

**LICENSE AGREEMENT FOR USE OF PROMENADE PARK
AS A CONCERT VENUE**

Licensee: ***HBC Management, LLC***

This License Agreement is entered into this ____ day of _____, 2023 by and between the City of Toledo ("City"), through its Department of Parks and Youth Services, an Ohio municipal corporation, with a primary mailing address of One Government Center, Suite 2200, Toledo, Ohio 43604, and HBC Management, LLC ("Licensee"), an Ohio limited liability company, with a primary mailing address of 3010 Stewart Rd., Monroe, Michigan 48162.

RECITALS

WHEREAS, the City finds it is in the interest of the City and its citizens to support entertainment events within the downtown and to promote the use and enjoyment of Promenade Park by both citizens and visitors; and

WHEREAS, Licensee desires to utilize Promenade Park, as depicted in Attachment A (the "Site"), for the purpose of arranging/sponsoring ticketed concerts and related entertainment events open to the general public (the "Events"); and

WHEREAS, the City finds that the use by Licensee for the above stated purpose will not unduly interfere with the requirements of the City or the public's enjoyment of the Site; that and the Site is not needed for other City purposes at the time or times authorized for use by Licensee under this Agreement; and

WHEREAS, This License Agreement is authorized by Ordinance ____-____ passed on _____.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the Parties agree as follows:

1. Incorporation of Recitals and Attachments. The above recitals and all Attachments referenced herein are incorporated into this Agreement as if fully rewritten herein in their entirety.
2. Grant of License. City, for and in consideration of the license hereinafter expressed, hereby grants to Licensee a limited license to enter and have use of the Site during the term of this Agreement for Events on such days and times (the "Event Days") as shall be specified in accord with the provisions of this Agreement (the "License"). No estate in real property is conveyed by this License. This License is only exclusive for Event Days, which shall include such times or days preceding and following the day of the actual Event as necessary to support its use of the Site for the Event, including for purposes of preparation, set-up, clean-up or take down and/or Site restoration. Other than for Event Days use of the Site is non-exclusive and the Site shall be open and available for use by the general public, with the limited exception that public access to an area

of the lower portion of the Site containing the stage and some seating enclosed by fencing may be restricted on non-Event Days. This limited exception does not apply to, and Licensee shall be obligated to maintain, public access to the riverside walkway on non-Event Days.

3. Licensee's Commitment.

A. Licensee commits to produce a minimum of ten (10) Events at the Site each season during the initial term of the License; provided, however, that Licensee will be excused from this requirement if it is prevented by an event of Force Majeure as defined in Paragraph 13 of this Agreement.

B. Licensee commits to working with the City, community and non-profit entities interested in using the Site, in whole or in part, for a licensed or permitted event.

C. In consideration for the nominal License Fee, Licensee agrees to work in good faith to facilitate the use of its seasonal stage, seating and fencing at a reasonable rate to support community events at the Site by non-profit parties.

4. Licensee's Use of Site.

A. Licensee's use of the Site shall be restricted to the purpose of sponsoring or putting on Events available for public enjoyment on the scheduled Event Days and uses necessary to supporting the other named uses in this section.

B. Licensee shall not knowingly violate or permit any violation of any Federal, State, or local law or regulation and shall abide by all applicable state and local fire and safety codes and secure all applicable permits and clearances.

C. Licensee shall not make any alterations to the Site, including any fixtures, building systems, or equipment, hardscape or landscaping, or other improvements, except for the temporary addition of staging, seating or other equipment required for the Event Days, with certain staging, fencing and seating permitted to remain in place for the term of the License as agreed by the City. As soon after the conclusion of an Event as is commercially reasonable, the Site shall be left in as clean and safe a condition as the Property was prior to the Event Day, reasonable wear and tear excepted. The Licensee shall restore the Site to its original state and remove from the Site all property and materials belonging to the Licensee, except as otherwise agreed in writing by the City under this License Agreement or an amendment thereto. If Licensee or Licensee's invitees damages the Site, City shall have the option of either (i) requiring Licensee, at Licensee's own expense and risk, to restore the Site to the condition existing prior to the Event, or (ii) itself making the repairs and restorations to the Site. City shall have sole and complete discretion in deciding which option to exercise 14 days after the City presents the Licensee with a written statement detailing the damage done to the site. If City decides to itself make the repairs and restorations to the Site, the costs for same shall be borne solely by Licensee. Licensee shall reimburse City for any repairs or restoration necessary to repair damages to the Site caused by Licensee or the attendees of the Event no later than ten (10) business days after City presents Licensee with a written statement or invoice reflecting the nature and costs of the repairs.

D. Licensee shall exercise care in the use of the Site. Licensee agrees to keep the Site in a clean, safe, sanitary and orderly condition and to remove all waste material as soon after the conclusion of the Event as is commercially reasonable, unless City agrees, in writing, to be responsible for cleanup, removal of waste or recycling.

E. Licensee agrees to so organize its activities as to cause as little disruption as commercially reasonable to other uses of adjacent areas and not to interfere with the regular operations of City or neighboring businesses. During Event Days, Licensee shall maintain public access to the Sandpiper Boat Dock at the termination of Jefferson Avenue and the public transient docks along the Promenade Park riverfront as identified on Attachment A. To the extent that disruptions are unavoidable, Licensee shall communicate such to the City and cooperate with the City to mitigate the negative impacts to the extent reasonable and to ensure safety.

F. Attachment B to this Agreement delineates certain dates that are reserved for limited annual community events at the Site. Licensee shall not schedule an Event or reserve a date that conflicts with the days and events reserved in Attachment B. Licensee shall notify the City's Department of Parks and Youth Services on or before February 1, 2024 of its schedule of Event Days for the year. The schedule may include reserved dates as to which Licensee has a good faith belief that it may schedule an Event but has not yet done so ("Reserved Dates"). After Licensee provides its schedule to the City, other community organizations may reserve the Site for events. After February 1, 2024, Licensee also may schedule additional Event Days for any open time period. The City and the Licensee shall notify each other as early as is practicable concerning a new reservation of the Site or the release of a previous reservation of the Site. In any event, each Reserved Date will be released automatically if Licensee does not have an Event scheduled at least 60 days prior to that Reserved Date.

G. Community organizations, both those involved in events listed in Attachment B and others who reserve the Site under the terms of Section 4.F of this Agreement (collectively "Community Organizations") may use Licensee's stage and other items present at the Site under the following terms and conditions:

- i. each Community Organization not affiliated with the events listed in Attachment B must be approved by the city prior to scheduling an event at the Site;
- ii. there will be no charge for the use of Licensee's stage;
- iii. each Community Organization will be required to provide proof of adequate insurance as required by Section 6.F of this Agreement;
- iv. each Community Organization will be required to reimburse Licensee for the actual costs that Licensee incurs in connection with the Community Organization's use of Licensee's stage, including without limitation the cost of Licensee's personnel who will be present during the Community Organization's use of Licensee's stage (including wages, travel costs, and

lodging), equipment usage, and any other reasonable out-of-pocket expense incurred by Licensee; for the avoidance of doubt, there will be no markup on any of the costs that will be passed on to the Community Organization;

- v. if any Community Organization wishes to use any of Licensee's equipment, such as audio or video equipment, the Community Organization will be required to reimburse Licensee for all additional actual expenses Licensee incurs in connection with such usage, including without limitation the cost of transporting such equipment to the stage; and
- vi. if any Community Organization wishes to use equipment provided by a vendor other than Licensee on the stage or in connection with the Community Organization's use of Licensee's stage, that Community Organization must first (a) provide Licensee with the name of the vendor, the type of equipment that vendor proposes to use (including specific model or type), and all other details relating to the use of the vendor's equipment, and (b) obtain Licensee's written approval of that vendor and its equipment.

H. No less than 30 days prior to an Event under this License, Licensee shall communicate Event plans with the following City Departments: Parks and Youth Services, Public Service, Fire and Rescue, Police, and Public Safety. The City agrees to designate department contacts for Licensee. Licensee shall supply, upon request by City, information reasonably deemed by City to be relevant to Licensee's use of the Site. The City shall coordinate all aspects of maintenance and routine operations of the Site, including, but not limited to: routine mowing, bulk trash pick-up, operation of the splash pad and other permitted or licensed events.

I. Licensee shall: (i) maintain order and provide protection for persons and properties; (ii) shall not permit a breach of the peace or any act which might endanger life, limb, health or property; and (iii) upon determination of necessity by City at any time, shall provide or increase the number of police/security personnel, at Licensee's sole expense. Licensee shall take any additional commercially reasonable precautions as the City may reasonably require for safety and accident prevention purposes. Licensee shall be responsible to supervise all personnel whom Licensee hires, and all media representatives. City reserves the right to eject, or cause to be ejected, any person or persons as it deems necessary for public safety, security, keeping of the peace or for violations of law. Neither City nor its officers or employees shall be liable to Licensee for consequential damages.

J. City reserves the right to enter and inspect the Site at any time for any purpose during the Event. City shall not interfere in the operation of the Event, except as necessary for safety or security issues or violations of applicable state or city codes. Licensee agrees to comply with directives from City officers.

K. Licensee shall be responsible for all costs related to the Events under the License, including but not limited to utilities, equipment set-up, take-down, fencing, ticketing, and security. Licensee shall supply electricity for all equipment, and lighting, and staging and special seating to be used for the Events. The City agrees to provide Licensee with access to certain supporting utility

infrastructure to the Site, including access to on Site electrical power. Licensee shall be responsible for procuring and setting up additional generators if necessary to support an Event.

L. Licensee, at its sole expense, shall be responsible for the routine mowing during the License term of a portion of the Site that will be used for the seasonal stage and seating areas. The City, at its sole expense, shall be responsible for routine mowing the other portions of the Site. The portions of the site that are subject to the Licensee and City routine mowing responsibilities are outlined in Attachment C.

5. Assumption of Risk, Waiver.

A. City does not have liability for nor does it insure the personal property of the Licensee or its employees, agents, guests or attendees against damage or loss by any means. Licensee assumes the risk of any such damage or loss. Licensee acknowledges that the Site is a public park and assumes the risk of placing and leaving its property on the Site, including the risk of potential damage from third parties. Licensee assumes the risk of the use of the Site "As Is".

B. WAIVER OF WARRANTIES AND DAMAGES. CITY MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO SITE (OR ANY COMPONENT THEREOF) AND HEREBY SPECIFICALLY DISCLAIMS ANY AND ALL SUCH REPRESENTATIONS OR WARRANTIES. CITY FURTHER SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES WITH RESPECT TO THE SITE (OR ANY COMPONENT THEREOF), INCLUSIVE WITH RESPECT TO ITS CONDITION, OR FITNESS FOR ANY PARTICULAR USE. IN NO EVENT SHALL CITY BE LIABLE TO LICENSEE OR TO ANY OTHER PERSON CLAIMING THROUGH LICENSEE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES RESULTING FROM CONDITIONS AT THE SITE OR LICENSEE'S EXERCISE OF ITS RIGHTS PURSUANT TO THIS AGREEMENT.

6. Insurance Requirements.

A. Licensee shall procure and maintain for the term of the License insurance against claims for injuries to persons or damages to property which may arise from or occur in connection with the use of the Site and the activities of the Licensee, its guests, agents, representatives, employees, or subcontractors. The cost of such insurance shall be borne by Licensee.

B. Licensee shall maintain commercial general liability insurance coverage, including personal injury and blanket contractual liability insurance covering obligations with respect to injuries to persons and property described in Section 8 below, with a financially responsible insurer authorized to do business in Ohio in amounts not less than _____ Million Dollars (\$____,000,000.00) per occurrence and not less than _____ Million Dollars (\$____,000,000.00) in the aggregate with respect to occurrences or events at the Site and activities of Licensee. Such insurance policies shall (i) provide primary coverage; (ii) be written on an occurrence, not a claims made, basis; (iii) name the City as an additional insured (ISO form CG 20 10 (11 85) or equivalent). The provision of this Section 6 requiring Licensee to carry insurance shall not be construed as waiving or limiting the obligations of Licensee under Section 8 of this License Agreement or any other provision of this Agreement.

C. Licensee is responsible for ensuring that its employees, contractors and subcontractors and employees of the same, and other workers or performers on the Site are covered by Workers Compensation insurance.

D. Vehicles brought onto the Site by Licensee or any of its vendors or service providers, whether owned, non-owned or hired vehicles, shall be insured at not less than \$1,000,000 bodily injury and property damage per occurrence.

E. Licensee shall furnish the City with such certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements must be actually received by the City at least four days before an Event Date. If the certificates and endorsements are not timely delivered to and received by the City, the Licensee shall have no right to use the Site.

F. The City will require other users or licensees of the Site, pursuant to events described in Section 3.B and Attachment B, to provide proof of insurance in a similar manner as required by Licensee if using the portions of the Site that include staging or seating areas installed by Licensee and require that such other licensee name the Licensee as an additional insured. Licensee shall be entitled, and it shall be its responsibility, to negotiate terms with any other licensees for use of Licensee's staging, seating or other property remaining at the Site during the Term of this Agreement in accordance with Section 3.

7. Liquor Liability. If Licensee will be supplying alcoholic beverages, the general liability insurance shall include host liquor liability coverage. If Licensee is using a caterer or other vendor to supply alcohol that vendor must have liquor liability coverage. If Licensee intends to sell alcohol either the Licensee or vendor providing the alcohol for sale must have a valid liquor sales license and liquor liability insurance covering the sale of alcohol. Proof of such license shall be provided to the City.

8. Indemnification and Hold Harmless.

A. Licensee shall defend, indemnify and hold harmless the City, and its officials, employees, officers, volunteers and agents (collectively, the "City") from and against any and all claims, liability, loss, damage, expense, costs (including without limitation costs, attorney's fees and fees of litigation) of every nature, including personal injury or death, arising out of, or in connection with, or relating to Licensee's use of the Site, or its failure to comply with any of its obligations contained in this Agreement, except to the extent such loss or damage was caused by the negligence or willful misconduct of the City. To the extent permitted by local, state, and federal law, the City shall be responsible any and all claims, liability, loss, damage, expense, costs (excluding, attorney's fees and fees of litigation or loss of profits), including personal injury or death, arising out of, or resulting from the City's negligent actions or willful misconduct at the Site, excluding any injury occurring as result of conditions on the Site for which Licensee assumes the risk under this Agreement. The City's liability under this section does not extend to liability for any action or occurrence for which immunity is provided to the City, its officers, agents or personnel under Ohio law. The City is not liable for the actions or negligence of third parties,

including other licensees using the Site pursuant to events described in Section 3.B and Attachment B.

B. Licensee shall ensure that all concerts or events performed under this License Agreement at the Site comply with any and all applicable licensing requirements related to any performance or use of any copyrighted music, songs or other copyrighted materials or trademarks, including ASCAP licenses if applicable. Licensee shall defend, indemnify and hold harmless the City from any and all causes of action, claims, damages, costs or expenses arising out of any violation of any license, copyright or other intellectual property rights related to or arising from Licensee's and/or all booked artists and/or performers use of the Site under this License Agreement.

C. In addition to paragraphs A and B above, Licensee shall indemnify the City to the same extent that Licensee is indemnified under its agreements with performers, artists or suppliers and/or subcontractors related to any causes of action, claims, damages, losses or expenses incurred from or arising out of activities undertaken under this Agreement.

D. The indemnifications under this Section 8 are in addition to and not limited by any insurance requirements of Licensee under this Agreement.

9. Term and Termination.

A. The initial term of this License shall commence on May 1, 2024 and terminate as of October 31, 2024 (the "Initial Term"). In addition to the Initial Term there shall be two one-year options for renewal for the same months as for the Initial Term in 2025 and 2026 (the "Renewal Term(s)"). Each Renewal Term shall require the mutual agreement of the parties and shall be executed by written amendment or addendum to this Agreement signed by the parties, with such amendment or addendum to include the City's reserved dates for the Renewal Term.

B. Licensee may cancel an Event without penalty upon notice to City at least thirty (30) days in advance of scheduled Event Days, unless the cancellation is by reason of Force Majeure, in which case the 30-day notice is waived. Licensee may also terminate this Agreement upon 30 days' notice for its convenience.

B. This License may be terminated by the City due to a default of the Licensee in accordance with the provisions of Section 9 or if an event of Force Majeure prohibits use of the Site indefinitely and such indefinite period of time is anticipated to exceed 90 days.

10. Default.

A. An "Event of Default" or "default" shall mean, whenever used in this License, any failure by the City or Licensee, or its employees, contractor, subcontractor or agents to observe and perform any covenant, condition or agreement in this License on its part to be observed or performed and the lapse of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, given to the Defaulting party, unless such party shall have begun to

cure the failure within the 30 day period and proceeded with diligence and good faith to accomplish the cure.

C. Following an Event of Default, the Parties shall have, in addition to any other remedies available at law, the option, but not the obligation, to terminate this License.

D. The waiver or failure to insist upon a strict performance of any term, condition or covenant contained in this License shall not be deemed a waiver of any rights or remedies that the parties may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions or covenants herein contained. No breach of a covenant or condition of this License shall be deemed to have been waived unless such waiver is in writing.

E. Nothing in this Agreement limits the ability of the City to avail itself of the protections offered by applicable law affording immunity to the City, inclusive of Ch 2744 of the Ohio Revised Code.

11. License Fee and other Costs

A. The Licensee shall pay base license fee or rent ("Base Fee") for the Term in the aggregate sum of Ten and 00/100 Dollars (\$10.00), which Base Fee shall be paid within 10 days after execution of this License.

B. The Licensee shall pay, as additional fees ("Additional Fee"), all applicable amounts, fees, taxes, costs and charges that may be required based on Licensee's use of the Site or Events pursuant to the Toledo Municipal Code provisions or regulations or as may be negotiated in an Addendum to this Agreement.

C. All fees payable by the City shall be paid without prior demand, deduction, offset or counterclaim of any kind or nature whatsoever, except as otherwise specifically provided herein or by Addendum.

12. Taxes.

A. Licensee shall comply with applicable State of Ohio and City law related to activities performed under this License, including withholding or reporting income taxes for its employees. Licensee shall cooperate with City to provide City with requested information related to Events held pursuant to this Agreement.

B. Licensee acknowledges that the Site is currently tax-exempt (except as to charges for assessments which are the City's responsibility) for state and local property taxes. As the exemption is based on the public use of the Site, Licensee agrees that to the extent that use of the Site for the purposes of this Agreement would result in the application of additional property taxes, the Licensee shall promptly upon request of the City reimburse the City for such a portion of accrued tax liability during the term of this License agreement in a percentage equivalent to the percentage of days during the Agreement term that such property is held for exclusive use by Licensee.

13. Force Majeure. City and Licensee reserve the right to postpone or cancel any event if, at the reasonable discretion of either Party, weather conditions, Site conditions, or other unforeseen circumstances or occurrences, including but not limited to, fire, casualty, strikes, labor disputes, war, acts of God, epidemic, pandemic, operation of federal state or local laws, regulations or orders or other events of force majeure beyond the reasonable control of the parties render fulfillment of the license difficult or impossible to perform.

14. Non-Discrimination. Licensee covenants that during the performance of this License, Licensee shall not deny the License's benefits to any person, and shall not discriminate unlawfully against any employee or application for employment on the basis of race, religion, color, national origin or ancestry, sex, age, sexual orientation, military status, physical or mental disability or other unlawful forms of discrimination.

15. 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 court of competent jurisdiction located in Lucas County, Ohio.

16. Entire Agreement /Assignment. This Agreement including any subsequent amendments, contains all representations and understanding of the agreement between the parties. Neither party may assign or transfer rights and/or obligations under this Agreement without the written consent of the other party. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement.

17. Amendment. This Agreement may only be amended by a written agreement signed by both Parties.

18. Captions. The captions, section and paragraph numbers in this Agreement are inserted for convenience of reference only, are not a part of this Agreement, and will not be used in interpreting or construing this Agreement.

19. Authority to Execute. The signatory or signatories hereto on behalf of HBC Management, LLC and the City represent they have the power and authority to enter into this Agreement and have been duly authorized to execute this Agreement.

(end of text; signature page follows)

LICENSOR: CITY OF TOLEDO

LICENSEE: HBC MANAGEMENT, LLC

By: _____

By: _____

(printed name)

(printed name)

Date: _____

Date: _____

Approved as to Content:

Director of Parks and Youth Services

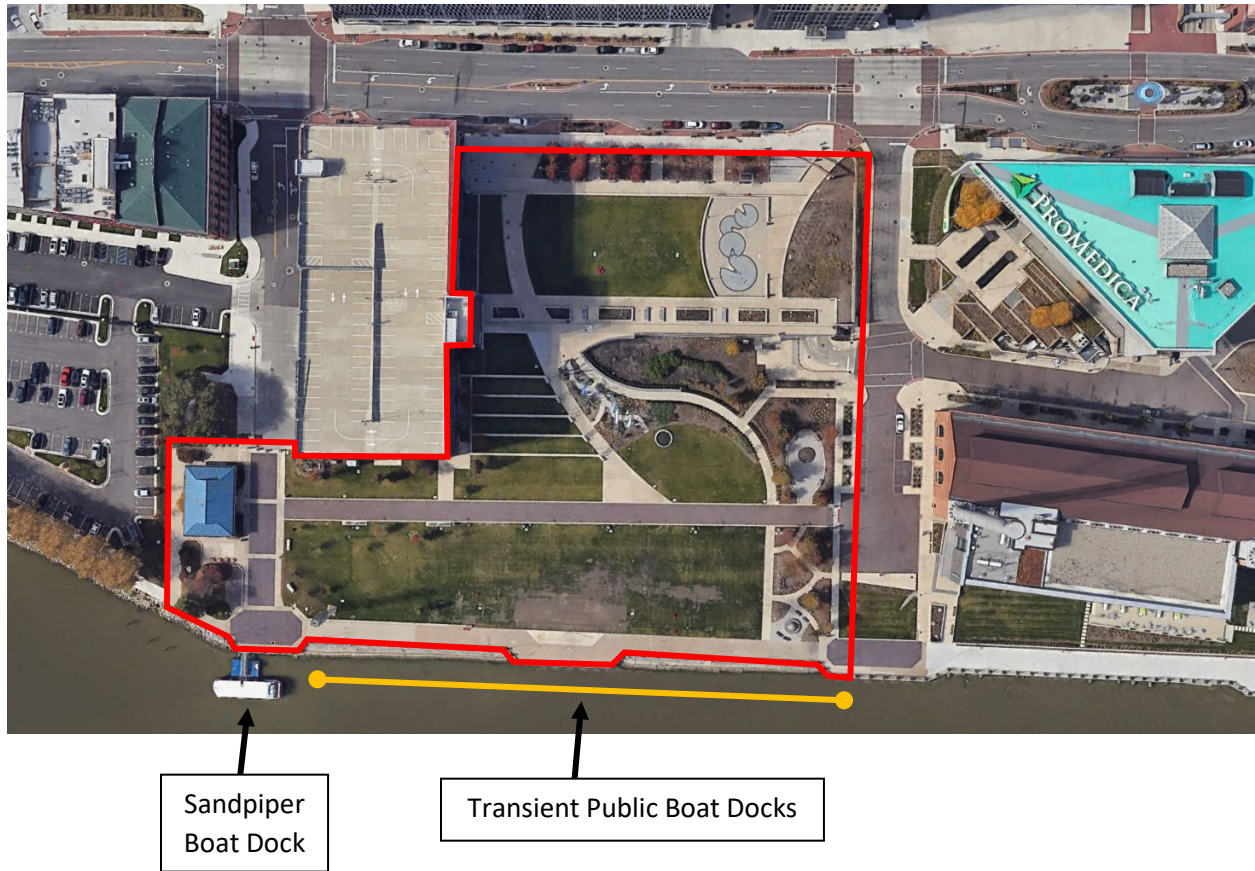
Approved as to Content:

Director of Economic Development

Approved as to Form:

Law Department

ATTACHMENT A – Site Depiction



ATTACHMENT B - City Reserved Community Event Days

▪ Fourth of July	July 6, 2024
▪ African American Festival	July 20, 2024
▪ Toledo Jeep Fest	August 2-4, 2024
▪ Toledo Pride Festival	August 16-18, 2024
▪ Strictly R & B	August 25, 2024
▪ Chalk Walk	August 29, 2024
▪ Latino Fest	September 14, 2024
▪ Momentum Art Festival	September 19-22, 2024
▪ Walk out of the Darkness Walk	October 5, 2024
▪ Toledo Walk to Defeat ALS	October 6, 2024
▪ LLS Light the Night Walk	October 13, 2024
▪ Alzheimer's Association Walk	October 12, 2024

ATTACHMENT C – Routine Mowing Responsibilities

