Act”). The Trade Secrets Act, Section 1333.61(D), defines “trade secret” as follows:

“Trade secret” means information, including the whole or any portion or phase of any scientific, or technical information, design, process, procedure, formula, patter, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

(1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Either party shall not be obligated to maintain in confidence any information that is not a trade secret including information that is publicly known or becomes publicly known through no fault of either party, or that comes to either party from a third party in a manner not in violation of any obligation of confidentiality by such third party to either party.

5.2. **Acknowledged Public Record.** Metroparks and the City acknowledge that this Agreement with all attachments and exhibits is and shall be public record subject to disclosure. Metroparks and the City acknowledge that all applications made to the City for related to zoning, plan approvals, grants, tax incentives and permits are and shall be public records subject to disclosure.

SECTION 6: LIABILITY AND INDEMNIFICATION.

6.1. **Deleted by parties.**

SECTION 7: MISCELLANEOUS.

7.1. **Notices.** Any notice or other communication required or permitted hereunder will be in writing and will be deemed sufficiently given if: (a) delivered personally; (b) sent by registered or certified U.S. Mail, return receipt requested, postage prepaid; (c) sent by a national overnight delivery service (e.g., Federal Express); or (d) sent by facsimile, provide that confirmation of facsimile is sent by regular or other reasonable means, in each instance addressed, sent for delivery or delivered personally as follows:

If to Metroparks:

3100 West Central Avenue
Toledo, Ohio 43615-2016
Attention: _____

With Copy To:

If to City:
Mayor, City of Toledo
One Government Center, Suite 2200
Toledo, Ohio 43604

Law Department
One Government Center, Suite 2250
Toledo, Ohio 43604
Attention: Law Director

or to such other address or to the attention of such other person as will be furnished by like notice to the other Party. Any such notice or communication personally delivered or sent by facsimile will be deemed to have been given when received, and any such notice or communication sent by U.S. Mail will be deemed to have been given on the earlier of the actual date of receipt or three (3) days after the date of duly sending same, and any such notice or communication will delivered by overnight courier will be deemed delivered the day after deposit with such courier provided such deposit was made in time, in accordance with terms of such courier, for such courier to make delivery the following day otherwise the date the courier was to have made delivery in accordance with its terms.

- 7.2. **Captions.** Captions in this Agreement are included for convenience of reference only, are not a part of this Agreement, and will not be used in interpreting or construing this Agreement.
- 7.3. **Time.** In computing any period of time prescribed by this Agreement, the day of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days.
- 7.4. **Counterparts.** Several copies of this Agreement may be executed by all of the Parties and will be deemed fully executed and binding on the Parties when each Party has signed one of the counterpart copies, notwithstanding that all Parties have signed all counterpart copies. Once each Party has signed at least one counterpart copy of this Agreement, all executed copies of this Agreement constitute one and the same Agreement, binding upon all parties, regardless of whether any one or more executed copies do not contain the signatures of all Parties.
- 7.5. **Construction of Agreement.** This Agreement has been prepared jointly by each Party and their respective professional advisors. Each Party and their respective advisors believe that this Agreement is the product of all of their efforts, it expresses their understanding and agreement, and, therefore, this Agreement shall not be interpreted in favor of or against any Party merely because of the extent of their efforts in preparing it.
- 7.6. **Governing Law.** This Agreement shall be governed by and interpreted under the laws of the State of Ohio, and any action or proceeding arising from this Agreement shall be commenced in a court of competent jurisdiction located in Lucas County, Ohio.
- 7.7. **Non-Discrimination.** Consultant agrees that it will not discriminate against any customer,

employee or applicant for employment because of race, ancestry, religion, color, sex, age, national origin or disability, or other legally protected status.

- 7.8. **Assignment/Compliance with Law.** Neither party may assign or transfer rights and obligations under this Agreement without the written consent of the other party. Each party agrees that it will perform its obligations in accordance with all applicable Ohio laws, rules, and regulations now or hereinafter in effect.
- 7.9. **Exhibits Incorporated.** All Exhibits attached hereto are incorporated as part of this Agreement.
- 7.10. **Entire Agreement.** This Agreement, including any subsequent amendments, contains all representations and the entire understanding of the agreement between the parties. No changes to this Agreement shall be valid unless made by a written amendment executed and approved by the parties. Time is of the essence of this Agreement. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
- 7.11. **Authority to Execute.** The signatory or signatories hereto on behalf of Metroparks and the City warrant(s) and represent(s) that they have the power and authority to enter into this Agreement and have been duly authorized to execute this Agreement.

**[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]
[SIGNATURE PAGE FOLLOWS NEXT]**

IN WITNESS WHEREOF, each Party to this Agreement has caused this Agreement to be executed by their duly authorized representative intending the same to be effective on the “Effective Date” set forth above.

CITY OF TOLEDO

By: _____
Wade Kapszukiewicz, Mayor

**BOARD OF PARK COMMISSIONERS
OF THE METROPOLITAN PARK
DISTRICT OF THE TOLEDO AREA**

By: _____
Board President

By: _____
Executive Director

APPROVED AS TO FORM:

By: _____
Director of Law

APPROVED AS TO CONTENT:

By: _____
Director of Public Utilities

By: _____
Director of Public Service

LIST OF EXHIBITS

EXHIBIT	DESCRIPTION
1	Consent Decree
2	Manhattan Marsh Property
3	City Conveyance Parcels

Appendix H
Dike Property

