



# Parma Heights, Ohio

---

6281 Pearl Road

Parma Heights, Ohio 44130

440.884.-9604

---

July 27, 2020

George Robinson

Via USPS and Traceable

[REDACTED]  
[REDACTED]  
[REDACTED]

Diane Keith

Via USPS and Traceable

[REDACTED]  
[REDACTED]

Andrew Tittler

Via USPS and Traceable

Field Solicitor, Boston Office  
Office of the Solicitor  
United States Department of the Interior  
15 State Street, 8<sup>th</sup> Floor  
Boston, MA 02109-3502

Dear Messrs. Robinson, Keith and Tittler:

Please accept this letter and the attached exhibits in support of the city's request to amend the intent of the original agreement between the City of Parma Heights and the federal government regarding changing the use of a portion of Nathan Hale Park.

We are confident that the information and documents provided with this submission will enable us to work collaboratively to move forward on the proposed basin project.

Please be assured that additional materials you may require to assist in your evaluation of the project that is designed to enhance park amenities, while addressing the city's need to remediate flooding problems, will be provided. It is our hope that we have sufficiently addressed the issues required for an approval of a change to the original approval. Based upon our previous conversation with you and Ms. Keith we are providing to you information that addresses the concerns that you raised in your October 4, 2019 letter.

1. *What other areas of the city were thoroughly evaluated for construction of the basin to alleviate flooding?*

Enclosed is the analysis from AECOM regarding Storm Sewer Evaluation Report Phase I [April 9, 2018] and Stormwater Remodeling Phase II [March 18, 2019]. [Exhibit A & B].

The City of Parma Heights has experienced significant storm sewer and overland flow flooding over the past several years which caused and is continuing to cause extensive damage to private property, including basement flooding and other surface flooding, in the area south of Pearl Road and west of York Road.

The City Engineer (Neff and Associates) met with engineers from Cuyahoga County Department of Public Works and AECOM in 2017 to discuss a plan of action to better understand the flooding, the causes of flooding, and quantify the types of storms that activate flooding issues.

AECOM proposed conducting a storm sewer system flow monitoring and modeling project in the area with flooding complaints. The storm sewer monitoring was intended to quantify the flooding and provide data that could be used in a hydraulic model.

The Storm Sewer Evaluation [Phase I] [Ex. A] was limited to the storm sewers on Pearl Road between West 130<sup>th</sup> Street and York Road. Upon model calibration, a hydraulic analysis was conducted and it was determined that the model was under predicting downstream conditions of the storm system tributary to Big Creek. AECOM suggested expanding the model to include all storm sewers in the system to improve hydraulic accuracy.

Stormwater Remodeling Phase II [Ex. B] was proposed and approved by City Council in May 2018 and in August 2018 AECOM began expanding the model and metering the new areas.

The AECOM Phase II report documents and summarizes the storm sewer hydraulic modeling study conducted in the City of Parma Heights, Ohio, southwest system. Fourteen (14) flow meters, two (2) rain gauges and one (1) stream gauge were deployed during the period of August 19, 2018 to October 14, 2018 (56 days).

The purpose of the flow monitoring was to document flows in the storm sewer system during wet weather periods. Flow and rainfall data was used to calibrate the project model AECOM built as part of this study. Once calibrated, the sewer model was used to analyze the existing sewer system's performance under wet weather conditions, and to recommend alternatives for improvement.

The model predicted that the proposed Nathan Hale Park storage would provide relief to the system but that there were still hydraulic bottlenecks in the system. One possible solution for increasing hydraulic efficiency would be to increase pipe sizes in areas that restrict flow due to capacity limitations. To accomplish this task the first alternative model was created and pipe segments that restricted flow were incrementally increased until the hydraulic issues were resolved. *This process excluded the proposed Nathan Hale Park storage.*

Instead of increasing the storm sewer pipe size, a second alternative model, to address the hydraulic bottleneck at Pearl Road and Meadowbrook Road would be to construct a second storage basin in conjunction

with the Nathan Hale Park storage basin. An aerial review shows that a vacant area of land, approximately nineteen (19) acres in size, is located on Pearl Road between W. 130<sup>th</sup> Street and Maplewood Road. Modeling results indicate that this second storage location, along with the storage basin in Nathan Hale Park, would allow the storm system south of Big Creek Parkway to operate normally.

A comprehensive hydraulic model of the City of Parma Heights southwest storm sewer system was built to characterize and address the city's recurrent flooding issues. The model was developed and successfully calibrated based on rainfall and flow monitoring data collected between August and October 2018.

The model was used to analyze the existing sewer system's performance under various wet weather conditions, including three design storms (5, 10, and 25 year recurrence, 6 hour duration) and one historical event that occurred on the August 6, 2018. Main pipe capacity limitations during the 5 year storm were predicted along Pearl Rd. and Big Creek Parkway. On Pearl Rd. limitations were mainly at the intersections of Maplewood Rd, Oakwood Rd., and Parma Park Blvd. due to large inflows along Pearl Rd. travelling west and from flows traveling north along Maplewood Rd. On Big Creek Parkway, limitations were mainly due to large inflows along Big Creek Parkway travelling west and from flows traveling north along Beverly Drive.

The proposed Nathan Hale Park storage was modeled, showing a positive resolution of surcharge and flooding issues in the system for the five (5) year storm. Being located above most of the storm sewer network, the storage could only capture the overland flows from Nathan Hale Park and the local swale, but these flows account for approximately 10.6% of the total storm sewer flow for that system.

A stakeholder meeting between officials from the City of Parma Heights, the City of Parma, Cuyahoga Community College (Tri-C) and the NEORS D was held on July 25, 2019 to discuss the proposed basin project and seek their input and possible assistance to help alleviate the flooding issues. [Ex. C] Specifically, Tri-C agreed to clean existing drainage ways on their property and remove impediments that may have caused storm water backup. Tri-C indicates that the culvert cleaning project will be tied into a parking lot improvement scheduled for the spring of 2020. [Ex. D] and [Ex. E].

The parking lot improvement project is underway and the cleaning of the culvert and restoration work is expected to be completed by the end of the summer 2020.

At the stakeholder meeting, the City of Parma and the NEORS D shared some of their proposed joint plans to help reduce flooding in the adjacent Parma area which are expected to be released this year.

Tri-C indicated that most of the land that remains between their safety town project and the Nathan Hale site boundaries are covered by good to high quality wetlands and they have exhausted their impacts permits for their safety town project. [Ex. F].

**2. *Can the size of the basin be reduced and possibly re-located more to the northeast, even if that means the basin would be constructed on land currently owned by Tri-C?***

Based upon preliminary engineering estimates generated by the City Engineer and the Sewer District it does not appear that reducing the size of the basin will provide sufficient volume to alleviate or eliminate the flooding issues.



Please note that the Sewer District, in a letter dated November 13, 2019 to Mayor Byrne states:

*“By creating a multiuse amenity, Parma Heights is adapting to the needs of its community members while maintaining the purpose originally assigned to the land. The basin will reduce stormwater flow in the local sewers and decrease basement backups during storm events, resulting in a benefit to the residents in the area. The walking path and ecological nature of the design will reconnect people to their watershed in a positive way, influencing how they perceive stormwater management in Parma Heights.*

*We look forward to the completion of the Nathan Hale Basin Project and fully support the progress and initiative taken by the City of Parma Heights to redevelop part of their traditional recreation space into an innovative and adaptive public park feature.” [Exhibit G].*

In prior correspondence you posed the following questions and the District responded in a November 13, 2019 letter to the Mayor.

- a. Is the District aware of the Quit Claim Deed transfer between the Federal Government and the City of Parma Heights? Also, is the District aware of the deed restriction and the reversionary clause, in favor of the Federal Government that is contained in the Quit Claim Deed?

*The Quit Claim Deed recorded on May 20, 1971, has been reviewed by the District's Legal Counsel, and in particular Item 7, which discusses the reversion of the property to the United States of America. Upon review the District is not concerned about the clause because it is confident that the City will fulfill all of the terms of the Member Community Infrastructure Program Agreement.*

- b. Can the District provide written confirmation regarding the extension of time that has been requested by the city in light of the current status of the proposed project?

*The District confirms that the MCIP Grant funding will be available to the City of Parma Heights. No date has been set to limit the availability of funds, as the District is committed to the project's completion.*

- c. A copy of the Award letter for the \$1,000,000 Project Grant.

*A copy of the Award letter is attached. [Ex. H].*

- d. Can the NEORS D provide written authorization for the use of \$400,000 from the Community Cost-Share Program funds to satisfy the balance of the monies required for the proposed project?

*Twenty-five percent of the funds collected from each community are put into an account solely*

*for that community's use and is therefore, non-competitive. Through the Community Cost-Share Program, Parma Heights can use the funds in their Community Cost Share Account for District-approved projects relating to stormwater. The Nathan Hale Basin Project is an approved use of Community Cost-Share funds under Title II, Section 5.0903 which states that eligible activities include, "projects that reduce volume, flow rate, or pollutant load of storm water to the Local Stormwater System or the Regional Stormwater System," as well as "operation, maintenance, and capital projects necessary to address stormwater-related problems." Upon completion of an application and executed agreement, these funds become available to the City of Parma Heights for the proposed Nathan Hale Basin Project.*

- e. Can the NEORSD provide written authorization for the use of Community Cost-Share Program funds for future maintenance of the proposed basin project?

*The Nathan Hale Basin Project's future maintenance is an approved use of Community Cost-Share funds under Title V, Section 5.0903, which states that eligible activities include "repair, replacement, or cleaning of local storm sewers, catch basins, and other components of the Local Storm water System." Upon completion of an application and executed agreement, these funds become available to the City of Parma Heights for the proposed Nathan Hale Basin Project's future maintenance.*

The District reaffirmed its support of the Nathan Hale Basin Project and fully supports the progress and initiative taken by the City of Parma Heights to redevelop part of their traditional recreation space into an innovative and adaptive public park feature.

3. *Can the design plans be modified so that the basin blends in more with its surroundings and is not an eyesore for the abutter's?*

Yes. The city received a Community Infrastructure Grant from the Northeast Ohio Sewer District for the Nathan Hale Storm Water Basin Project in February 2019 to address water quality and quantity issues associated with sewer infrastructure that adversely impacts human health and the environment. The Grant Agreement provides that the District shall have the right to review and comment on the final project design prior to construction.

On October 7, 2019 a public meeting was held at the Cassidy Theater which was attended by 77 residents [that signed in] and various city, county, and federal government officials. [Ex. I & J]. At that meeting Mr. Neff made a presentation stating that "... what we are trying to do is we are going to create a lake here instead of just a stormwater basin. Some of these suggestions came from residents, some of them came from third parties, our stakeholders, Tri-C, the Northeast Ohio Regional Sewer District, the City of Parma and also the Federal Parks Department trying to make it more of a lake end." [Exhibit K Meeting Minutes], [Ex. L Power Point].

4. *How will the proposed basin project affect the recreational use of Nathan Hale Park?*

Conditions have changed significantly since 1970 when the City submitted its Program of Utilization. In addition, the City's goals as stated in the original need statement were to (1) purchase property for "open space and recreational

purposes" and, as noted in the Program of Utilization, to provide "facilities for persons of all ages".

The city initially set out to solve the area's flooding problem, but, after listening to the feedback from neighborhood residents, it responded with an innovative solution that redesigned the facilities to be both an engineering answer to a public works problem and an attractive recreation feature that will increase the range of facilities at Nathan Hale Park. Furthermore, providing a walking path, educational panels, a new picnic pavilion, gazebo, etc. to create a passive recreation amenity is consistent with the city's original goals.

Based on the unanticipated changes in the population, changes in recreation programming needs and a growing awareness of the importance of well-designed open space, the construction of the proposed stormwater basin project at the expense of one baseball diamond and two soccer fields is a prudent investment in the city's future. The loss of the ball fields will not have a negative effect on the city's recreation facilities or recreation programs. This opinion is supported by the following facts:

- a. The population in the city never reached the estimated population of 35,000.
- b. The number of children participating in baseball programs in 1970 was 1,700. In 2020 there are 336 registered participants.
- c. There is an increased need for a range of recreational uses that provide activities for all neighborhood residents of all ages and abilities.
- d. Adding the proposed amenities will enhance the park and will provide a greater variety of activities, which should increase the number of residents using the park.
- e. The remaining facilities at Nathan Hale Park will not be negatively impacted by the change. With two parking lots, the northern one to accommodate users for the walking path and the southern parking lot to accommodate the six remaining soccer fields, the active recreation facilities will remain grouped in the southern portion of the site.
- f. The proposed changes continue to preserve open space and provide for environmentally-friendly, green infrastructure.
- g. The basin includes design elements to increase safety: providing mild (5:1) slopes and a safety shelf around the perimeter of the detention pond which reduces the risk of someone falling into the permanent pool; and placing wetland plants on the safety shelf combined with shrubs on the slopes and an unmowed buffer around the pond to discourage wading and swimming. This approach also creates wildlife habitat and an attractive natural shoreline. [See Ex. PP].

## MISCELLANEOUS

There are a number of potential end users who can use the excavated soil from the basin site. The soil will be removed from the site during the excavation and simultaneously be transported off-site to the end users location.

The Cuyahoga County Department of Public Works has determined that “The Parma Heights sewer fund has sufficient balances in the sanitary and storm sewer accounts to fund the project. The Cuyahoga County Department of Public Works (CCDPW) concurs that the Nathan Hale Detention Basin project will benefit the downstream sewer system in the City. The CCDPW will allocate \$1,000,000 from the funds to assist in the financing of the project. Reimbursement to the city from the fund shall be through our normal reimbursement procedure.” [Ex. M].

Davey Tree Company completed a Water Resource Delineation Report dated August 2019 to objectively evaluate the environmental impact as well as the viability of the proposed project on the surrounding wetlands. [Ex. N].

The city’s ability to operate and maintain the basin at the conclusion of the project is addressed in the letter issued by the NEORSD in items 4 & 5. [See Previous Ex. G].

The Department of the Army Corps of Engineers in a letter dated November 12, 2019 stated that the wetland delineation map that was submitted had been reviewed and a determination was made that the wetland and wetland boundaries shown on the map accurately represent on site conditions. [Ex. O].

On December 31, 2019 GEOSci issued its report regarding the soil borings it performed at the site and its analysis. [Ex. P].

---

## PUBLIC MEETINGS

On February 11, 2019 the Community Infrastructure Grant for the proposed Nathan Hale project was discussed at the Mayor’s Caucus. [Ex Q].

On February 11, 2019 the City Council, at a regularly scheduled meeting, referred to proposed basin project to the city Planning Commission for review. City Council also approved the Community Infrastructure Grant with the NEORSD. [Ex. R].

On March 4, 2019 the Planning Commission, at a regularly scheduled meeting held a public hearing for the Nathan Hale Basin Project. A public notice announced the hearing date and time. [Ex. S]. No members of the public attended this public meeting. [Ex. T]. The minutes indicate a full discussion of the proposed project and the Planning Commission referred the matter back to the city council for further action. [Ex. U].

On March 25, 2019, City Council received more information about the proposed project at the Mayor’s Caucus. [Ex. V].



An ordinance authorizing the recommendations of the Planning Commission for the Nathan Hale Stormwater Project received a first and second reading before the city council on April 8, 2019 and April 22, 2019. [Ex. W] [Ex X].

In the spring 2019 Mayor's newsletter he advised the residents of the proposed Nathan Hale Stormwater Basin project. [Ex. Y].

A public meeting at the Cassidy Theatre was held on May 1, 2010. [Ex. Z]. A power point presentation was made by Mr. Neff. [Ex. AA]. Audience questions and comments were received. There is no sign in sheet for this meeting. Minutes were not taken at this meeting.

A second public meeting at the Cassidy Theatre was held on May 15, 2019. [Ex. BB]. A power point presentation was made by Mr. Neff. [See Previous Ex. AA]. Audience questions and comments were received. There is no sign in sheet for this meeting. Minutes were not taken at this meeting.

A third public meeting at the Cassidy Theatre was held on October 7, 2019 to present updated information related to the proposed construction of a retention basin at Nathan Hale Park. [Ex. CC]. A power point presentation was made by Mr. Neff. [See Previous Ex. L]. A sign in sheet and minutes [See Previous Exhibit J & K Sign In Sheets & Meeting Minutes] and a petition in support of construction of a basin/lake with park amenities were generated at this meeting. [Ex. DD].

This presentation reviewed the original design plan that was presented on May 1<sup>st</sup> and May 15<sup>th</sup> at the public meetings and presented a proposed new design that incorporated many new and innovative features to the design that are intended to improve Nathan Hale Park and provide improvements and enhancements to the park that make it a unique destination within the city to be enjoyed by all residents.

The revised plan includes, but is not limited to, an improved basin design with both open water deep and shallow water areas, no disturbance to the surrounding and existing wetlands, a walking path that encompasses the entire basin, a pedestrian bridge, benches along the path, educational signage, spray fountain, gazebo, appropriate grading and landscaping with selected tree, shrub and grass plantings, a new building containing a pavilion and bathrooms, soccer field improvements and resurfacing of a parking lot.

Audience questions and comments were received. There is a sign in sheet for this meeting and minutes were taken at this meeting [See previous Exhibit K].

---

## **1. NATHAN HALE PARK BACKGROUND**

In 1971 the Bureau of Outdoor Recreational/National Park Service [NPS] conveyed 25 acres of land to the City of Parma Heights, which currently is known as Nathan Hale Park [NHP]. [Ex. EE].

The land was conveyed at a 100% discount of the fair market value solely for public parks and recreation in perpetuity under provisions of what is now called the NPS Federal Land to Parks Program [FLPP] [40 USC 550 b & e].

The conveyance to the city was made under the authority of the Administrative Services Act which imposed certain requirements on the transfer, which are set forth in the deed, that the property shall be used and maintained for the public purposes for which it was conveyed in perpetuity, as set forth in the program of utilization and plan contained in the application, submitted by the Grantee on December 31, 1970.

The offer to purchase property and program of utilization submitted by Mayor Paul Cassidy on December 31, 1970 and Part A of the Application for Federal Surplus Property for Public Park or Recreational Use [Ex. FF] provides that;

“The program of utilization included in Part "B" of the application may be amended, at the request of either the Applicant or the Federal Government, with the written concurrence of the other party. Such amendments will be added to and become a part of the original application and shall be consistent with purposes for which the property was transferred. The Applicant further agrees to furnish such data, maps, reports, and information as may be needed by the Bureau of Outdoor Recreation. [See Item 9 of the Application].

In 1996 the City Council, in Ordinance 1996 – 21 established regulations for the placement of wireless communications antennae in the City of Parma Heights. [Ex. GG ].

The NPS was contacted in October 1996 regarding the city’s decision to permit cell towers in public parks in lieu of residential neighborhoods and permission was requested to permit construction of a cell tower in NHP. [Ex. HH].

The city and the NPS exchanged numerous correspondences regarding the cell tower installation. [EX. II, JJ and KK].

On October 28, 1997 the NPS approved the city’s request to install a wireless communications tower in NHP. [Ex. LL].

NHP has served the residents well since its inception by providing numerous playing surfaces to meet the city’s recreational baseball and soccer leagues, as well as a general recreational area open to all residents for their recreational needs.

In 2000 the Department of the Army commissioned a construction work plan for the removal of two (2) underground storage tanks located on the NHP property. One tank was located beneath the parking lot and the other tank was located beneath a soccer field. [Ex. MM].

## 2. PROGRAM OF UTILIZATION

The program of utilization that was submitted with the 1970 application states;

- a. Proposed uses: The City of Parma Heights proposes to use this land for playground and recreational facilities and continue and expand its existing recreational programs the proposed facility will include ball diamonds, football fields, tennis courts, hard- surfaced play areas and other ancillary facilities for persons of all ages. If at all possible, the existing buildings, S-100, S-101 and S-114, will be used as a youth center, a senior citizens center, arts and crafts and other recreational and cultural programs. Building S-108, if adaptable, will be used for the storage of recreational equipment and supplies including maintenance equipment. Adequate parking is provided.
- b. General Development Plan. The general development plan expands recreational programs and provides other ancillary facilities for persons of all ages in compliance with the intent set forth in the 1970 application. This new use of a portion of the park property is consistent with the purposes for which the property was originally transferred.
- c. Development time table and estimated cost of each scheduled facility.

Preliminary estimates indicate a total cost of \$2,514,061.00. While both the accurate time schedule and an accurate estimate of cost cannot be made until detailed plans and specifications are made, this appears to be a reasonable estimate at the present time. [Ex. MM-1].

Construction of a regional stormwater management basin at Nathan Hale Park in Parma Heights has a total available storage capacity of 23 acre-feet.

The estimated useful life of the project is 50 years.

Since the inception of this park, recreational opportunities have been provided for city recreational programs, including, but not limited to: baseball, football, soccer, a playground with apparatus, hard-surfaced play areas, and other passive recreational pursuits. Interest in the site for an enhanced retention basin with amenities to provide a different recreational experience for residents (along with the retention of the current recreational uses) has been investigated and designed.

### **3. PLAN OF UTILIZATION AMENDMENTS**

As a result of the flooding events and subsequent details set forth below, the City of Parma Heights respectfully requests an amendment to the original program of utilization. Our park utilization for recreational activities has changed over the last 50 years due to a decrease in the number of residents that utilize the park for recreational purposes. The city, in conjunction with the Northeast Ohio Regional Sewer District, has an interest in developing a regional solution to flooding problems that have plagued residents living in proximity to the park and immediately adjacent to the park.

The City Engineer has proposed that a retention basin be constructed in the area that was occupied by Litten Field. The proposed retention basin will be landscaped, surrounded by appropriate trees and landscaping, will have a walking trail, and a fountain feature installed which will provide a new and different park amenity while providing relief to city residents experiencing flooding.

The proposed amended use of a portion of the NHP will not inhibit in any way the intended use of the property for recreational purposes since a significant portion of the property will not be disturbed and will remain open of the purpose originally intended.

The proposed amended use will improve and enhance the park property because the water feature, surrounded by a walking trail with its educational component, fountain and other improvements, will provide amenities to the city's residents that currently do not exist in Parma Heights.

### **4. CONCESSION AGREEMENTS**

Neither the city administration nor the Recreation Department has any formal agreements for sale of concessions on this property. It is possible that with the improvements to the park and the construction of the proposed pavilion that the amateur and youth teams may sell minor concessions [soda, chips, snacks] during home games to benefit the recreational programs of the city.

### **5. OTHER LEGAL AGREEMENTS**

On October 28, 1997 the NPS approved the city's request to install a wireless communications tower in NHP. [Ex. LL].

### **6. FINANCIAL STATEMENT**

The city receives an annual lease payment from the Nathan Hale Cell Tower for \$153,479.29. The revenue from the lease payment permits the city to fund both general and capital expenditures for the city's recreational programs.

## **7. VISITATION**

There is no way to reflect the annual visitation at Nathan Hale Park. It is used by walkers, runners, bike riders, joggers, the city recreational soccer leagues and children using the playground apparatus. Please see Ex. QQ regarding the analysis of demographic trends in the City of Parma Heights and the effect on the recreational programs.

## **8. OVERUSE**

The city has not experienced any overuse or management problems with NHP. In fact, as set forth in the CT Consultants Reports [Ex. QQ] the park has been under-utilized due to a documented decline in population.

## **9. PHOTOGRAPHS**

Relevant photographs for the property are included in Exhibits AA, CC, QQ and SS.

## **10. MAPS**

Relevant maps of NHP are included in various exhibits attached to this report.

## **11. HISTORIC PROPERTIES**

This property has not received any special designations.

## **12. CONTAMINATION**

To date, no hazardous substances have been identified on the property. In 2000 the Department of the Army commissioned a construction work plan for the removal of two (2) underground storage tanks located on the NHP property. One tank was located beneath the parking lot and the other tank was located beneath a soccer field. [Ex. MM].

The GEOSci core sample study has been discussed above. [Ex. P].

## **13. FLP QUITCLAIM DEED OF CONVEYANCE & CONFIRMATION OF ADHERENCE TO COVENANTS**

1. This property shall be used and maintained for the public purposes for which it was covenanted in perpetuity as set forth in the program of utilization and plan contained in the application submitted by the Grantee on December 31, 1970.

*The city confirms adherence to this covenant and requests Program of Utilization amendment and requests an amendment to the Program of Utilization to permit the installation of a retention basin, as set forth in the attached Exhibits.*

2. The Grantee shall, within six (6) months of the date of the deed of conveyance, erect and maintain a permanent sign or marker near the point of principal access to the conveyed area indicating that the property is a park or recreation area and has been acquired from the Federal Government for use by the general public.

*The city has a sign in place on the property at the principal access point and confirms adherence to this covenant.*

3. The property shall not be sold, leased, assigned, or otherwise disposed of except to another eligible governmental agency that the Secretary of the Interior agrees in writing can assure the continued use and maintenance of the property for public park or public recreational purposes subject to the same terms and conditions in the original instrument of conveyance. However, nothing in this provision shall preclude the Grantee from providing related recreational activities and services compatible with the approved application through concession agreements entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the Secretary of the Interior.

*No commercial or for profit concession sales are allowed at this property and the city confirms adherence to this covenant.*

4. From the date of this conveyance the Grantee, its successors and assigns, shall submit biennial reports to the Secretary of the Interior, setting forth the use of the property during the preceding two-year period, and other pertinent data establishing its continuous use for the purposes set forth above, for ten consecutive reports and as further determined by the Secretary of the Interior.

A December 22, 2005 letter from the US Department of the Interior stated that compliance reports should be submitted every five years thereafter. [Ex. NN]. It appears from our records that the last compliance report was submitted on or about October 3, 2011. [Ex OO]. We cannot locate any record of a submitted compliance report after that date. In November 2014 an arson fire occurred at the City Hall and some records were lost in the fire.

*By way of this submission the city confirms adherence to this covenant.*

5. If at any time the United States of America shall determine that the premises herein conveyed or any part thereof are needed for the national defense, all right, title and interest in and to said premises or part thereof determined to be necessary to such national defense, shall revert to and become the property of the United States of America.

*The city confirms adherence to this covenant.*

6. As part of the consideration for this Deed, the Grantee covenants and agrees for itself, its successors and assigns, that (1) the program for or in connection with which this Deed is made will be conducted in compliance with, and the Grantee, its successors and assigns, will comply with all requirements imposed by or pursuant to the regulations of the Department of the Interior ... issued under the provisions of Title VI of the Civil Rights Act of 1964; (2) this covenant shall be subject in all respects to the provisions of said regulations; (3) the Grantee, its successors and assigns, will promptly take and continue to take such action as may be necessary to effectuate this covenant; (4) the United States shall have the right to seek judicial enforcement of this covenant, and (5) the Grantee, its successors and assigns, will (a) obtain from each other person (any legal entity) who, through contractual or other arrangements with the Grantee, its successors or assigns, is authorized to provide services or benefits under said program, a written agreement pursuant to which such other person shall, with respect to the services or benefits which he is authorized to provide, undertake for himself the same obligations as those imposed upon the Grantee, its successors and assigns, by this covenant, and (b) furnish a copy of such agreement to the Secretary of the Interior, or his successor; and that this covenant shall run with the land hereby conveyed, and shall in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of, and in favor of the Grantor and enforceable by the Grantor against the Grantee, its successors and assigns.

*The city confirms adherence to this covenant.*

7. In the event there is a breach of the conditions and covenants herein contained by the Grantee, its successors and assigns, whether caused by the legal or other inability of the Grantee, its successors and assigns, to perform said conditions and covenants, or otherwise, all right, title and interest in and to the said premises shall revert to and become the property of the Grantor at its option, which in addition to all other remedies for such breach shall have the right of entry upon said premises, and the Grantee, its successors and assigns, shall forfeit all right, title and interest in said premises and in any and all of the tenements, hereditaments and appurtenances thereunto belonging; provided, however, that the failure of the Secretary of the Department of the Interior to require in any one or more instances complete performance of any of the conditions or covenants shall not be construed as a waiver or relinquishment of such future performance, but the obligation of the Grantee, its successors and assigns, with respect to such future performance shall continue in full force and effect.

*The city confirms adherence to this covenant.*

## **ADDITIONAL ASSESSMENT, REVIEW & REPORT**

The CT Consultant Report regarding the Assessment of Impacts for the Proposed Basin and the completed Federal Lands to Parks Environmental Screening Form (ESF) are attached. [Ex. PP] & [Ex. QQ].

An independent review of the preliminary engineering cost estimates issued by Euthenics Consulting Engineers finds the estimate prepared by Neff and Associates to be in-line with the scope of work indicated on the Improvement Plan for the project. [Ex. RR].

A report from the Ohio Historical Preservation Office [OHPO] reviewing any ground disturbing activity that involves any federal agency or its delegated authority was requested. CT Consultants submitted a section 106 Review Project Summary Form to OHPO, and OHPO determined that Nathan Hale Park does not meet the criteria for inclusion in the National Register of Historic Places. [Ex. SS] [Ex. SS – 1].

---

## **CONCLUSION**

We are requesting that you give favorable consideration to our request for approval for the city to move forward with the proposed stormwater retention basin at Nathan Hale Park. We are confident that after you review the information attached herein, you will agree the proposed project, with its park-like amenities and enhancements, will comply with the requirements of the Quit Claim Deed regarding recreational use of the property for public purposes.

The installation of the retention basin, as redesigned by the City Engineer, will give a new life to this park and create a unique experience for the residents by providing a retention basin which is lake like in appearance, and includes a fountain, trail, bridge, benches, educational stations and a new covered pavilion with bathrooms, with the potential for a gazebo near the basin.

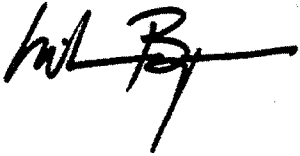
The city administration, the Northeast Ohio Regional Sewer District, our regional partners, and other federal officials remain committed to achieving a regional solution that will have an immediate positive impact on our citizens and provide a “game changing” solution to an ever increasing storm water problem that plagues this area of the city. At the same time this solution will modernize Nathan Hale Park by introducing a unique water feature as an innovative amenity to the park. This basin, as redesigned, provides new and additional recreational opportunities although changing the original intent for only a small portion of this park. The majority of the park will continue to be used for the originally-specified soccer and other recreational activities. Funding has been approved and we are now ready to move forward with this shovel-ready project as soon as permission from your office is granted.

When completed, this project will provide a new enhanced area in which to enjoy the park which will encourage productive and enjoyable harmony between the residents and the environment, promote efforts to prevent or eliminate damage to the environment and ecological systems, and promote inclusivity by providing a wider range of opportunities for our residents to appreciate the park in a new and different way.



I am hopeful that after your review of this submission you will endorse our proposal and permit this new use that will be a focal point in our city while, at the same time, expand multiple benefits and recreational activities to a wider segment of our residents including the elderly and those who are physically challenged who may have previously been unable to enjoy the park.

Thank you for your time and assistance. We look forward to hearing from you soon.  
Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Byrne". The signature is stylized with a large, sweeping "B" and a horizontal line extending to the right.

Michael P. Byrne  
Mayor

Encl.

cc: Director of Public Service  
Director of Recreation  
Director of Law  
City Engineer  
City Council and Planning Commission Members  
Congressman Anthony Gonzalez  
[All without attachments]