

LICENSE AGREEMENT

This License Agreement (this “*Agreement*”) is entered into effective as of _____, 2019 between the City of Rochester Hills, Michigan (“*City*”) and Hamlin Conservation Park, LLC (“*HCP*”), whose address is 25101 Chagrin Blvd, #300 Beachwood, OH 44122.

WITNESSETH:

A. City is the owner of a parcel of real property located in the City of Rochester Hills, County of Oakland and State of Michigan, commonly known as the Innovation Hills Public Park, portions of which are more particularly shown on Exhibit A attached hereto (the “*Innovation Hills Public Park*”).

B. HCP is the owner of a parcel of real property located in the City of Rochester Hills, County of Oakland and State of Michigan, commonly known as the East Area, portions of which are more particularly shown on Exhibit A (the “*East Property*”).

C. The East Property and the Innovation Hills Public Park border each other along a roughly north-south axis as shown on Exhibit A.

D. The East Property is the subject, along with other property, of a Brownfield Reimbursement Agreement between the City and LRH Development, LLC (“*LRH*”).

E. Pursuant to that Brownfield Reimbursement Agreement, dated April 23, 2018, effective June 15, 2018 and amended as of July 27, 2018 and an Amended Consent Judgment between LRH and the City, HCP and LRH desire access over and through a portion of the Innovation Hills Public Park for the purpose of conducting response activities on the East Property including conducting certain construction relating to encapsulating contaminants on the East Property (the “*Response Activity Work*”) and the City is willing to grant to LRH such access for such purposes on the terms and conditions set forth herein.

NOW, THEREFORE, for Ten Dollars (\$10.00) and the mutual covenants and consideration herein, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. The City hereby grants to LRH a non-transferable temporary license across and through the westernmost 14 feet of the Innovation Hills Park Property (the “*License Zone*”) to be used solely and only to the extent necessary in connection with the Response Activity Work, together with the right of ingress and egress from the East Property for all purposes incident to this grant. LRH and HCP acknowledge that they do not and shall not claim, at any time, any interest or estate of any kind or extent whatsoever in the License Zone or any portion thereof by virtue of the license granted hereunder

or LRH's Response Activity Work in the License Zone pursuant to this Agreement.

2. Response Activity Work

(a) As used herein, "**Response Activity Work**" means: (i) staging equipment and placing equipment in the License Zone so that LRH may remove certain contaminated soil, debris and other wastes from the East Property, install a slurry wall on the East Property and other response actions on, in and under the East Property; (ii) certain construction work to encapsulate certain wastes that will remain on site at East Property; (iii) soil removal, grading, landscaping and other restoration work on the East Property, including grading and planting some of which may occur in the License Zone and to restore any damage done during the Term and Response Activity Work as provided herein; and (iv) includes, but is not limited to the response activity work described in the 381 Work Plan approved by the Michigan Department of Environmental Quality ("MDEQ") and the Brownfield Plan approved by the City of Rochester Hills. The Response Activity Work shall not include any excavation or encapsulation in or on the Innovation Hills Park Property but shall merely mean clearing and using the License Zone for the temporary placement of construction equipment on the surface to allow such work to occur on the East Property. While the eastern portion of the License Zone will be sloped and graded consistent with the description in Exhibit A, and all of the License Zone disturbed by the Response Activity Work will be replanted consistent with the remaining ground cover, the western half of the License Zone will not be required to be refilled with dirt removed during the Response Activity Work.

(b) The City agrees that the cost of the clearing the License Zone are necessary costs of the Engineering Controls described in Section 2.3.7 of the Brownfield Plan adopted by reference in the Brownfield Reimbursement Agreement and are, therefore, costs of eligible activities subject to reimbursement pursuant to the Brownfield Plan and Brownfield Reimbursement Agreement.

3. Term. LRH's rights to access and conduct work at the License Zone shall commence as of the date hereof and its rights and obligations shall terminate upon the earlier of the following: (a) August 30, 2019; (b) the date LRH no longer needs access in connection with the Response Activity Work, or (c) the occurrence of a default by LRH hereunder, as notified by the City, that is not cured within a reasonable time period, which time period shall depend upon the nature of the default. Prior to the end of the term, LRH and HCP shall restore the landscaping on the License Zone so that it is consistent with the landscaping prior to the Response Activity Work, but such requirement does not require either LRH or HCP to replace trees removed in the License Zone. If trees removed are not replaced, HCP shall make payment into the City's tree fund in accordance with its tree ordinance.

4. Compliance with Laws.

(a) LRH and HCP warrant and represent to the City that they shall use and occupy the License Zone in accordance with the terms of this Agreement and in a manner that will not constitute a public or private nuisance. LRH shall not take any action that will diminish the value of the License Zone (normal wear and tear and removal of trees and or shrubs required to conduct the Response Activity Work excepted), nor permit any waste on or in the License Zone. LRH, HCP and their subcontractors, at LRH's sole cost and expense, shall comply with all of the requirements of all municipal, state, and federal statutes, laws, regulations, requirements and orders now in force or while LRH is conducting the Response Activity Work, which will then be in force, including but not limited to environmental laws (collectively the "**Laws and Regulations**"), in connection with the Response Activity Work and its use of the westernmost 14 feet of the Innovation Hills Park Property.

(b) The Response Activity Work (including, without limitation, any removal, collection, transportation, storage, or disposal of debris, material, or waste in connection therewith), and the maintenance and installation of any equipment used in connection therewith, including the LRH's equipment or that of its subcontractors, shall be performed by LRH or its subcontractors in compliance with all Laws and Regulations at LRH's expense. The LRH shall be considered the generator of such debris, material, or waste and shall obtain and use its own generator identification number.

(c) LRH shall be responsible, at its sole cost and expense, for obtaining any consents, permits, accreditations, and licenses required to perform the Response Activity Work and install and maintain any equipment used in connection therewith; provided, however, that HCP shall cooperate, at no cost to HCP and in all reasonable respects, with LRH in order to accomplish the same.

5. Prohibited Activities. LRH, at LRH's sole cost and expense, covenants and agrees that the transportation on or across, and the disposal, use or storage of any substances or chemicals on the License Zone is prohibited, except those substances or chemicals necessary to operate or maintain the LRH's equipment and then only to the extent in connection with the Response Activity Work (the "**Permitted Chemicals**") and in full compliance with applicable laws and regulations. LRH shall be permitted to store its equipment on the License Zone while the Response Activity Work is being conducted. Following completion of the Response Activity Work, LRH and HCP shall notify the City and vacate the License Zone.

6. City Reserved Rights. The City reserves the right to use the License Zone for any purpose, in its sole discretion, so long as such use does not substantially interfere with HCP's and LRH's rights hereunder.

7. Waiver of Claims; Indemnification.

(a) LRH, for and on behalf of itself and its officers, directors, shareholders, partners, members, managers, employees, contractors and agents, and the heirs, legal representatives, successors and assigns of all of the foregoing (collectively, the "**LRH Related Parties**"), assumes sole and entire responsibility for any and all loss of life, injury to persons or damage to property (wherever such property may be located) that may be sustained directly or indirectly due to any activities, operations or use of the License Zone by LRH or any LRH Related Parties, including without limitation any activities, operations or use in connection with the Response Activity Work. LRH and HCP hereby releases the City, its officers, directors, shareholders, partners, members, managers, employees, and agents, and the heirs, legal representatives, successors and assigns of all of the foregoing (collectively, the "**City Related Parties**") from, and waives all claims, including for damages to person or property, sustained by LRH, HCP, any of the LRH Related Parties, or by any other person or entity, resulting directly or indirectly from LRH's or any LRH Related Party's use of the License Zone or Response Activity Work including, without limitation, any act or neglect of any LRH Related Party in or about the License Zone.

(b) LRH and LRH Related Parties shall indemnify, defend, and hold harmless the City and the City Related Parties from and against any and all claims, actions, obligations, notices of violation, notices of liability, judgments, damages, liability, cost and expense, including reasonable attorneys' fees, arising from or related to: (a) any occurrence in, upon or at the License Zone (including loss of life, personal injury and/or damage to property including, but not limited to, any environmental contamination caused or exacerbated during or related to the Response Activity Work) caused directly or indirectly by HCP, LRH or LRH Related Parties, (b) HCP's, LRH's or LRH Related Parties' failure

to comply with any provision of this Agreement, (c) any act or omission of HCP, LRH or LRH Related Parties using the License Zone (including without limitation any failure by HCP, LRH or anyone acting on LRH's behalf to comply with the Laws and Regulations), and/or (d) any liability or obligation arising under any environmental law at any location, on-site or off-site as a result of any act or omission of HCP, LRH (or anyone acting on LRH's behalf) or any hazardous substance, chemical, or contaminant originating on the License Zone released, exacerbated, transported, disposed or generated by HCP, LRH (or anyone acting on LRH's behalf) during the term of this Agreement.

8. Insurance. LRH, and any contractors and subcontractors engaged in the Response Activity Work ("**Contractors**"), shall carry insurance throughout the Response Activity Work, at their respective sole cost and expense, with terms, coverages and companies reasonably satisfactory to the City and with such increases in limits as the City may reasonably request from time to time, but initially LRH and any Contractors shall maintain the following coverages in the following amounts with insurers licensed to do business in the State of Michigan having an A.M. Best rating of A+ or A:

(a) Worker's compensation insurance in amounts required by applicable law (but in no event less than One Million Dollars (\$1,000,000) per occurrence), covering all persons employed in connection with any work done on or about the License Zone with respect to which claims for death or bodily injury could be asserted against the applicable Contractor, HCP, LRH or the City;

(b) Employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence;

(c) Commercial general liability insurance (broad form), with the following limits of coverage:

(i) Combined single limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate with respect to claims for damages because of: (A) bodily injury, including personal injury, disease or death of any person; (B) injury to or destruction of tangible property including loss of use resulting therefrom; and

(ii) Combined single limit of Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate with respect to claims for damages because of: (A) bodily injury, including personal injury, sickness or death; and (B) injury to or destruction of tangible property including loss of use resulting therefrom, for pollution related claims.

(d) Excess umbrella liability insurance with limit of Five Million Dollars (\$5,000,000) per occurrence and in the aggregate with respect to claims for damages because of bodily injury, including personal injury, sickness or death of any person; and from claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom, for pollution related claims.

The foregoing insurance shall be set forth in one or more policies which may cover more than one party or property. The insurance shall name the City and the City Related Parties as additional insureds and shall contain a waiver of subrogation clause in favor of the City. Certificates evidencing such insurance shall be furnished to the City prior to the commencement of any work or other activities to be performed by LRH by virtue of the License granted by the City. Such policy shall provide that

termination or cancellation will not occur without at least thirty (30) days' prior written notice to the City.

9. Representations and Warranties of LRH and HCP. LRH and HCP hereby represent and warrant to the City as follows:

(a) LRH and HCP are each duly organized and validly subsisting under the laws of the State of Michigan and have full power and authority to own and operate its properties, to conduct their affairs as now being conducted, to execute and deliver this Agreement and to perform its obligations hereunder and thereunder including, without limitation, the indemnification obligations under Section 7 hereof.

(b) LRH and HCP have, in connection with the execution and delivery of this Agreement, complied in all respects with the provisions of every statute, regulation, decision, instrument, agreement or resolution by which they or any of their business or property is bound or subject, and the execution and delivery by LRH and HCP of this Agreement and the performance thereof has been duly authorized by all actions necessary or requisite on the part of LRH and HCP.

(c) Neither the execution, the delivery, nor the performance by LRH or HCP of the provisions of this Agreement does or will, with notice or lapse of time, or both, conflict with or constitute a default under any statute, rule, regulation, decree, decision, resolution, instrument, document or agreement by which LRH or HCP is bound or to which LRH or HCP or any of their properties or assets is subject.

(d) This Agreement is in full force and effect and is valid, binding and enforceable upon LRH and HCP in accordance with its terms.

10. Representations and Warranties of the City. The City hereby represents and warrants as follows:

(a) The City is duly organized and validly subsisting under the laws of the State of Michigan and have full power and authority to own and operate its properties, to conduct its affairs as now being conducted, to execute and deliver this Agreement.

(b) The City has, in connection with the execution and delivery of this Agreement, complied in all respects with the provisions of every statute, regulation, decision, instrument, agreement or resolution by which it or any of its business or property is bound or subject, and the execution and delivery by the City of this Agreement and the performance thereof has been duly authorized by all actions necessary or requisite on the part of the City.

(c) Neither the execution, the delivery, nor the performance by the City of the provisions of this Agreement does or will, with notice or lapse of time, or both, conflict with or constitute a default under any statute, rule, regulation, decree, decision, resolution, instrument, document or agreement by which the City is bound or to which the City or any of its properties or assets is subject.

(d) This Agreement is in full force and effect and is valid, binding and enforceable upon the City in accordance with its terms.

11. Notices. All notices required or desired to be given hereunder by any party to the others shall be in writing and shall be deemed to have been given (a) upon receipt if delivered in person, or (b) the third business day after mailing, if mailed, first class certified, registered or express mail, return receipt requested and postage prepaid, or (c) the following business day if sent by recognized overnight courier with charges prepaid, when sent to the addresses set forth in the first paragraph of this Agreement, or to such other address as may be designated from time to time by such other party hereto by notice given in the manner provided in this Section.

12. Miscellaneous.

(a) If any party commences an action against another to enforce any of the terms of this Agreement or because of the breach by a party of any of the terms hereof, the losing party shall pay to the prevailing party's reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action.

(b) This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs and successors. Either party may freely assign its rights or obligations under this Agreement. A party may not assign its rights or obligations under this Agreement without the prior written consent of the other party.

(c) This Agreement will be governed by the laws of Michigan and resort by the parties to any litigation regarding this Agreement shall only be to courts of applicable jurisdiction and venue located within Michigan.

(d) Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the court making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

(e) The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

(f) The captions and headings to the Sections and subsections contained in this Agreement are for convenience and reference only, do not form a substantive part of this Agreement and do not restrict or enlarge substantive portions of this Agreement.

(g) Except as otherwise provided in this Agreement, all representations, warranties, covenants and agreements of the parties contained or made pursuant to this Agreement shall survive the execution of this Agreement.

(h) The recitals set forth above are incorporated by reference into the Agreement as if fully set forth therein.

(i) If a conflict arises between the terms of or definitions in this Agreement and the Brownfield Reimbursement Agreement between the parties, this Agreement shall prevail and control.

(j) No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

(k) This is the entire agreement between the parties as to its subject. It shall not be affected by any course of dealing and the waiver of any breach shall not constitute a waiver of any subsequent breach of the same or any other provision. This Agreement may not be amended, altered, modified or cancelled unless done so in writing by all of the parties hereto. This Agreement contains all of the representations and statements by the parties to one another, and express the entire understanding between the parties. All prior and contemporaneous communications between the parties not reduced to writing are merged in and replaced by this Agreement.

(l) Except for payment of sums due, no party shall be liable to another or deemed in default under this Agreement if and to the extent that such party's performance under this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party so delayed and could not have been avoided by exercising reasonable diligence, which may include, for example, natural disaster or decrees of governmental bodies not the fault of the affected party(s). If either party is delayed by force majeure, the party affected shall provide written notification to the other party immediately, but shall do everything reasonably possible to resume performance. The notification shall provide evidence of the force majeure event to the satisfaction of the other party.

(m) This Agreement may be executed in two or more counterparts, with the same effect as if all the signatures on the counterparts were on the same instrument.

(n) This Agreement constitutes the entire agreement between the parties hereto with regard to the subject matter hereof.

HAMLIN CONSERVATION PARK, LLC

LRH DEVELOPMENT, LLC

By: _____

By: _____

Its: Manager

Its: Manager

Dated: _____

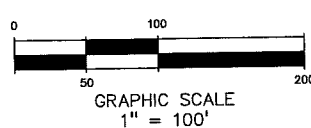
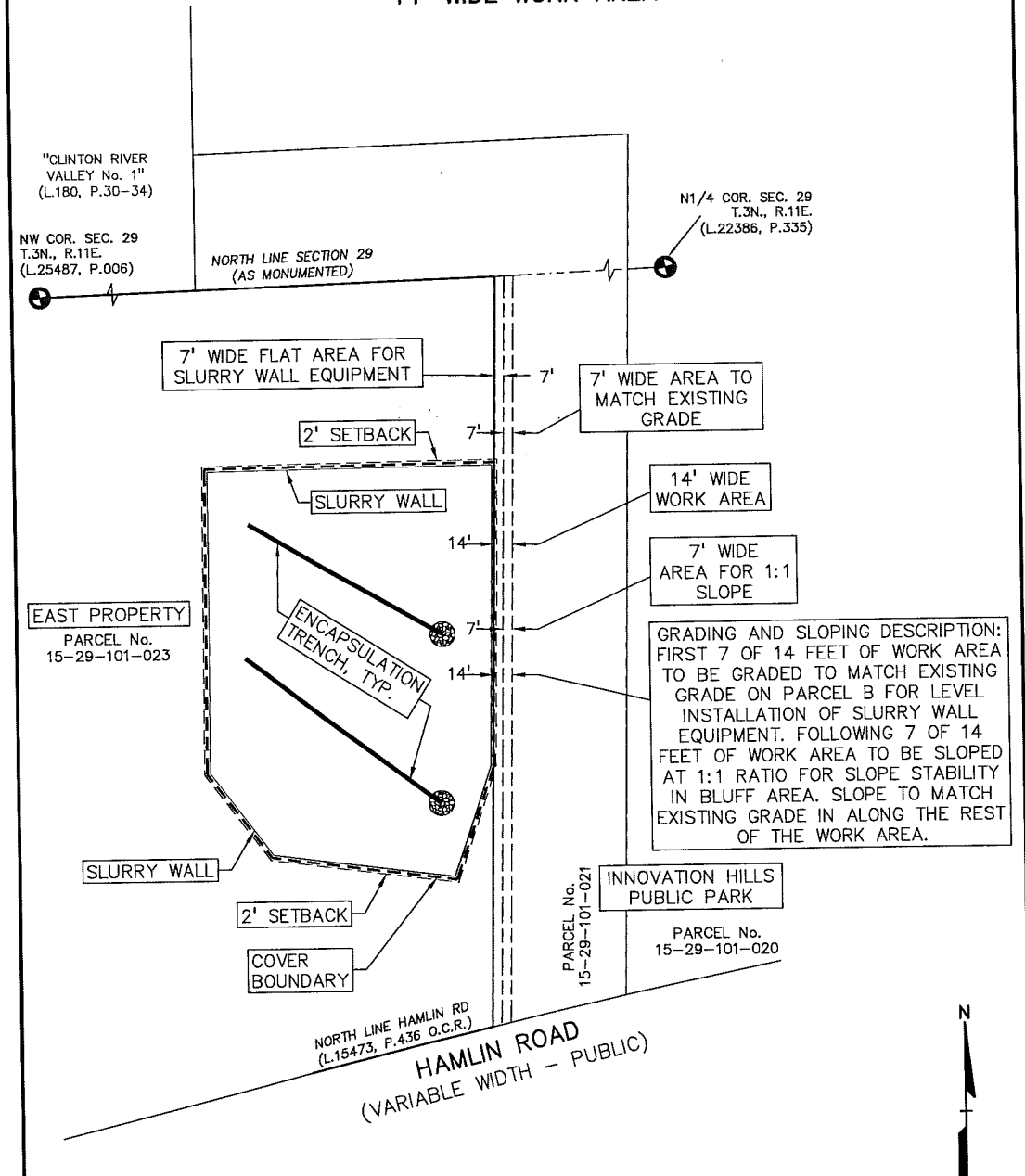
Dated: _____

CITY OF ROCHESTER HILLS

By: _____

Its: _____

EXHIBIT A ENCAPSULATION AREA AND 14' WIDE WORK AREA



PEA, Inc.
 2430 Rochester Ct., Ste. 100
 Troy, MI 48063-1872
 t: 248.689.9090
 f: 248.689.1044
 www.peainc.com

CLIENT: GOLDBERG COMPANIES, INC 25101 CHAGRIN BOULEVARD BEACHWOOD, OH 44122	SCALE: 1" = 100'	JOB No: 2017037
	DATE: 3/14/19	DWG. No: 1 of 1