US EPA RECORDS CENTER REGION 5
422305

CITY OF TOLEDO, OHIO

LICENSE AGREEMENT

THIS AGREEMENT OF LICENSE, made this ____ day of _____, 1985, by and between The City of Toledo, Ohio, a municipal corporation, hereinafter referred to as "LICENSOR" and The Toledo Edison Company, an Ohio corporation, hereinafter referred to as "LICENSEE".

WITNESSETH:

WHEREAS, the LICENSOR is an owner in fee of various parcels of real property which would benefit from landfill; and

WHEREAS, the LICENSEE is desirous of obtaining the right of ingress and egress to said parcels of real property and a license for the purpose of placing flyash from its generation station on said properties from time to time; and

WHEREAS, the LICENSOR is desirous of obtaining landfill for said parcels of real property.

NOW, THEREFORE, in consideration of the mutual promises made and to be performed, the parties hereto agree as follows:

TO HAVE AND TO HOLD the same, with appurtenances thereunto belonging to said LICENSEE for and during the term of one (1) year commencing on the 19th day of June, 1985, and ending on the 18th day of June, 1986, on the following terms and conditions, to-wit:

COVENANTS OF LICENSEE

Said LICENSEE does hereby covenant and agree with said LICENSOR as follows:

1. LICENSEE agrees to pay in advance as rent therefor to the LICENSOR the sum of one thousand five hundred dollars ($1,500). Further, in the event said premises, now tax exempt, become subject to any taxes or assessments during the term of this License Agreement due to activities of the LICENSEE such taxes and assessments so levied shall be paid by the LICENSEE.

2. This License shall be effective upon execution and shall continue in full force and effect without further act by either party hereto. Either party at all times shall have the right to cancel upon thirty (30) days' written notice by certified mail to the above-mentioned parties. In the event this License is terminated by the LICENSOR, it is understood that the LICENSEE shall be relieved of any and all obligations of further performance under the terms of this License.

3. The LICENSEE shall utilize the premises solely for the purpose outlined in this License Agreement. Any other use or activity by the LICENSEE upon the subject real property is subject to the prior approval of the LICENSOR.

4. The LICENSEE shall place at least 15,000 but no more than 150,000 cubic yards of flyash at the Miracle Park property shown in Exhibit A, which is attached thereto and made a part hereof. The LICENSEE, its employees or agents, shall have the sole responsibility for the transportation, placement and grading of said flyash on the subject real property, subject to review by the LICENSOR.

5. THE LICENSEE, its employees or agents, shall "track" said flyash into place to form a stable fill and grade to result in a reasonably level surface. The LICENSEE, its employees or agents, shall construct a containment cover consisting of a six-inch (6") layer of soil on level surfaces of the flyash; where surfaces slope in excess of a ratio of 3:1, a two-foot (2') thick layer of soil shall be used.

6. The LICENSOR is an owner in fee of certain real property known as Miracle Park. The LICENSOR, by executing this License, warrants that it has authority to permit the activity contemplated herein, and will indemnify and hold the LICENSEE harmless from all actions based on the contrary.

7. When weather permits LICENSEE, its employees or agents, shall mulch, fertilize and seed the containment cover area.

8. Upon completion of the seeding as required in Section 7, the LICENSEE shall send written notice of completion to the LICENSOR at which time the LICENSOR shall have thirty (30) days in which to conduct acceptance tests or until the seeding has germinated, whichever is longer. The LICENSOR will send written notice to the LICENSEE of acceptance. Any erosion occurring from lack of proper cover or failure of any areas to germinate properly are the responsibility of the LICENSEE to correct at the direct of the LICENSOR. Upon acceptance, the LICENSOR shall be responsible for the maintenance, operation, regrading, and any additional fertilizing, mulching, or seeding that may be necessary.

9. The LICENSEE, its employees or agents, make no warranties, whether statutory, express or implied (including but not limited to warranties of merchantability and fitness for a particular purpose), as to the suitability of flyash.

10. LICENSOR shall allow access to the Licensed Premises during the construction phase of this License to only those authorized personnel necessary to the execution of the activities included within the ambit of this License. The LICENSOR reserves the right to enter into additional Licenses for the deposit of fill material in other areas of Miracle Park provided that said Licenses do not interfere with the operation of the hereinabove LICENSEE.

11. The LICENSOR shall permit the LICENSEE to use soil stockpiles at Miracle Park for the containment cover, to the extent said stockpiles are available after July 8, 1985, and subject to the approval of the LICENSOR.

12. The parties agree to indemnify and save harmless each other from any and all claims, demands, actions or causes of action arising out of or connected with the sole negligent act of either party, their employees,

agents or invitees. When on the premises licensed hereunder, the LICENSOR agrees to indemnify and hold the LICENSEE harmless and assumes the defense of the same from any and all claims of the LICENSOR'S employees or agents.

13. LICENSEE agrees not to interfere with the operation, use and enjoyment of other premises in Miracle Park outside the premises licensed hereunder by the LICENSOR.

14. The LICENSEE warrants that there are currently no Federal, State, or Local permits required to maintain the licensed area as a repository of flyash. If Federal or State hazardous waste permits become a requirement within 30 years of termination of this license as a result of the placement of flyash, and for so long as the LICENSOR holds both legal title and the beneficiary use and uses the land as a park, the LICENSEE shall bring the area into compliance and obtain said permits. LICENSOR shall pursue, with due diligence, exemption from the permit requirements and the LICENSOR shall take reasonable steps to mitigate the cost to the LICENSEE of compliance.

15. LICENSEE agrees that construction and demolition materials will not be placed on the parcel licensed hereunder.

16. The parcel licensed hereunder may not be subleased nor underlet.

17. This License may be renewed by the mutual agreement of the parties.

IN WITNESS WHEREOF, the City of Toledo, Ohio, a municipal corporation, LICENSOR, has caused this Lease Agreement to be executed by its City Manager with the attestation of the Clerk of Council, who has caused the seal of the City to be hereunto affixed, and the said LICENSEE, The Toledo Edison Company, has caused this License Agreement to be signed by its proper officers and its corporate seal to be hereunto affixed and attested to duplicates hereof as of this ____ day of _____, 1985.

SIGNED AND ACKNOWLEDGED

IN THE PRESENCE OF:

FOR: THE CITY OF TOLEDO, OHIO A

MUNICIPAL CORPORATION, LICENSOR

_____
Witness

BY: _____
C. E. Riser, its City Manager

_____
Witness

ATTEST: _____
Larry J. Brewer, its Clerk of Council

ACKNOWLEDGEMENT BY LICENSOR

STATE OF OHIO)
)
COUNTY OF LUCAS)

On this ____ day of _____, 1985, before me appeared C. E. Riser, to me personally known, who being by me duly sworn, did say that he is the City Manager of the City of Toledo, Ohio and that the seal affixed to the foregoing instrument is the corporate seal of the City of Toledo, and the said C. E. Riser, City Manager and Larry A. Brewer, Clerk of Council, did acknowledge said instrument to be their free act and deed and the free act and deed of said City of Toledo,

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid, the day and year last above written.

_____
Notary Public - State of Ohio

ACKNOWLEDGEMENT BY LICENSEE

STATE OF OHIO)
) SS:
COUNTY OF LUCAS)

Before me, a notary public, in and for said county and state, personally appeared Joseph E. Murray, Vice President and Stratman Cooke, Secretary of The Toledo Edison Company, the corporation which executed the foregoing instrument; that they did sign the said instrument as such officers, respectively in behalf of said corporation and by authority of its Board of Directors; and that said instrument is the free act and deed of said officers and said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name this 2nd day of July, 1985.

Norma G. Trudell
NORMA G. TRUDELL
Notary Public, State of Ohio
My Commission Expires Oct. 14, 1989

APPROVED AS TO LEGAL FORM:

_____
John A. DeVictor, Jr., Senior Staff Attorney

Date: _____

TD 3506MM

SIGNED AND ACKNOWLEDGED

IN THE PRESENCE OF:

Jan M. Szabo
Witness

Norma G. Trudell
Witness

FOR: THE TOLEDO EDISON COMPANY,

AN OHIO CORPORATION, LICENSEE

BY: Joseph E. Murray
Vice President, Energy Supply

ATTEST: Stephen Cooke
Secretary

APPROVED AS TO CONTENT:

Richard W. Boers
Director of Natural Resources