

CITY OF TOLEDO, OHIO

SUPPLEMENTAL  
ENVIRONMENTAL PROJECT PROPOSAL  
FOR THE  
STICKNEY WEST INDUSTRIAL PARK

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A. INTRODUCTION

On October 29, 1991, U.S. EPA filed an enforcement action against the city of Toledo, Ohio captioned *The United States of America and The State of Ohio v. The City of Toledo, Ohio*, Civil Action 3:91:CV7646, before Judge John W. Potter in the United States District Court for the Northern District of Ohio Western Division, regarding alleged violations associated with the city of Toledo's Bay View Wastewater Treatment Plant. As a part of the settlement of this enforcement action, the city of Toledo hereby requests approval of a Supplemental Environmental Project ("SEP") in connection with the Stickney West Industrial Park brownfield redevelopment.

Hemisphere Ltd., a brownfields redevelopment company, has identified an area consisting of seven parcels of land located principally at 4401-4425 Creekside Avenue, Toledo, Ohio, directly across from the 400 acre Chrysler Jeep Plant, for redevelopment into an urban industrial park, the Stickney West Industrial Park ("SWIP" or the "Project"). Hemisphere has had no nexus to causing any of the contamination at the SWIP site. In 1999 the Stickney/Tyler Administrative Group completed construction of CERCLA removal actions for the parcels comprising the Stickney Avenue and Tyler Street Landfills. Also in 1999 Hemisphere initiated a voluntary cleanup of contamination and debris on Gorney Parcel 1 and of scrap tires, railroad ties, and other solid waste from Gorney Parcel 2. Hemisphere intends to investigate, acquire and clean up the remaining three properties that make up this expansive brownfield. As an interim stage in the cleanup and redevelopment of the SWIP site, Hemisphere has licensed a Construction and Demolition Debris ("C&DD") landfill at a portion of the SWIP site (Gorney Parcel 1). The landfill, which has been designed, after closure, to support light industrial development, will help fund additional cleanup and redevelopment at the site. In total, Hemisphere anticipates assembling approximately 160 acres dedicated to industrial/warehouse space to support "just in time" manufacturing for the new Jeep Plant.

As explained below, the SWIP Project will serve as a national model for brownfields redevelopment. Hemisphere and the City have negotiated a Development Agreement whereby Hemisphere has volunteered to address certain specific environmental liabilities at Parcel 1. A copy of the Development Agreement is attached hereto as Exhibit A. Both parties are also working closely to further the cleanup and development of the remaining parcels, which are not covered by the Development Agreement. **Pursuant to U.S. EPA's request, this application seeks SEP funds for only those portions of the Project not covered by the Development Agreement and only for work not yet conducted.** The city of Toledo (the "City") has no equity interest in the proposed SEP. The proposed SEP satisfies all criteria of U.S. EPA's Supplemental Environmental Projects Policy and Using Supplemental Environmental Projects to Facilitate Brownfields Redevelopment Policy. Therefore, the City respectfully requests U.S. EPA's prompt review and approval of a minimum of Five Hundred Thousand Dollars (\$500,000) to be dedicated as a SEP in partial settlement of the above-referenced enforcement action.

**B. SITE DESCRIPTION AND HISTORY**

**SITE DESCRIPTION.** The 160-acre SWIP Project is made up of several distinct properties:

- Gorney Parcel 1 ≈ 27.5 acres
- Gorney Parcel 2 ≈ 17.27 acres
- Gorney Parcel 3 (a.k.a. the Tyler Landfill) ≈ 55 acres
- Stickney Avenue Landfill ≈ 50 acres
- **Gorney Parcel 4 ≈ 3.37 acres**
- **Shepherd Property ≈ 5.22 acres**
- **Toledo Recycling North ≈ 4.72 acres**

Although the entire SWIP Project entails all of the above parcels, **this SEP Application pertains solely to Gorney Parcel 4, the Shepherd Property and Toledo Recycling North (the "SWIP SEP Parcels")**. A site map with the SWIP SEP Parcels noted, and aerial photographs detailing the SWIP Project and its relationship to the nearby landfills, the new Jeep Facility and Lake Erie are attached hereto as Exhibit B.

**HISTORY – PAST INDUSTRIAL ACTIVITIES AND ENVIRONMENTAL CONCERNS.** The SWIP Project is located in a heavily industrialized area of Toledo approximately 1,000-1,500 feet from Interstate 75 activities. Historically, much of the property was used by the now-defunct Royster Company as a fertilizer manufacturing plant. Mr. Ronald Gorney also used these parcels as an unlicensed salvage yard since the mid-1980s. Because of the SWIP site's previous industrial uses, contaminated state, and nuisance conditions including dilapidated structures and accumulated debris, the SWIP site is considered a brownfield. None of the properties involved in the SWIP Project are National Priorities List sites.

When Hemisphere began work on the first phase of the SWIP Project, many environmental conditions posed a significant threat to both surface water and groundwater. Approximately 250,000 to 300,000 used tires (at least 50% of which were in large piles on Gorney Parcel 2 – with the remainder contiguous thereto) and about 50,000 used railroad ties (solely on Gorney Parcel 2) were present at the site. These tires and railroad ties remain there today, threatening both Sibley Creek and the Ottawa River in the event of a fire. Large stockpiles of old automobile fuel tanks generated as part of the salvage operation, and associated puddles of gasoline, were present on Parcel 1 and Toledo Recycling North; although likely to be smaller in scope, these issues may remain on Parcel 4 and the Shepherd Property. Over 200 unmarked drums containing unidentified liquid wastes were located on Parcel 1, as well as a number of abandoned above ground and underground storage tanks, which are also suspected environmental concerns on the SWIP SEP Parcels. Asbestos-containing transite was contained in a large dilapidated building on Parcel 1 and remaining buildings are likely to contain asbestos. Piles and bags of fertilizer and pesticides were left on Parcel 1 and likely impacted Parcel 2. Wetlands located on Parcels 1 and 2 were illegally

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filled by prior owners/operators. Contaminated soils were identified on Parcels 1 and 2 through sampling, and additional contamination is expected on the remaining parcels.

With respect to the SWIP SEP Parcels, the following present conditions continue to pose significant environmental concerns:

- **Gorney Parcel 4** – A portion of this parcel, which is approximately 3.37 acres in size, was included in an outdated Phase I of the Shepherd Property. It was determined that this Property was historically used as a salvage yard and some of the buildings located on Parcel 4 were used in conjunction with the slaughterhouse that was operated on the contiguous Shepherd Property. These buildings also may contain asbestos. One potential UST (a former dispenser pad) was discovered during the Property reconnaissance. Hemisphere was unable to verify whether the UST has been removed. The tank is not registered with the Ohio Bureau of Underground Storage Tanks (BUSTR). One additional suspected UST was discovered through the interpretation of historical Sanborn Maps that were obtained for the Shepherd Property. The Sanborn Map illustrates a UST near the north-central portion of the Gorney Parcel 4 Property. This UST was not located during the Property reconnaissance. Gorney Parcel 4 does not have positive drainage, which may be causing ponding near the toe of the Tyler Street Landfill (Gorney Parcel 3). A Phase I Property Assessment has not been conducted on the entirety of this Property
- **Shepherd Property** – This parcel experienced historical railroad and automotive salvage operations and contains several underground storage tanks. Buildings located on the Shepherd Property, as well as Gorney Parcel 4, may contain asbestos. The extent of environmental contamination has not yet been determined.
- **Toledo Recycling North** – This parcel previously was used as an acetylene and solvent blending plant and a salvage yard. No buildings currently exist on this parcel. Further, the Toledo Recycling North property abuts a portion of an area designated as a wetland, which is located primarily on Gorney Parcel 2. Sibley Creek runs through this property. This parcel may be impacted by former railroad operations, previous filling activities, the presence of creosote utility poles and potential asbestos containing materials, the presence of junked cars and other past industrial activities. This parcel is currently being used for temporary stockpiling of concrete demolition debris from the Gorney Parcel 1 site clearing activities. The stockpiled concrete debris will be utilized or disposed in conjunction with the operation of the C&DD Landfill being prepared on Gorney Parcel 1. Disposition of this material is an existing obligation of Hemisphere and is not a component of the proposed SEP.

**HISTORY OF WORK PERFORMED AT PARCEL 1.** Hemisphere has already made significant progress on many of the environmental problems on Parcel 1 of the SWIP site, resulting in immediate reduction in the risk to the Ottawa River and Sibley Creek. At Hemisphere's direction, about 30,000 cubic yards of solid waste scattered across Parcel 1 were removed. The leaking gas tanks were sent to a scrap metal facility and all stained areas contaminated with gasoline were addressed pursuant to Ohio EPA oversight. The piles and bags of fertilizer and pesticides were immediately placed in secure containers and sent off-site to be incinerated at an approved facility, thus removing another potential source of contamination into the groundwater and surface waters. Hemisphere worked with U.S. EPA and its contractor, Ecology and Environment, to characterize the materials in the 200 + drums so that they could be appropriately disposed. The drums primarily contained used oils, transmission fluids and coolant materials associated with the mechanical operation of the former scrap yard. Removal of these drums eliminated a potential risk of contamination into the soil, groundwater and adjacent surface waters. An illegally filled wetland received the appropriate after-the-fact permit and was mitigated. The large asbestos transite building on Parcel 1 was demolished and all friable materials were sent off-site; non-friable transite materials are appropriately stored on-site and will be placed in the C&DD landfill once constructed. All above ground and underground tanks on Parcel 1 were excavated and the materials inside were properly disposed. Most of these tanks contained oil or gasoline, however, one above ground tank contained hazardous waste. Although none of the tanks showed signs of leaking, the tanks had not been used since at least 1985 and a potential source of contamination is now eliminated at Parcel 1. All impacted non-hazardous soils were taken to the adjacent Dura Avenue Landfill for placement beneath the protective cap at that secure facility, pursuant to Ohio EPA permission and U.S. EPA oversight. Removal of the impacted soils, as well as the other materials described above, has resulted in reduced risk to the Ottawa River and Sibley Creek.

Much environmental progress has been made at Parcel 1, however, much work remains ahead – work that will provide further benefits to the Ottawa River and Sibley Creek, as well as Toledo's economy. Hemisphere is already obligated by an Easement Agreement dated 11/3/99 to address the tires, railroad ties, and solid waste located on Parcel 2 at a cost of approximately \$400,000. While not required by any law or agreement regarding the site, including the Development Agreement between the City and Hemisphere, Hemisphere intends to take Parcel 1 through the Ohio Voluntary Action Program ("VAP") and obtain a Covenant Not To Sue for Parcel 1 at an anticipated additional cost to Hemisphere of between \$120,000 and \$150,000.

Hemisphere believes that the extra comfort on the environmental liabilities provided through this process is necessary to attract tenants to the site once the landfill has been closed. Depending on the availability of the requested SEP Funds, Hemisphere also intends to investigate, acquire and remediate the three (3) SWIP SEP Parcels and take these parcels through the VAP at an estimated cost of \$750,000. It is the work at the three (3) SWIP SEP Parcels to which the City seeks to apply SEP dollars.

C. **REMAINING ENVIRONMENTAL WORK TO RECEIVE SEP FUNDING**

Outlined below is a brief summary of the most significant environmental issues to be addressed by Hemisphere with use of the proposed SEP funds at the SWIP SEP Parcels:

1. **Site Investigation** – Prior Phase I Property Assessments and limited sampling indicate the likely presence of pesticides, heavy metals, and petroleum contamination in soil samples on the SWIP SEP Parcels. Numerous USTs are likely located on the SWIP SEP Parcels. Based on the prior Phase I Property Assessments, at least 5 USTs are expected to be found. Once the SEP funds are available, Hemisphere plans to perform additional environmental investigation to complete VAP Phase I, Phase II and risk assessment activities. This task will also include any investigation activities necessary to evaluate USTs. Although the costs attributable to this task at the SWIP SEP Parcels are difficult to quantify until additional investigatory work is underway, the investigation of the SWIP SEP Parcels in accordance with the VAP and the UST requirements are currently estimated to cost \$200,000 to \$250,000.
2. **Cleanup of Contaminated Media** – Hemisphere plans to perform remediation necessary to meet Ohio EPA's promulgated VAP standards, and the UST requirements as necessary, on the three SWIP SEP parcels. Meeting these standards will ensure that the parcels are protective of human health and the environment. This task may include limited removal of concrete fill material from Sibley Creek. Unsuitable drainage paths on Gorney Parcel 4 will be addressed to improve positive surface drainage to the Tyler Street landfill perimeter drainage ditch. Until all investigatory work is completed, the cost to complete this task is difficult to predict. However, cleanup is currently estimated to cost from \$150,000 to \$200,000.
3. **Building Demolition and Waste Disposal** – Old, dilapidated buildings are currently located in the SWIP SEP Parcels. These buildings may contain asbestos. Demolition and associated waste disposal are estimated to cost between \$150,000 - \$200,000.
4. **Ohio Voluntary Action Program NFA Preparation and SEP Completion Report** – Hemisphere intends to take Gorney Parcel 4, the Shepherd Property and Toledo Recycling North through Ohio EPA's VAP in an effort to secure Covenants Not To Sue. Hemisphere is not obligated to either the City or any other party to perform this activity. However, Covenants Not To Sue will add significant value to these properties and thus help secure both financing and tenants for future redevelopment. In addition to conducting VAP-specific investigations and performing cleanup necessary to meet the VAP's protective standards, additional costs will be incurred to secure No Further Action

Letters (NFAs) and ultimately Covenants Not To Sue, at these parcels. These additional costs are estimated to be \$100,000 and include additional risk assessment activities, Ohio EPA oversight and assistance, and operation and maintenance measures. This task also includes Hemisphere's submittal of a SEP Completion Report to the City. This report shall include information to enable the City to provide a SEP Completion Report to U.S. EPA as required by the Consent Order and shall include information such as: a description of the SEP as implemented; a description of the operating problems encountered and the solutions thereto; itemized costs documented by purchase orders, invoices, receipt or canceled checks; and a description of the environmental and public benefits resulting from the implementation of the SEP. The deliverables provided by Hemisphere to the City in accordance with the payment schedule below may also serve to fulfill aspects of the SEP Completion Report.

Preliminary Phase I studies of the SWIP SEP Parcels were conducted along with Parcel 1. Attached, as Exhibit C, is a more complete list of the Identified Areas (i.e., areas of environmental concern) attributable to the SWIP SEP Parcels, as noted in those prior Phase I Property Assessments.

**D. APPLICATION OF SEP FUNDING**

**But for the grant of these funds, Hemisphere is highly unlikely to investigate, acquire or remediate the SWIP SEP Parcels.** The brownfields cleanup and redevelopment activities remaining at the SWIP SEP Parcels, and the associated cost the City seeks through the SEP, are listed below. Hemisphere seeks to apply SEP funds to result in the allotment of \$200,000 for site investigation and NFA Preparation activities (Tasks 1 and 4) and \$300,000 for site cleanup, building demolition and waste disposal activities (Tasks 2 and 3). More than \$300,000 may be applied to Tasks 2 and 3 if tasks 1 and 4 utilize less than \$200,000, so long as the total in SEP Funds made available do not exceed \$500,000.

<u>Environmental Concern</u>	<u>Estimated Cost</u>	<u>SEP Funds Sought</u>
Task 1. Site Investigation	\$200,000 - \$250,000	\$150,000
Task 2. Cleanup of Contaminated Media	\$150,000 - \$200,000	\$200,000
Task 3. Building Demolition and Waste Disposal	\$150,000 - \$200,000	\$100,000
Task 4. Ohio VAP NFA Preparation and SEP Completion Report	<u>\$100,000</u>	<u>\$50,000</u>
<b>TOTAL</b>	<b>\$750,000</b>	<b>\$500,000</b>

Hemisphere will prioritize among the SWIP SEP Parcels the expenditure of funds once the Phase I updates and Phase II studies are completed to insure that actual progress is made at these sites, maximizing redevelopment opportunities. However, as with all brownfield acquisitions, it is impossible to guarantee the feasibility of such redevelopment before these environmental assessments have been completed. In the event the environmental investigations disclose liabilities on one or more of the SWIP SEP Parcels making it economically infeasible for Hemisphere to acquire said parcels, Hemisphere will prioritize the SEP funds to address the environmental issues at the remaining sites. The above-referenced activities will be conducted in a fashion that affords Hemisphere the ability to submit NFAs for each of the SWIP SEP Parcels actually acquired by Hemisphere within three years of receiving SEP funds. The city will allocate SEP funds to Hemisphere in accordance with the payment and deliverables schedule, attached as Exhibit D.

**E. SIGNIFICANT BENEFITS TO THE COMMUNITY FROM THE SWIP PROJECT**

Hemisphere's successful cleanup and redevelopment of the SWIP Project will create benefits to the Community for purposes of environmental remediation and economic redevelopment. Significant direct benefits, both tangible and intangible, are briefly described below:

**Benefits to the Community as a Whole.** Concrete benefits provided to the Toledo Community by the SWIP Project in general, and by the use of SEP funds at the SWIP SEP Parcels in particular, include:

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1. **Permanently Abolishing Environmental Blight** – U.S. EPA funding through the SEP will definitively address historical environmental hazards on Gorney Parcel 4, the Shepherd Property and Toledo Recycling North, which include impacts from abandoned underground storage tanks, dilapidated structures, surface debris, and contaminated soils. These efforts will reduce risk to the water quality of Sibley Creek and the Ottawa River, and ultimately the Maumee River and Lake Erie.
2. **Catalytic Brownfield Redevelopment** – Creating a model public/private partnership, including all relevant stakeholders for redeveloping some of the City's most difficult brownfield sites. Without implementing this creative approach, the SWIP Project area would likely remain undeveloped and unabated.
3. **Building on Jeep Momentum** – Creating immediate and long-term benefits related to the Jeep Project by firmly establishing an additional 13.3 acres of industrial development space contiguous to the Jeep Plant to complement the 27.5 acres being recovered in Parcel 1. This approach will recycle brownfield property and combat urban sprawl. SEP funding is critical to overcoming the environmental hurdles in existence at the SWIP SEP Parcels that have precluded redevelopment of these properties.
4. **New Jobs** – Creating job opportunities for Toledo residents in the businesses to be located in the new industrial park.
5. **Increasing Tax Base** – Enhancing the local tax base through the redevelopment of an area, which, without the SWIP Project, will remain an obvious blight to the city of Toledo.
6. **Leveraging Private Dollars** – With the infusion of \$500,000 from SEP funds, the City will be able to leverage an even greater contribution of Hemisphere's private dollars toward the cleanup and redevelopment of these brownfields.

F. **SWIP FUNDING TO DATE**

Pursuant to a \$200,000 Site Assessment Grant awarded to the city of Toledo by U.S. EPA, a Phase II investigation of Parcels 1 and 2 was conducted. An additional \$300,000 of in-kind lab related services also were provided by U.S. EPA for the SWIP Project and used almost exclusively at Parcel 1. The extensive cleanup of Parcel 1 was funded by Hemisphere, with financial support from the revenue created by the sale of cover material for the Dura Avenue Landfill. Further, Hemisphere has invested over 3,500 professional hours and significant financial resources in supplemental due diligence costs to date. Hemisphere is working with Ohio EPA to secure a remediation loan for a portion of funds spent to date.

The SEP funds to be utilized by Hemisphere from the City shall be used to address and remediate the environmental liabilities identified by Hull & Associates, Inc. through its due diligence performed at the SWIP SEP Parcels. All relevant environmental liabilities at the SWIP site will be addressed consistent with applicable environmental laws.

**G. THE TEAM**

Hemisphere Ltd., a nationally recognized brownfields redevelopment company, has formed a sophisticated team of professionals, each dedicated to adding value to the Project, in order to accomplish this redevelopment. Todd Davis and Jenifer Kwasniewski will address all Project-related development, management, legal and environmental issues. Biographies for Mr. Davis and Ms. Kwasniewski are attached hereto as Exhibit E. Hemisphere has engaged Hull & Associates, Inc. and its principals, John Hull and Craig Kasper, to address environmental engineering issues at the SWIP site.

The SWIP team was assembled to deliver all necessary expertise to address every aspect of this property's redevelopment, including legal, financial, real estate, environmental and construction related issues. The goal of this project is to form a public/private partnership between Hemisphere, the city of Toledo, U.S. EPA and Ohio EPA to redevelop one of the city of Toledo's largest brownfield sites into "just in time" manufacturing facilities to support the \$1.2 billion Toledo Jeep Plant expansion.

**H. COMMUNITY INPUT**

The City has involved the Community during the development of the SWIP Project. The City's involvement in the Project was a topic of a Toledo City Council meeting, which was open to the public, on June 15, 1999, and was authorized by Toledo Municipal Ordinance No. 498-99 passed on August 3, 1999. Additionally, presentations were made to the Toledo Planning Commission, which approved land use issues for the Project. Over the last year, Mr. Casey Stephens, Project Manager for the City's Service Department, and Hemisphere representatives have made several presentations about the Project to the Maumee Remedial Action Plan Group, an active local citizens environmental group concerned about the Western Lake Erie watersheds, as part of the City's efforts to notify and inform local interests. Therefore, the Toledo Community has been apprised of the Project and, through their elected representatives, approve of the City's participation.

**I. SATISFACTION OF U.S. EPA'S SUPPLEMENTAL ENVIRONMENTAL PROJECTS CRITERIA**

Based on the foregoing analysis, the city of Toledo's use of the \$500,000 Supplemental Environmental Project toward remedial activities at the SWIP SEP Parcels meets all relevant criteria of the U.S. EPA Supplemental Environmental Projects Policy dated May 1, 1998 (the "SEP Policy") and U.S. EPA's policy entitled "Using Supplemental

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Environmental Projects to Facilitate Brownfields Redevelopment" dated September 1998 (the "Brownfields SEP Policy"). *Additionally, but for the grant of the SEP in this matter, the environmental rehabilitation of the SWIP SEP Parcels in particular, would not occur.* The criteria from these policies are listed below with a brief explanation of how the work at the SWIP SEP Parcels meets each criterion.

- **The project must be environmentally beneficial** - As previously explained, the SWIP Project undoubtedly is "environmentally beneficial" as Hemisphere will remediate a substantial public nuisance and environmental and public health hazards currently manifested at the SWIP SEP Parcels. The conditions at the SWIP SEP Parcels pose a significant threat to the Ottawa River and Sibley Creek.
- **The defendant/respondent (the city of Toledo) must agree to undertake the SEP in settlement of an enforcement action** - On October 29, 1991, U.S. EPA filed an enforcement action against the city of Toledo, Ohio captioned *The United States of America and The State of Ohio v. The City of Toledo, Ohio*, Civil Action 3:91:CV7646, before Judge John W. Potter in the United States District Court for the Northern District of Ohio Western Division, regarding alleged violations associated with the city of Toledo's Bay View Wastewater Treatment Plant. This SEP is proposed as a part of the settlement of this enforcement action.
- **U.S. EPA must have the opportunity to help shape the scope of the project before it is implemented** - The U.S. EPA has played a critical role to date through closure activities in connection with contiguous landfills, as well as oversight provided in the context of the Site Assessment Grant which has been utilized by the city of Toledo to perform preliminary environmental due diligence in connection with the Gorney Parcel 1 Property. But for U.S. EPA's activities to date, the SWIP Project would not have advanced to this stage. Hemisphere and the City welcome the continuation of U.S. EPA's assistance.
- **The project must not commence until after the Agency has identified a violation** - The Agency identified the alleged water violation, which forms the basis for the SEP, in 1991, well before the SWIP Project had been identified for the SEP. Furthermore SEP monies will only be applied to activities that have not yet been conducted.
- **The defendant/respondent must not be otherwise legally required to perform to work funded by the SEP** - The use of the SEP for the SWIP SEP Parcels would allow Hemisphere to investigate, acquire and remediate certain brownfield properties that it would not otherwise legally be required to address. As a prospective purchaser, Hemisphere is not required to address

the SWIP parcels by any federal, state or local law or regulation. Further, by using the funds for the environmental improvement of the SWIP SEP Parcels, neither the city of Toledo nor Hemisphere is performing an action which it otherwise would be required to perform: 1) as injunctive relief in the instant case (the water violation matter); 2) as injunctive relief in another legal action EPA, or another regulatory agency, could bring as part of an existing settlement or order; 3) in another legal action; or 4) by a state or local requirement. Furthermore, remedial activities required by the Development Agreement between the City and Hemisphere will not be funded with SEP monies. As the environmental hazards to be addressed were created by private parties (including the bankrupt Royster Co.) the city of Toledo would not be responsible for addressing these hazards. Therefore, neither the City nor Hemisphere would be legally required to perform these remedial activities.

- **The project cannot be inconsistent with any provision of the underlying statutes** - The SWIP Project will comply with all applicable environmental laws and be conducted under the auspices of both Ohio EPA and U.S. EPA. Additionally, the Project will not be inconsistent with any provision of any relevant statutory requirement.
- **All projects must advance at least one of the objectives of the environmental statutes that are the basis of the enforcement action and must have adequate nexus. Nexus is the relationship between the violation and the proposed project. This relationship exists only if:** 1) the project is designed to reduce the likelihood that similar violations will occur in the future; 2) the project reduces the adverse impact to public health or the environment to which the violation at issue contributes; or 3) the project reduces the overall risk to public health by the environment potentially affected by the violation at issue - A SEP at a brownfield will generally satisfy the nexus requirement if the action enhances the overall public health or environmental quality of the area put at risk by the violation. A SEP is not required to be at the same facility where the violation occurred provided that it is within the same ecosystem or in the immediate geographical area. In general, the nexus requirement will be satisfied if the brownfield is within a 50-mile radius of the site from which the violation occurred. In this instance, the SWIP Project is located approximately 3 miles from the city of Toledo's Bay View Wastewater Treatment Plant, the site of the enforcement action filed by U.S. EPA and well within a 50 - mile radius of the site where the alleged violation occurred. Additionally, the environmental liabilities at the SWIP SEP Parcels certainly affect the same ecosystem as the alleged violations at the city of Toledo POTW. Further, by abating the environmental liabilities at the SWIP Project area, the surface and groundwater of the same ecosystem will be protected. Environmental improvements to the SWIP SEP Parcels will provide a direct benefit to the Ottawa River and Sibley Creek,

which flow into the Maumee River and ultimately Lake Erie, the same water body into which the Wastewater Treatment Plant discharges. Therefore, the SWIP Project satisfies U.S. EPA's criterion by protecting surface and ground water quality, as well as human health and safety, which is the basis of the enforcement action, as well as having sufficient nexus to the alleged violation as defined in the Brownfields SEP Policy.

- **U.S. EPA may not play any role in managing or controlling funds that may be set aside or escrowed for performance of a SEP. Nor may EPA retain authority to manage or administer the SEP** - With respect to the SWIP Project, U.S. EPA will not play any role in managing or controlling funds for performance of the SEP, or retain authority to manage or administer the SEP. Hemisphere and the City, however, welcome U.S. EPA's participation to perform oversight to ensure that the Project is implemented pursuant to provisions of the settlement and in a manner that furthers U.S. EPA's Brownfields goals.
- **The type and scope of each project must be defined in the signed settlement agreement** - The City will designate funds from the settlement, in the amount of Five Hundred Thousand Dollars (\$500,000), to address the articulated environmental liabilities associated with the SWIP SEP Parcels in particular and the SWIP Project area generally. No SEP funds will be applied toward activities currently required pursuant to the Development Agreement or any currently existing private-party agreement. No SEP Funds will be applied to any activities already conducted at Parcel 1.
- **The project cannot be used to satisfy EPA's statutory obligation or another federal agency's obligation to perform a particular activity. Conversely, if a federal statute prohibits the expenditure of federal resources on a particular activity, EPA cannot consider projects that would appear to circumvent that prohibition** - The SWIP Project does not satisfy any of U.S. EPA's statutory obligations or another federal agency's obligation to perform a particular activity. Further, no federal statute prohibits the expenditure of federal resources on this brownfield redevelopment. To the contrary, U.S. EPA's Brownfields Economic Development Initiative specifically supports the use of this type of SEP to assist in redeveloping significant brownfield properties such as the SWIP SEP Parcels.
- **The project may not provide EPA or any federal agency with any additional resources to perform a particular activity for which Congress has specifically appropriated funds. The project may not provide EPA with additional resources to perform a particular activity for which Congress has earmarked funds in an appropriations committee report. Further, the project cannot be used to satisfy EPA's statutory or earmark**

**obligation, or another federal agency's statutory obligation, to spend funds on a particular activity** - The SWIP Project does not run afoul of any of the above-referenced prohibitions.

- **The project may not provide additional resources to support specific activities performed by EPA employees or EPA contractors** - The SWIP Project does not provide additional resources to support specific activities to be performed by EPA employees or contractors.
- **The project may not provide a federal grantee with additional funds to perform a specific task identified within an assistance agreement** - The SWIP Project does not violate this prohibition, as Hemisphere is not a federal grantee. Furthermore, the city of Toledo maintains no grant obligations with U.S. EPA for the performance of any activity at the SWIP SEP Parcels proposed to receive SEP funding. U.S. EPA awarded the city of Toledo a Brownfields Site Assessment Grant which was utilized by the city of Toledo to perform preliminary due diligence at the Gorney Parcel 1 Property. Hemisphere, with its own financing, has already abated many of the environmental conditions on Parcel 1. The proposed SEP for the SWIP Project will be utilized to help take the next logical steps to characterize and clean up the designated parcels.
- **The project must comport with at least one of seven specific categories of projects which may qualify as a SEP** - The SWIP Project, at the very least, satisfies Category 4, Environmental Restoration and Protection. As defined in Section D of the SEP Policy, an environmental restoration and protection project is one that enhances the condition of the ecosystem or immediate geographic area adversely affected. These projects may be used to restore or protect natural environments (such as ecosystems) and man-made environments, such as facilities and buildings. This category also includes any project which protects the ecosystem from actual or potential damage resulting from the violation or improves the overall condition of the ecosystem. The elimination of this long-standing threat to the city of Toledo and some of the City's most notorious brownfield sites definitively satisfies this project category. Activities at the SWIP SEP Parcels will involve the remediation of raw land, facilities and buildings, which activities would not otherwise be required by the City or mandated by U.S. EPA. The Project will also include the removal/mitigation of contaminated materials, including soils and asbestos, which are a continuing source of release and/or threat to individuals. Therefore, this element of the SEP Policy will be satisfied by using the SEP funds for the activities described in this application.
- **SEPs at brownfields cannot include action that the Federal Government is likely to undertake or compel another to undertake** - As previously

discussed, activities at the SWIP Project Area would not likely be compelled by the federal government. Further, the SWIP parcels are not on the National Priorities List, are not sites where the federal government is planning or conducting a removal action pursuant to CERCLA Section 104(a) and are not sites for which the defendant/respondent or other party would likely be ordered to perform an assessment. In fact, based on discussions with U.S. EPA representative Mike Gifford, even the nature of environmental liabilities at Gorney Parcel 1 would be unlikely to satisfy the requirements for a removal action under CERCLA Section 104(a).

**J. CONCLUSION**

Based on this review of both the SEP Policy and the Brownfields SEP Policy, the city of Toledo's use of the SEP for the SWIP SEP Parcels as outlined in this proposal meets all criteria contained in both policies. Further, by forming an effective public/private partnership, Hemisphere will create a model brownfield redevelopment for all stakeholders. Without the SEP funding, the redevelopment aspects of this Project would not be economically viable, and a blight to the Community and threat to human health, safety and the environment will remain unabated.

**DEVELOPMENT AGREEMENT  
BETWEEN  
CITY OF TOLEDO  
AND  
HEMISPHERE, LTD.**

This Development Agreement (the "Agreement") is entered into as of the date indicated below by and between the City of Toledo, a municipal corporation duly organized and existing under and by virtue of the Constitution and Laws of the State of Ohio, as well as a duly adopted Charter (the "City"), with offices at One Government Center, Suite 2200, Toledo, Ohio 43604 and Hemisphere, Ltd., an Ohio limited liability company ("Hemisphere"), with offices at 2300 BP Tower, 200 Public Square, Cleveland, Ohio 44114-2378.

WHEREAS, the City identified and prioritized for redevelopment certain acreage, located west of Stickney Avenue that is industrially zoned, environmentally impacted, containing public nuisances and characterized as a Brownfield site; and

WHEREAS, the acreage, described and depicted in Exhibit "A" attached hereto and incorporated herein, is referred to in this Agreement as the Stickney-West Industrial Park ("SWIP Property"); and

WHEREAS, Hemisphere is a developer of Brownfield sites and has experience dealing with the United States Environmental Protection Agency ("U.S. EPA") and Ohio Revised Code Chapter 3746, i.e., Ohio's Voluntary Real Estate Reuse and Clean-up Program; and

WHEREAS, Hemisphere is attempting to purchase, at least, 27.5 acres of real estate designated as "Parcel 1", described below, within the SWIP Property and the City may exercise its power of eminent domain as to the SWIP Property in general; and

WHEREAS, Ordinance No. 498-99, passed by Toledo City Council on August 3, 1999, attached hereto as Exhibit "B" and incorporated herein, authorized the Mayor to enter into an Agreement with Hemisphere to environmentally remediate, abate a public nuisance and redevelop a Brownfield site within the SWIP Property, i.e., "Parcel 1";

NOW, THEREFORE, in consideration of the mutual promises made herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and Hemisphere agree as follows:

**ARTICLE I. REPRESENTATIONS, OBLIGATIONS AND COVENANTS OF HEMISPHERE**

1.01 Hemisphere agrees to do the following:

- A. On or before September 1, 1999, Hemisphere shall acquire site control and access rights to at least the 27.5 acre portion of the SWIP Property identified as "Parcel 1" in the survey and accompanying legal description prepared by James A. Broadway, Mannik & Smith, Inc., dated 2/23/99, attached hereto and incorporated herein as Exhibit "C".
- B. On or before November 8, 1999, Hemisphere shall acquire title to Parcel 1 within the SWIP Property.
- C. On or before November 15, 1999, Hemisphere shall use its best efforts to provide to the City a permanent access easement to the south side of Sibley Creek for ditch maintenance purposes.

- D. Within thirty (30) days from the date of this Agreement, Hemisphere shall commence site preparation to abate the public nuisance found on Parcel 1. On or before November 15, 1999, Hemisphere shall commence abatement of the public nuisance found on Parcel 1. Abatement of the nuisance shall include, but is not limited to, the mitigation of certain previously illegally filled wetlands identified on Parcel 1 and the removal, disposal or environmentally sanctioned re-use of the scrap tires and railroad ties stored and accumulated on the site, as well as, off-site removal of drums and other debris found on Parcel 1 in accordance with applicable laws.
- E. On or before December 15, 1999, Hemisphere shall make available to the City, including its employees, agents or contractors, access to Parcel 1 for any and all activity to be undertaken by the City at the site (Parcel 1).
- F. On or before December 15, 1999, Hemisphere shall make available to the City a designated area within Parcel 1, or other areas of the SWIP Property owned by Hemisphere and acceptable to the City, from which the City may mine the designated amount of soil stated below to complete construction of the Dura Avenue Landfill Remedial Action. Hemisphere shall provide the City's Dura Avenue Landfill Remedial Action General Contractor with all relevant geotechnical characterization performed within the designated areas and specific locations for stockpiling soil materials to allow the City's Dura Avenue Landfill Remedial Action General Contractor to perform any necessary handling or treatment required to meet all relevant specifications.

Furthermore, Hemisphere shall ensure that a sufficient amount of soil is made available for the Dura Avenue Landfill Remedial Action that meets all relevant specifications as contained in the City's Dura Avenue Landfill Remedial Action Construction Contract, Section 02210, Part 2.1, attached hereto as Exhibit "D", and Section 02211, Part 2.1, attached hereto as Exhibit "E", as applicable to the particular type of soil required, either Engineered Base or Protective Cover respectively. Hemisphere shall make available to the City up to 400,000 cubic yards of material for the Dura Landfill Remedial Action activities, consisting of up to 150,000 cubic yards of Engineered Base material and up to 250,000 cubic yards of Protective Cover material. Furthermore, Hemisphere shall:

- Designate and provide access to areas on Parcel 1, or Parcel 2 south of Sibley Creek, for stockpiling of soils.
- Designate and provide access to areas on Parcel 1, or on any portion of Parcel 2 not acquired by the City, for placement of soils unsuitable for use in construction of the Dura Landfill remedial action.
- Provide plans for construction of the borrow pit including water management.
- Designate a Borrow Source Engineer by November 15, 1999, who, during the course of the work and at Hemisphere's expense, shall provide necessary interpretations, approvals, and directions for

implementation of the Dura Soil Borrow Plans by the City's Dura Avenue Landfill Remedial Action General Contractor.

- Obtain all necessary permits and approvals necessary for the operations to be conducted on Parcel 1.
  - Segregate areas of soil during soil excavation activities not meeting Ohio EPA approval criteria for placement under the Dura Avenue Landfill Remedial Action geomembrane liner and commence to remediate such areas of Parcel 1 consistent with risk-based industrial clean-up standards identified in R.C. Chapter 3746 et seq. at Hemisphere's expense. Hemisphere shall be held liable to the City for any and all costs, damages and expenses incurred by the City as a result of any material failure by Hemisphere to make a sufficient amount or type of soil available to meet the specifications associated with the soil required to be provided and provided by Hemisphere for the Dura Avenue Landfill Remedial Action. The City shall be held liable to Hemisphere for any material failure to follow Hemisphere's excavation design, or causing material damage to Parcel 1 arising from or related to the City's activities in connection with the Dura Avenue Landfill Remedial Action.
- G. By December 15, 1999, Hemisphere shall provide the City with all soil characterization data and other necessary information relative to Parcel 1 and the soil to be mined therefrom. Hemisphere shall also obtain, by this date,

Ohio EPA approval for placement of impacted soils under the cap to be installed as part of the Dura Avenue Landfill Remedial Action. Also, by this date (December 15, 1999), Hemisphere shall have cleared the site (Parcel 1) of all rubble, structures, debris, and any other materials that would significantly interfere with the work to be conducted by the City's Dura Avenue Landfill Remedial Action General Contractor.

- H. Hemisphere shall prioritize first and foremost the use and expenditure of all City funds received, pursuant to this Agreement, for the abatement of the public nuisance and the environmental remediation of Parcel 1.
- L. Hemisphere shall provide to the City, within two (2) months after execution of this Agreement, a detailed preliminary development plan for (a) Parcel 1 in particular and (b) the SWIP Property in general. The plans shall include proposed tasks and projects to be undertaken at the sites (e.g., construction and demolition disposal landfill and redevelopment), schedules or timetables for completion of specific tasks and projects, preliminary design plans and layouts for the specific projects to be undertaken at the sites, as well as providing preliminary information to address redevelopment, job and business creation at the site.
- J. Within three (3) months from the date of this Agreement and no later than December 1, 1999, Hemisphere shall commence to remediate Parcel 1 consistent with relevant risk-based industrial clean-up standards; R.C. Chapter 3746.

- K. Hemisphere shall complete abatement of the nuisance on Parcel 1 within a reasonable period of time, not to exceed two (2) years from the date of this Agreement. However, removal of all barrels, tanks, debris, etc. on Parcel 1 will occur within six (6) months of acquiring Parcel 1. Hemisphere shall complete remediation of Parcel 1 within a reasonable period of time, not to exceed four (4) years from the date of this Agreement.
- L. Hemisphere shall reimburse the City for all expenses demonstrated to have been reasonably incurred by the City as a result of Hemisphere's failure to comply with the time frames required under paragraphs E, F and G in Article 1.01.
- M. Hemisphere represents and covenants that it has the power and authority to make, deliver and perform this Agreement.

**ARTICLE II. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CITY**

- 2.01 The City agrees to the following:
  - A. The City shall pay to Hemisphere a lump-sum price for up to 400,000 cubic yards of soil from Parcel 1 (the "SWIP Soil Price") for the Dura Avenue Landfill Remedial Action based on the formula described in the City of Toledo, Ohio Bidding Instructions, Contract Forms, Requirements and Specifications for Remedial Action Construction at Dura Avenue Landfill (444 Dura Avenue, Toledo, Ohio, dated May 28, 1999) delineated in Section 1.4, Page 00100-2: "Lowest and Best Base Bid A - Lowest and Best Base Bid B = SWIP Soil Price." The SWIP Soil Price (determined by and pursuant to the

above-referenced competitive bid), shall be the amount of One Million, One Hundred Eighty-five Thousand, Six Hundred Twenty-three and 15/100 Dollars (\$1,185,623.15). The payment of the SWIP Soil Price for the Dura Avenue Landfill Remedial Action shall be made by the City to Hemisphere as follows:

(i) Six Hundred Thousand Dollars (\$600,000.00) on January 1, 2000, subject to the City's receipt from Hemisphere of copies of executed contracts for the abatement of the public nuisance and environmental remediation of Parcel 1 as provided in this Agreement; (ii) Two Hundred Thousand Dollars (\$200,000.00) on July 1, 2000; (iii) Two Hundred Thousand Dollars (\$200,000.00) on August 1, 2000; (iv) One Hundred Eighty-five Thousand, Six Hundred Twenty-three and 15/100 Dollars (\$185,623.15) on October 1, 2000. Hemisphere, however, shall be responsible for paying any net increase in costs attributable to placement of impacted soil not used as engineered base as identified in Base Bid B Item 315, Delay Rate for Unanticipated Conditions as identified in Base Bid B Item 316, Relocation Rate for Unanticipated Conditions as identified in Base Bid B Item 317, Relocation of Lower Lacrustine Materials as identified in Base Bid B Item 318 (collectively hereinafter "Incremental Costs"). Conversely, the City shall pay to Hemisphere as part of the SWIP Soil Price the savings associated with any decrease in anticipated expenses for Base Bid B Items 315 and 318. Incremental Costs, if any, shall be calculated using the line item prices present in the lowest and best Base Bid B as accepted by the City. Hemisphere's

designated Borrow Source Engineer shall verify to the City in writing any application for payment by the City's Remedial Action General Contractor in connection with pay items 315, 316, 317 and 318. Hemisphere and the City will use their best efforts to minimize any Incremental Costs identified herein. Hemisphere shall pay to the City charges associated with these Incremental Costs incurred by the City within 30 days of receipt of an invoice certified by the Dura Resident Engineer duly documenting services provided by the City's Remedial Action Contractor as authorized by the City and discussed with Hemisphere. In addition to the SWIP Soil Price, the City shall pay to Hemisphere a unit price of One Dollar (\$1.00) per bank cubic yard for each cubic yard of soil borrowed from the SWIP Property in excess of four hundred thousand (400,000) cubic yards as determined by field survey. The volume calculations shall be based on an initial survey of the borrow area less the bank volume of impacted soils removed from the site determined by a final survey, and less the surveyed volume of excavated soil used in the SWIP Property to construct screening berms or remaining on the SWIP Property in stockpiles. All surveys shall be conducted by the Borrow Source Engineer, witnessed and/or confirmed by the City's Dura Resident Engineer.

- B. City shall comply with and adhere to the Bidding Instructions, Contract Forms, Requirements and Specifications for Remedial Action Construction at Dura Avenue Landfill dated May 28, 1999, as amended. Likewise, the City shall use its best efforts to complete its activities on Parcel 1 and remove all associated

equipment by October 20, 2000 (the "Completion Date"). In the event the City cannot complete its activities on Parcel 1 by the Completion Date, the City will pay to Hemisphere the difference between the liquidated damages due the City from the City's Remedial Action General Contractor pursuant to Section 9.8 of the General Conditions to the contract between the City and the City's Remedial Action General Contractor (Five Thousand Dollars [\$5,000.00] for each calendar day) and the City's actual costs incurred due to the City's Remedial Action General Contractor's failure to meet the Completion Date, up to a maximum of Twenty Thousand Dollars (\$20,000.00) per month (pro-rated for partial months).

- C. Upon approval and direction of the U.S. EPA, the City shall grant to Hemisphere the Seven Hundred Thousand Dollars (\$700,000) to be made available through settlement with the U.S. EPA of a certain environmental liability incurred by City as a Supplemental Environmental Project ("SEP"). Hemisphere shall use these funds in the remediation and redevelopment of Parcel 1 in particular and the SWIP Property in general consistent with the Voluntary Action Program's risk-based cleanup standards for industrial property; i.e., R.C. Chapter 3746, et seq. Likewise, upon U.S. EPA approval and direction, the City shall grant to Hemisphere all or any amount approved by U.S. EPA currently attributable to the Five Hundred Thousand Dollars (\$500,000) assessed fine in the above-referenced environmental liability matter, for remediation and redevelopment of Parcel 1 in particular, and the

SWIP Property in general, pursuant to this Agreement and specifically compliance with Article 1.01. A payment schedule acceptable to U.S. EPA, the City and Hemisphere, and based on the performance by Hemisphere of activities described in this Agreement (i.e., Article 1.01), shall be drafted and incorporated into this provision for distribution or disbursement of the SEP dollars and fine.

- D. City shall use its best efforts and take all reasonable action necessary to promptly apply for and obtain the SEP dollars and fine amount for the purpose stated herein.
- E. Subject to terms and conditions to be negotiated between the City and Hemisphere, and subject to Toledo City Council approval, the City will endeavor to enter into another, separate development agreement with Hemisphere for the re-development of any portion(s) of the remaining SWIP Property, including the Stickney and Tyler Landfills owned or controlled by the City when the performance monitoring period at those landfills imposed by U.S. EPA or other relevant parties has ended.
- F. City represents and covenants that it has the power and authority to make, deliver and perform this Agreement.

### ARTICLE III. MISCELLANEOUS

3.01 Notices. Any notice by either party to the other shall be in writing and shall be hand delivered or mailed by registered or certified mail in a postage prepaid envelope addressed as follows: (i) if to the City: to the Mayor, One Government Center, Suite 2200,

Toledo, Ohio 43604; and (ii) if to Hemisphere: to Hemisphere Ltd. 2300 BP Tower, 200 Public Square, Cleveland, Ohio 44114-2378, Attention Todd S. Davis, Member, or to such other address as the City or Hemisphere, respectively, may designate in writing. All notices shall be deemed to have been duly given upon receipt.

3.02 Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties regarding the subject matter described herein. Both the City and Hemisphere and their respective employees and agents, have made no representations or promises with respect to this Agreement except as herein expressly set forth.

3.03 Severability. If any provision of this Agreement or the application thereof shall be held invalid or unenforceable by a court of law, the remainder of this Agreement other than those which are held invalid or unenforceable shall not be affected thereby, unless such invalidity or unenforceability materially affects the purpose of this Agreement, in which event, the party materially prejudiced may declare this Agreement null and void, and neither party shall have any further liability to the other.

3.04 Parties Bound. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns. Each party shall provide appropriate resolutions of authority.

3.05 Assignment. Neither party shall assign its rights or obligations under this Agreement without the written consent of the other party.

3.06 Governing Law. This Agreement shall be governed by the laws of the State of Ohio.

3.07 Headings. The table of contents and the headings of the several articles and sections contained in this Agreement are for convenience only and do not define, limit or construe the contents of such articles or sections.

3.08 Force Majeure. Neither the City nor Hemisphere shall be required to perform any term, condition or covenant in this Agreement so long as such performance is prevented by an act of God or any cause not reasonably within the control of the City or Hemisphere and which by the exercise of due diligence the City or Hemisphere is unable, wholly or in part, to prevent or overcome.

3.09 Cooperation. From and after the date hereof, each party shall use its best efforts to cooperate with the other to secure all consents, approvals, authorizations or otherwise take such further actions necessary to facilitate the activities contemplated by this Agreement.

3.10 Counterparts. This Agreement and any amendments hereof, may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

3.11 Approvals. All consents and approvals required or permitted under this Agreement shall not be unreasonably withheld or delayed, and in the case of the City shall be given by the Mayor and/or the Director of Law and/or the Director of Development, subject only to Toledo City Council approval, and in the case of Hemisphere, shall be given by an authorized member of the limited liability company, or their respective successors in such offices. Either party shall be entitled to conclusively rely on the consent or approval

of the other provided that the same is executed by those persons holding the offices or authorized to perform the duties of such offices specified herein.

IN WITNESS WHEREOF, the parties have executed this Agreement on the 17th day of September, 1999.

Signed and acknowledged  
in the presence of:

Michele J. Schaefer

Kerri A. Rose  
As to the City

**CITY OF TOLEDO, OHIO**

By: [Signature]  
Carleton S. Finkbeiner, Mayor

APPROVED AS TO FORM:

Susan E. Friedrick  
DEPARTMENT OF LAW

APPROVED AS TO CONTENT:

Louise Santiaso, Acting Dir.  
Department of Development

Signed and acknowledged  
in the presence of:

[Signature]  
Rebecca Stuppert

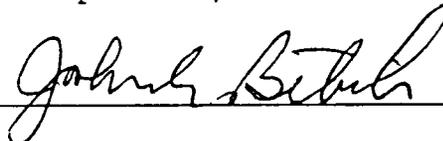
**HEMISPHERE LTD.**

By: [Signature]  
Todd S. Davis, Authorized Member

CERTIFICATE OF FISCAL OFFICER - CITY OF TOLEDO

The undersigned, being the Fiscal Officer of the City of Toledo, Ohio, does hereby certify, pursuant to Chapter XIII, Toledo City Charter, and Chapter 187, Toledo Municipal Code, and Section 5706.41, Ohio Revised Code, that the amount required to meet the current contractual obligations of the City of Toledo as described in the attached contract has been lawfully appropriated or is lawfully deemed to be appropriated for such purpose, and is in the Treasury of the City of Toledo or in process of collection to the credit of 01 2450 4561 CAO956 in the amount not to exceed \$1,185,623.15 and is free from any previous encumbrances; and that all current and future expenditures of money under the attached contract shall be subject to the provisions of this certification in accordance with applicable Laws.

Dated this 17<sup>th</sup> day of September, 1999



John Bibish  
Finance Director and Fiscal Officer  
City of Toledo

Division of Economic Development

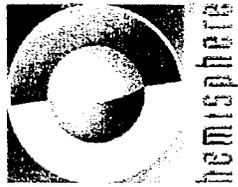
Hemisphere Ltd.  
2300 BP Tower, Public Square  
Cleveland, OH 44114-2378

Todd Davis, Principle

This Instrument Prepared By:

City of Toledo  
Department of Development  
1 Government Center Suite 1850  
Toledo, Ohio 43604

# Stickney West Industrial Park



**IDENTIFIED AREAS  
LOCATED ON THE SWIP SEP PARCELS**

1. Two existing USTs are located at the Merchants Marine Home Delivery Service on the Shepherd property. These tanks are not registered with BUSTR, have any records associated with these USTs been identified.
2. An existing dispenser pad, along with four pipes, are located near the eastern property boundary of the Shepherd property boundary. It could not be determined if the USTs have been removed.
3. A gasoline UST was identified and was reported to be located on the north side of the former office on the Shepherd property. The location of the UST could not be verified during site reconnaissance.
4. A large pad-mounted transformer was identified and was reported to be located at the south end of the former Hide building on Gorney Parcel 4.
5. Several small pits were identified on a 1974 aerial photograph just south of the Creekside Autoparts building on Gorney Parcel 4.
6. A railroad spur was identified entering the Shepherd property from the north and extending onto Gorney Parcel 4. Past operations associated with railroad use are a potential source of PAH and PCB contamination.
7. Although ground water flow is toward the Ottawa River, mounding is occurring just east of the Shepard property and Gorney Parcel 4. A potential exists for ground water emanating from Tyler Street Landfill onto the eastern portion of these properties. In addition, a potential exists for surface water runoff to enter these properties along their eastern property boundaries.
8. Stained areas were identified near active floor drains in the service bays associated with Creekside Autoparts on the Shepherd property. The southernmost floor drain of the service bays appeared to have red staining (possibly transmission fluid) and an elevated PID reading. Another floor drain located in the autoparts washing room also had an elevated PID reading.
9. Several drums of used oil were located in the service bay area of the Creekside Autoparts building, located near a floor drain without secondary containment.
10. Pipe insulation associated with the former boiler room, the former hot water tank located in the upstairs locker room, and the walls of the utility closet of the Creekside Autoparts building are potential asbestos containing materials.
11. A former railroad grade observed along the northwest edge of Toledo Recycling North may contribute creosote, chemical spills, PAHs, and herbicides.

12. A white sediment material noted in Sibley Creek, particularly along the southern edge of Toledo Recycling North.
13. Unknown demolition fill material and a white residue or sludge utilized to form a terrace across the south portion of Toledo Recycling North along Sibley Creek.
14. The "cold process mixer" chamber associated with past uses at Toledo Recycling North that extends below the floor of the building.
15. Elevated PID readings of a grab soil sample taken from dark brown soil near the northeast corner of the main building on Toledo Recycling North that is also in the vicinity of a two-inch steel pipe protruding from the fill material.
16. Loading dock area adjacent to the railroad spur along the northwest side of the building on Toledo Recycling North and a loading dock on the southeast corner of the building that may contribute to chemical spills based upon the historic use of the Toledo Recycling North property.
17. A steel pipe of unknown origin protruding from the ground at the southwest corner of the building on Toledo Recycling North.
18. A former steel gas holder associated with the former acetylene plant on Toledo Recycling North.
19. A stockpile of soil fill of unknown origin along the southern edge of Toledo Recycling North.
20. A pile of utility poles exhibiting a strong creosote odor located at the southeast corner of Toledo Recycling North.
21. Potential asbestos containing materials, as floor tiles, ceiling tiles, and plasterboard, noted inside the main building on Toledo Recycling North.
22. Junked cars on the southeast portion of Toledo Recycling North.
23. Former coal use as a fuel source on Toledo Recycling North.
24. A past fire at the ARCOA Corporation facility, a former occupant of Toledo Recycling North.
25. Prior building demolition at Toledo Recycling North without a permit that may have released hazardous substances.
26. A past spill of approximately 100 gallons of diesel fuel just upgradient of Toledo Recycling North.

## SWIP Supplemental Environmental Project Payment and Deliverables Schedule

PAYMENT NUMBER	ENVIRONMENTAL TASKS FUNDED BY SEP MONIES	PAYMENT AMOUNT	MILESTONE FOR PAYMENT TO HEMISPHERE	DELIVERABLES FROM HEMISPHERE TO CITY
1	Initiation of Task 1a - Phase I Property Assessments	\$10,000	Lodging of Consent Decree and signed contractual agreement between Hemisphere, Ltd., and Environmental Consulting Firm to perform Phase I property assessments.	Copy of signed contractual agreements between Hemisphere, Ltd., and Environmental Consulting Firm to perform Phase I property assessments.
2	Completion of Task 1a - Phase I Property Assessments	Balance of Task 1a costs up to cumulative Task 1a costs of \$20,000	Completion of Phase I property assessments.	2 copies of each Phase I property assessment report.
3	Initiation of Task 1b - Phase II Property Assessments including Preliminary Risk Assessment and UST Investigation	\$50,000	Signed contractual agreement between Hemisphere, Ltd., and Environmental Consulting Firm to perform Phase II property assessments.	Copy of signed contractual agreements between Hemisphere, Ltd., and Environmental Consulting Firm to perform Phase II property assessments.
4	Completion of Task 1b - Phase II Property Assessments including Preliminary Risk Assessment and UST Investigation	Balance of Task 1a & 1b costs up to cumulative Task 1a & 1b costs of \$150,000	Completion of Phase II property assessments.	2 copies of each Phase II property assessment report including Preliminary Risk Assessment and UST Investigation reports.
5	<ul style="list-style-type: none"> <li>• Initiation of Task 2 - Cleanup of Contaminated Media and UST Closure to include remediation to VAP standards and UST requirements, provision of positive surface drainage, and possible limited removal of concrete fill from Sibley Creek.</li> <li>• Initiation of Task 3 - Building Demolition and Waste Disposal to include asbestos abatement, building demolition, and associated disposal.</li> </ul>	\$100,000	Signed contractual agreement between Hemisphere, Ltd., and Environmental Consulting/Demolition Firms to perform cleanup, UST removal, building demolition, and waste disposal.	Copy of signed contractual agreement between Hemisphere, Ltd., and Environmental Consulting/Demolition Firms to perform cleanup, UST removal, building demolition, and waste disposal.
6	<ul style="list-style-type: none"> <li>• Completion of Task 2 - Cleanup of Contaminated Media</li> <li>• Completion of Task 3 - Building Demolition and Waste Disposal</li> </ul>	Balance of Task 2 and Task 3 costs up to cumulative Task 1, 2, & 3 costs of \$450,000	Completion of Site Cleanup Activities and Documentation of Cumulative Task 2 and Task 3 Costs of at Least \$300,000.	Documentation of Task 2 and Task 3 costs and work accomplished.
7	Initiation of Task 4 - Ohio VAP NFA Preparation	\$20,000	Signed contractual agreement between Hemisphere, Ltd., and Environmental Consulting Firm to prepare VAP NFA letter and pursue Covenant Not To Sue.	Copy of signed contractual agreement between Hemisphere, Ltd., and Environmental Consulting Firm to prepare NFA letter.
8	Completion of Task 4 - Ohio VAP NFA Preparation	Balance of Task 4 costs and un-reimbursed Task 2 and Task 3 costs up to \$30,000	Completion of Ohio VAP NFA Letter and Documentation of Task 4 Costs of at Least \$50,000.	2 copies of NFA letter and documentation of Task 4 costs.

## TODD S. DAVIS

Todd S. Davis is President of Hemisphere Corporation, a company that acquires, redevelops and consults on environmentally distressed real estate. He received his Bachelors of Business Administration from the University of Michigan, with Distinction, and his law degree from The George Washington University, with Honors. Mr. Davis also was formerly a partner in Benesch, Friedlander, Coplan & Aronoff LLP and was the Co-Chairman of the firm's Environmental Practice Group. He currently practices law in his own firm located in Cleveland, Ohio.

Mr. Davis focuses his practice on all aspects of redeveloping contaminated property and the environmental aspects of real estate transactions. In this role, Mr. Davis has provided strategic advice in hundreds of transactions, including a number of the nation's largest and most sophisticated brownfields redevelopments. These transactions typically have involved participating in relevant state voluntary cleanup programs, coordinating applicable financing alternatives, negotiating public incentives, and the manuscripting and placement of pertinent environmental insurance products.

Mr. Davis has been widely published in treatises, periodicals and newspapers. He is a principal author of an extensive 700 page treatise on redeveloping brownfields sites nationally, entitled *Brownfields: A Comprehensive Guide to Redeveloping Contaminated Property* (1997), published by the American Bar Association ("ABA"). This treatise has been the most successful book published by the ABA's Environmental Section and features a Preface by Vice President Al Gore. He is a contributing author to *Turning Brownfields Into Greenbacks* (1998), a book published by the Urban Land Institute highlighting successful brownfields redevelopment strategies. Mr. Davis authored a chapter on brownfields redevelopment in *The Environmental Aspects of Real Estate Transactions* (2d Ed. ABA 1999). He also is an author of *The Underground Storage Tank Manual* (1st Ed. 1994), a comprehensive publication on Ohio underground storage tank law.

Mr. Davis has been a featured speaker in numerous national forums on various environmental topics associated with redeveloping contaminated real estate. Recent presentations included the opening ceremonies at HazWaste World SuperFund XVIII (December 1997, Washington, DC) where he was selected to participate on a panel with U.S. EPA Administrator Carol Browner and U.S. House of Representatives Environmental Committee Chairman Michael Oxley. His other recent speaking engagements include: U.S. EPA's Brownfields '99 (December 1999, Dallas, TX), The 1998 ABA SONREEL Annual Meeting (March 1998, Keystone, CO), U.S. EPA's Brownfields '98 (November, 1998, Los Angeles, CA), The U.S. Federal Reserve's 1997 Annual Community Reinvestment Forum - Sustainable Community Development (October 1997, Dublin, OH), The 1997 Ohio Governors Brownfield Redevelopment Conference (October 1997, Columbus, OH), U.S. EPA's Brownfields '97 (September 1997, Kansas City, KS), The 1997 ABA Annual Convention (August 1997, San Francisco, CA), The 1996 National Governors Association Conference (August 1996, Cleveland, OH). He also has been a featured speaker on the ABA's Satellite Seminar, Brownfields Transactions: Making the Deals Work (March 1997, Washington, DC, Broadcast via satellite to over 80 locations) and appeared on National Public Radio's "Talk of the Nation" (August 1997).

Mr. Davis is a Vice Chairman of the ABA's Brownfields Task Force. He also is a Vice Chairman of the ABA's Environmental Transactions and Brownfields Committee. Mr. Davis has been appointed the ABA's Subcommittee Chairman for planning U.S. EPA's Brownfields '98 Summit in Los Angeles, California. On a local level, he participated in the Rulemaking Committee for Ohio's Voluntary Action Program and is a member of the Ohio Brownfields Finance Partnership. On the lighter side, Mr. Davis was selected by *Cleveland Magazine* as one of Cleveland's "Most Interesting People of 1998."

EXHIBIT E

## JENIFER A. KWASNIEWSKI

Jenifer A. Kwasniewski is a Senior Project Manager with Hemisphere Corporation, a company that acquires, redevelops and consults on environmentally distressed real estate. She brings to Hemisphere significant experience with the Ohio Environmental Protection Agency's (EPA) brownfield program, the Voluntary Action Program (VAP). At Ohio EPA, Ms. Kwasniewski began working on brownfields in 1991 as a member of then - Governor Voinovich's Real Estate Reuse Task Force. She also was a member of the team that worked with then - Senator Montgomery on the drafting and passage of the VAP statute. Ms. Kwasniewski managed the VAP from the creation of the program in 1994 until the spring of 2000. In this role, she chaired the program's extensive rule-making process, managing almost 100 external stakeholders and Ohio EPA staff in this effort.

In addition to her extensive knowledge of Ohio's VAP, Ms. Kwasniewski participated in two national task forces that have provided her with an understanding of brownfields programs in other states.

Prior to her work with brownfields, Ms. Kwasniewski worked on state and federal Superfund projects. She has additional experience with the State of Ohio's hazardous waste and water pollution programs.

Ms. Kwasniewski is a member of the Ohio Brownfield Finance Partnership. She has been a featured speaker on brownfield cleanup and redevelopment at many state and national conferences.

Ms. Kwasniewski received her bachelor's degree in Environmental Science from the Florida Institute of Technology.

EXHIBIT 2 to the Consent Decree  
 United States et al. v. City of Toledo  
 Case No. 91-CV-7646 (N.D. OH)



- Approximate Property Boundary (Not field verified)
- Gornoy Property Boundary (Field verified)
- Proposed Property Line

NOTES:  
 1) Aerial photo taken by Geo One on March 12, 1997.  
 Actual conditions have been modified from those shown.



SUPPLEMENTAL ENVIRONMENTAL  
 PROJECT APPLICATION

EXHIBIT B  
 PROPERTY LAYOUT MAP

NOVEMBER 2000

