

h [Draft – 01/09/19 – FOR DISCUSSION PURPOSES]

Development Agreement

For the

Maumee Riverfront Metropark Project

Between

City of Toledo

And

The Metropolitan Park District of the Toledo Area

This **DEVELOPMENT AGREEMENT FOR THE MAUMEE RIVERFRONT METROPARK PROJECT (“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 Metropolitan 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 the development of the riverfront metropark (“Riverfront Metropark”) in the vicinity of Front Street-Main Street-South Marina Drive and Riverside Drive in the City of Toledo, Lucas County, Ohio.

WHEREAS, the Riverfront Metropark restoration represents an important opportunity for the City, involving significant investment into east Toledo.

WHEREAS, the Riverfront Metropark restoration will aid the continued development and growth of east Toledo and the general welfare in and around Toledo;

WHEREAS, in order for the Riverfront Metropark 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 Project;

WHEREAS, the Mayor of the City of Toledo has been authorized to execute this Agreement pursuant to Ordinance No. ____-19 passed by Toledo City Council on _____, 2019, and the Board of Trustees of the Metroparks has approved, by all requisite action, this Agreement and its execution by passage of Resolution _____ on _____, 2019.

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: DEVELOPMENT ITEMS:

- 1.1. **Construction of Project.** Metroparks agrees to acquire the necessary property and, at its cost and expense, construct the project on the project site as identified in Exhibit A attached hereto and incorporated herein. Project construction on Phase One of the project as set forth on Exhibit B shall be completed within three (3) years of the Effective Date. Metroparks’ construction of the project shall be in accordance with all the terms and conditions of zoning, plats, site plans, and approvals by the Architectural Review Committee, Toledo-Lucas County Plan Commission, and Toledo City Council. City agrees to cooperate with Metroparks in obtaining such approval as may be required to

complete the project.

- 1.2. **Vacation of Riverside Drive.** Metroparks, at Metroparks' cost and expense, within 30 days of the Effective Date shall, with the assistance of the City, file an application with the Clerk of Toledo City Council to vacate those portions of Riverside Drive identified in Exhibit A attached hereto and incorporated herein. Said vacation shall reserve to the City a 60 foot full width easement across the entire length of vacated Riverside Drive for purposes of the City's continued maintenance and operation of existing public utility infrastructure. Said easement will remain until such time as a new water main loop on the Morrison Drive extension is placed in service. Forthwith upon the Morrison Drive water main loop being placed in service, the City will execute and deliver needed instruments to release the Riverside Drive easement.

Within 90 days of the Effective Date, Metroparks shall promptly notify the City's Department of Public Utilities, Division of Water Distribution, of the Metroparks' request to remove the fire hydrants along vacated Riverside Drive. Provided that fire protection as determined by the City is not required. All costs and expenses of the removal of the fire hydrants shall be paid for by Metroparks. The removed fire hydrants and associated infrastructure shall remain the property of the City. Should the Metroparks elect to abandon all or part of the water main subsequent to the completion of the vacation, Metroparks shall be responsible for the filling and plugging of the water main at Metroparks' expense. Any filling or plugging shall be performed to the satisfaction of the City's Director of the Department of Public Utilities. The City, at City's expense, shall cut and plug the eastern end of the 16 inch water main west of the first 16 inch valve for the purposes of retaining service in the event a loop is required for the future Phase II of the Metropark project development. In the event that it is determined by the Metroparks that a loop is not required, then Metroparks, at its cost and expense, shall request the City's Department of Public Utilities, Division of Water Distribution to kill the 16 inch water main at the location of South Marina Drive. Upon this event, the remainder of the water line will be converted to a private water line with all future costs of maintenance to be borne by the Metroparks. Thereafter, any future loop of the water main shall be through a private water main located on Metroparks' property that connects to the public water main in the Front Street right-of-way in the vicinity of Elgin Avenue. Metroparks, at its cost and expense as part of the vacation of Riverside Drive, shall install a new manhole for the 12 inch sanitary main in the right-of-way in the location of the new property line as a result of the vacation of Riverside Drive. The remainder of the sanitary main will be converted to private with the future cost of maintenance to be borne by the Metroparks. A 25 foot perpetual utility easement will be retained by the City on that portion of the existing 42 inch storm main within the proposed right-of-way vacation for the purpose of providing drainage to south Marina Drive and the parking lot of the National Museum of the Great Lakes. Subject to the approval of the vacation ordinance by Toledo City Council, all engineering costs, costs of land, work required, and recording fees will be waived by the City.

- 1.3. **Vacation of 30 foot Right-of-Way along Front Street.** Metroparks shall within 90 days of the Effective Date, file an application with the Clerk of the Toledo City Council to

vacate that portion of the public right-of-way of Front Street adjacent to the Metropark development site. Subject to passage of a duly authorizing ordinance of Toledo City Council, the City will waive all associated costs and fees of the Front Street right-of-way vacation.

- 1.4. **Vacation of Right-of-Way Adjacent to Interstate 280.** Metroparks shall within one (1) year of the Effective Date file an application with the Clerk of Toledo City Council to vacate that portion of the public right-of-way adjacent to Interstate 280 and identified in Exhibit A attached hereto and incorporated herein. This application will be subject to subject to roadway and right of way purposes for the City of Toledo and State of Ohio approval as needed. The Metroparks and the City will continue to work together and collaborate on the design, specifications, and cost estimate of a proposed urban campground site to ensure access is preserved for the purposes of the City's access to the existing Dearborn Combined Sewer Overflow Storage Pipeline and related infrastructure on the vacated land. Subject to Toledo City Council by way of a duly authorized vacating ordinance, the cost of land, work required, engineering costs, and recording fees shall be waived by the City. This vacation specifically does not include the area known as Tribute Park.
- 1.5. **Decorative Streetlights on Vacated Portion of Riverside Drive.** Within 90 days of the Effective Date, the City shall execute and deliver needed instruments for the conveyance to the Metroparks of 25 decorative street lights as are currently located on the proposed vacated portion of Riverside Drive. Metroparks shall be solely responsible at its cost and expense for separately metering the 25 decorative street lights Metroparks will cooperate with the City in the establishment of a plan and timeline for the removal of the remaining 79 decorative street lights Metroparks has chosen not to receive with the costs of such removal to be at the City's expense. The cost of removal and relocation of any decorative street lights which the Metroparks elects to accept by donation will be at the sole cost and expense of the Metroparks. Any decorative street lights Metroparks elects to accept from the City shall be first taken from the area closest to the Morrison Drive extension for the purpose of assisting and preparing the area for Phase I of the Metroparks' development.
- 1.6. **Option Properties.** Upon request of the Metroparks and within _____ days of the Effective Date, the City shall execute and deliver needed instruments to grant the Metroparks an option to purchase parcels 13-87678 (Lot 7 Marina District) and 16-27861 (Edison Park) from the City for \$1.00 each. The Metroparks shall be responsible for all transactional costs, including but not limited to, document preparation fees, recording costs, survey costs, and title reports. All needed instruments will provide for the City's retention of an easement of the property located at 1821 Front Street (TD 16-27861) for the purpose of accessing the City's existing Dearborn Combined Sewer Overflow Storage Pipeline and related infrastructure.
- 1.7. **East Broadway Curb Cut.** The City will grant permission for the Metroparks to install a curb cut at the existing East Broadway and Front Street right-of-way. Metroparks, at its cost and expense, prior to the construction of the curb cut, shall provide and deliver to the City to the satisfaction of the City's Department of Public Service, Commissioner of

Transportation, a traffic study. The Metroparks, at its cost and expense, shall be responsible for constructing the curb cut in accordance with plans and specifications acceptable to the City's Commissioner of Transportation. The City, at its expense, subject to and conditioned upon future appropriation, shall be responsible for installing a new pole, traffic light, cross walk, and completing the upgrades to the traffic signals and any other work required as determined by the City's Commissioner of Transportation.

- 1.8. **Bike Trail Over Main Street.** The City, upon the request of the Metroparks, shall execute and deliver needed instruments for the grant of an aerial easement over Main Street (including a bridge abutment on the International Park side of Main St) for the purposes of the installation, operation, and maintenance of a multi-purpose path. All costs associated with the installation, operation, and maintenance of the path shall be the responsibility of the Metroparks. Said expenses shall include but not be limited to, the cost of the design, specifications, cost estimate, construction, preparation of legal description and surveys required. Said plans, specifications, and cost estimates meeting the reasonable satisfaction of the City's Commissioner of Transportation.
- 1.9. **Purchase Option for Ravine Park I, II and Hecklinger Pond.** The City, upon the request of the Metroparks shall execute and deliver needed instruments for the City's granting the Metroparks a purchase option having the term of one year for the acquisition of Ravine Park I, Ravine Park II, and Hecklinger Pond at an option purchase price of \$1.00 each. Metroparks will have an additional one year to execute option to purchase. Any costs associated with the conveyance of said properties pursuant to the purchase options shall be paid for by the Metroparks. Said costs shall include but not be limited to, the preparation of any legal descriptions, surveys, and easements needed by the City as deemed necessary by the Directors of the City's Department of Public Service or Department of Public Utilities.
- 1.10. **Pedestrian Improvements Across Front Street.**

The City, at its expense, and subject to any needed traffic study and Toledo City Council Appropriation, on or before one (1) year from the Effective Date and subject to Council appropriation will construct pedestrian improvements to cross Front Street in accordance with plans and specifications approved by the City's Commissioner of Transportation. These items could crosswalks, signage and lights.
- 1.11. **MLK Bridge Nautical Mile Extension.** Upon the request of the Metroparks, the City will execute and deliver needed instruments for the City's grant of an easement to the Metroparks for the area underneath the east end of the Martin Luther King Jr. Bridge for the extension of the Nautical Mile Project. Metroparks shall be responsible for paying for any necessary costs associated with the grant of said easement including, but not limited to, surveys, legal description, studies, engineering tests, reports, permits, and related costs as deemed necessary by the City's Director of Public Service.
- 1.12. **Waiver of Permit Fees.** The Metroparks shall be responsible for the payment not otherwise specifically waived within this Agreement, including, but not limited to, fees of

the City's Division of Building Inspection.

SECTION 2: LIABILITY AND INDEMNIFICATION.

- 2.1. **Mutual Release of the Parties.** To the extent permitted by law, the Metroparks shall be liable for and shall release and hold the City harmless from liability, loss, injury (including death), costs (including reasonable legal fees), and damages finally awarded to third parties under claims which arise directly out of the Metroparks' willful misconduct or negligence in connection with this Agreement or which otherwise result from any act under this Agreement. Likewise, the Metroparks shall not be liable for, and the City hereby agrees that it will, to the extent permitted by law, release and hold the Metroparks harmless from any liability, loss, injury (including death), costs (including reasonable legal fees), and damages caused by or arising out of the negligence or willful misconduct of the City. Where liability, loss, injury, costs and/or damages arise from the willful misconduct or negligent acts or omissions of both the Metroparks and the City, each party shall be liable only to the extent of each party's own willful misconduct, negligence or omissions.

SECTION 3: TERM AND TERMINATION.

- 3.1. **Term of Agreement.** This Agreement shall be as of the Effective Date and shall continue for a period of five (5) years.
- 3.2. **Termination for Default.** Either party may terminate this Agreement in writing, if the other party fails to materially fulfill its obligations under this Agreement in a timely manner. However, no such termination may be effected unless such failure to materially fulfill an obligation remains uncured for thirty (30) days after the party claiming the failure provides written notice of such failure and intention to terminate in accordance with the terms of this Agreement; provided, however, that if such obligation is able to be cured, but cannot be cured within such thirty (30) day period, then, as long as the party placed on notice promptly commences the cure and thereafter diligently pursues such cure to completion, then the cure period provided for and thereafter herein shall be extended for a reasonable period not to exceed an additional ninety (90) days within which the curing party may complete such obligation.

SECTION 4: MISCELLANEOUS.

- 4.1. **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: Executive Director

If to City:

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

With Copy To:

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.

- 4.2. **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.
- 4.3. **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.
- 4.4. **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.
- 4.5. **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.

- 4.6. **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.
- 4.7. **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.
- 4.8. **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.
- 4.9. **Exhibits Incorporated.** All Exhibits attached hereto are incorporated as part of this Agreement.
- 4.10. **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.
- 4.11. **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

**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

By: _____
Director of Neighborhoods and Business
Development

EXHIBIT A

Project Site