

## 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