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**THREE-PARTY PROJECT ASSISTANCE AND PAYMENT
AGREEMENT BETWEEN THE CITY OF PITTSBURGH, THE
PITTSBURGH PARKS CONSERVANCY, AND K.J. JOHNSTON, LTD.,
FOR SCHENLEY PARK WESTINGHOUSE MEMORIAL POND
RESTORATION**

Made this 24th ^{NOVEMBER} day of ~~September~~, 2015

BY AND BETWEEN

THE CITY OF PITTSBURGH ("CITY")

AND

THE PITTSBURGH PARKS CONSERVANCY ("PPC")

AND

K.J. JOHNSTON, LTD. ("JOHNSTON")

Whereas, the CITY and the PPC have entered into and then renewed a Cooperation Agreement ("Cooperation Agreement") to establish an alliance to provide infrastructure improvements, special care, and restoration for the CITY's four regional parks -- Frick, Schenley, Highland and Riverview; and

Whereas, the CITY is undertaking the Schenley Park Westinghouse Memorial Pond Restoration Project ("Project") and the PPC has offered to assist the CITY by providing funding and other assistance for the Project; and

Whereas, JOHNSTON, a Pennsylvania corporation located at 12 Western Avenue, Pittsburgh, PA 15202, has been hired by the City through a competitive process as the General Contractor to do the work needed for the Project under Contract/Spec. No. 47956/6756 by letter dated July 15, 2015, with a not to exceed cost of One Million Two Hundred Fourteen Thousand One Hundred Dollars (\$1,214,100) (the "Construction Contract"); and

Whereas, the City has agreed to pay a total of Five Hundred Thousand Dollars (\$500,000) to this Project, of which the City has already paid \$139,452.50 in design fees to MTR Landscape Architects, leaving a balance of \$360,547.50; and

Whereas, the CITY and PPC have agreed to share the costs of the Construction Contract, with the City to pay \$360,547.50 and PPC to pay \$853,552.50; and

Whereas, the CITY and PPC have agreed to pay their respective contributions directly to JOHNSTON; and

Whereas, JOHNSTON will accept from the CITY the CITY'S monetary responsibility for the Project and subsequently, directly from PPC, PPC's monetary responsibility for the Project as described above;

NOW; THEREFORE, in consideration of the mutual promises and intending to be legally bound hereby, the parties hereto agree as follows:

1. **INCORPORATION:** The above recitals are incorporated herein by reference.
2. **SCOPE OF ASSISTANCE:** Subject to all terms and conditions set forth below and within the Construction Contract the PPC will provide funding for the contract work for the Project by CITY, with JOHNSTON as the Contractor. The City of Pittsburgh Department of Public Works will act as Project Manager for the Project. PPC will act as co-Project Partner, with full involvement in all stages of the project, and review and approval of all invoices and other deliverables. Without limiting the generality of the foregoing, the City agrees that PPC's representatives will have notice of and the opportunity to participate in all meetings and decisions involving the Project, and PPC's express written approval shall be required prior to any changes being made in the Project, including the issuance of any change orders under the Construction Contract. The applicable review and approval(s) will occur prior to CITY'S and/or PPC's payment of invoice(s) per Section 4 of this Agreement.
3. **TERM OF AGREEMENT:** The term of this Agreement begins on the date first written above and, unless otherwise terminated earlier as permitted herein, ends on the Completion Date of the Project, as determined by the Director of the City's Department of Public Works, with the consent of PPC.
4. **FUNDING:** The City agrees to provide funding of Three Hundred Sixty Thousand, Five Hundred Forty-Seven Dollars and Fifty Cents (\$360,547.50) and PPC agrees to generate and to provide funding in an amount of Eight Hundred Fifty-Three Thousand, Five Hundred Fifty-Two Dollars and Fifty Cents (\$853,552.50). This project will be paid as follows:

A. JOHNSTON will:

1) Submit invoices and supporting documentation to both the CITY (to the attention of the Director of the Department of Public Works, Michael Gable at 414 Grant St. #301, Pittsburgh, PA 15219, (412) 255-8850), and to the PPC (to the attention of the PPC's Parks Management & Maintenance Director, Phil Gruszka, at 45 South 23rd Street, Suite 101, Pittsburgh, PA 15203, (412) 682-7275), requesting payment for costs actually incurred;

2) Allow the CITY to have a period of fifteen (15) days following receipt to review the invoices submitted, and during that period CITY may, in its reasonable discretion, request that JOHNSTON furnish additional supporting documentation with respect to the invoices submitted; and

3) Allow the PPC to have a period of fifteen (15) days following receipt to review the invoices submitted, and during that period PPC may, in its reasonable discretion, request that JOHNSTON furnish additional supporting documentation with respect to the invoices submitted; and

4) JOHNSTON will accept payment for the full project as described in 4(B), (C), and (D) below.

Ⓟ 4024500014.53901.00
\$230,547.50
50002800400.53901.00
Ⓟ \$130,000.00

B. WITH RESPECT TO THE FIRST THREE HUNDRED SIXTY THOUSAND, FIVE HUNDRED FORTY-SEVEN DOLLARS AND FIFTY CENTS (\$360,547.50) INCURRED: the CITY will, within thirty (30) days following receipt of each invoice for payment and all required supporting documentation, pay the amount of each invoice to JOHNSTON, by check made out to JOHNSTON and mailed to its place of business; and

C. ANY AMOUNT EXCEEDING THE CITY'S PORTION DESCRIBED IN B ABOVE, UP TO AN ADDITIONAL EIGHT HUNDRED FIFTY-THREE THOUSAND, FIVE HUNDRED FIFTY-TWO DOLLARS and FIFTY CENTS (\$853,552.50), WILL BE PAID BY THE PPC:

the PPC will, within thirty (30) days following receipt of each invoice for payment and all required supporting documentation, pay the amount of each

invoice to the CITY, by check made out to: JOHNSTON and mailed to the City; and

- D. ANY AMOUNT EXCEEDING the total of the amounts paid under (B) and (C) above, including any amounts that may be agreed to in change orders issued under the Construction Contract, shall be payable as may be mutually agreed in writing by the City and PPC, it being understood and agreed that neither the City nor PPC is obligated to pay any amounts in excess of those stated above.
 - E. Notwithstanding the responsibility of City and PPC to pay their respective shares, the CITY, as Project Manager, and the PPC as co-Project Partner, will each approve all work by JOHNSTON and will notify the other party of its approval in writing, prior to payment of JOHNSTON by either the City or PPC.
 - F. The City agrees to use its best efforts to cause JOHNSTON to cooperate with PPC in providing any documentation that PPC may reasonably request or as may be required by PPC's funding sources for the Project. It is understood and agreed that PPC's funding obligations hereunder are conditioned upon PPC's obtaining all necessary documentation from JOHNSTON required by its funding sources. The City will be responsible for monitoring all work performed by JOHNSTON under the Construction Contract, subject to PPC's review and approval as provided herein, and compliance with the Declaration of Covenants dated March 13, 2015.
5. **INTERRUPTION; POSTPONEMENT; ABANDONMENT:** In the event that the work herein contemplated, or any part thereof, will be interrupted, postponed, or abandoned due to circumstances which CITY considers to be in its best interests, PPC will not be entitled to reimbursement from CITY for any funds expended on the Project. Nor will PPC be responsible for payment of any unpaid portion of the balance of its contribution set forth in Paragraph 4.
6. **REVIEW OF PROJECT RECORDS:** Representatives of PPC will have access to the books and records maintained by CITY relating to the Project, the Construction Contract or this Agreement at all reasonable times and for all reasonable purposes. All books and records pertaining to the Project will be preserved by CITY for a period of ten (10) years after the termination of this Agreement. The City will provide copies and

confirmation of payment of all invoices issued by MTR Landscape Architects for the Project to PPC.

7. **GOVERNING LAW:** This Agreement will, in all respects, be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.
8. **AMENDMENT AND TERMINATION:** This Agreement contains all terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement, will be deemed to exist or to bind any of the parties hereto. This Agreement may not be changed, modified, discharged or extended except by prior written amendment, duly executed by the parties.
9. **PITTSBURGH HOME RULE CHARTER:** This Agreement is subject to the provisions of the Pittsburgh Home Rule Charter.
10. **OWNERSHIP OF IMPROVEMENTS:** Ownership of all alterations, additions or capital improvements constructed, including those paid for by PPC at the Site will vest in CITY upon installation, without compensation being paid therefore.
11. **ASSIGNMENT; SUBCONTRACTING:** PPC will not assign this Agreement without written consent of CITY.
12. **NON-OBLIGATION OF CITY TO REPAY ANY PRIVATE MONIES OR GRANTS:** In the event that this Agreement is terminated by CITY, or in the event of bankruptcy of PPC, the CITY will not be obligated to repay any private monies obtained by PPC for the Project.
13. **AUTHORIZING RESOLUTIONS:** This Agreement is entered into by CITY pursuant to Resolution No. 741 of 2013, effective November 21, 2013 and Resolution No. *641* of 2015, effective *10/7*, 2015. *Agreement subject to Home Rule Charter; Liability to City Under Agreement is zero (\$0).*
14. **INSURANCE:** Prior to the beginning of any work performed on the Project by JOHNSTON after the execution date of this Agreement, the CITY will ensure that certificates of insurance are furnished duly naming the CITY and the PPC as additional insured on every policy of comprehensive general liability insurance required.
15. **COUNTERPARTS:** This Agreement may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same agreement.

SIGNATURE PAGE TO FOLLOW IMMEDIATELY

IN WITNESS WHEREOF, the parties have duly executed this Agreement the day and year first above written.

WITNESS:

CITY OF PITTSBURGH

Laurie Danks

By: [Signature]
Mayor, William Peduto

WITNESS:

CITY of Pittsburgh
Department of Parks & Recreation

[Signature]

By: [Signature]
Director, Jim Griffin

WITNESS:

CITY of Pittsburgh
Department of Public Works

[Signature]

By: [Signature] 9/17/15
Director, Michael Gable

WITNESS:

The Pittsburgh Parks Conservancy

[Signature]

By: [Signature]
President & CEO, Mary M. Cheever

WITNESS:

K.J. JOHNSTON, LTD.

By: _____
Keith J. Johnston, President

Examined:

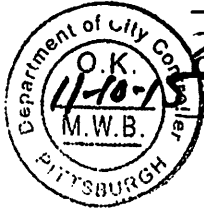
[Signature]

Approved as to form by: [Signature] Assistant Associate CITY Solicitor

Countersigned by: [Signature]

[Signature]
CITY Solicitor

[Signature] 11-24-15
CITY Controller



5147

IN WITNESS WHEREOF, the parties have duly executed this Agreement the day and year first above written.

WITNESS:

CITY OF PITTSBURGH

By: _____
Mayor, William Peduto

WITNESS:

**CITY of Pittsburgh
Department of Parks & Recreation**

By: _____
Director, Jim Griffin

WITNESS:

**CITY of Pittsburgh
Department of Public Works**

By: _____
Director, Michael Gable

WITNESS:

The Pittsburgh Parks Conservancy

By: _____
President & CEO, Mary M. Cheever

WITNESS:

K.J. JOHNSTON, LTD.



Ingar Yaksetic, Secretary

By: 

Keith J. Johnston, President

Examined:

Associate CITY Solicitor

Approved as to form by:

CITY Solicitor

Countersigned by:

CITY Controller



City of Pittsburgh

510 City-County Building
414 Grant Street
Pittsburgh, PA 15219

Certified Copy

Resolution: 641

File Number: 2015-2027

Enactment Number: 641

Resolution amending Resolution 741 of 2013, effective November 21, 2013, to authorize the Mayor and the Director of the Department of Public Works to now enter into a Three-Party Project Assistance And Payment Agreement between The City Of Pittsburgh, The Pittsburgh Parks Conservancy, and K.J. Johnston, Ltd., for the Schenley Park Westinghouse Memorial Pond Restoration to allow the Pittsburgh Parks Conservancy to remit its portion of the Project's funding directly to the contractor K.J. Johnston, and for the contractor K.J. Johnston to accept payment by the Pittsburgh Parks Conservancy toward the Project.

WHEREAS, the CITY and the PPC have entered into and then renewed a Cooperation Agreement to establish an alliance to provide infrastructure improvements, special care, and restoration for the CITY's four regional parks -- Frick, Schenley, Highland and Riverview, pursuant to Resolution 741 of 2013, effective November 21, 2013; and

WHEREAS, the CITY is undertaking the Schenley Park Westinghouse Memorial Pond Restoration Project and the PPC has offered to assist the CITY by providing funding and other assistance for the Project; and

WHEREAS, JOHNSTON, a Pennsylvania corporation located at 12 Western Avenue, Pittsburgh, PA 15202, has been hired by the City through a competitive process as the General Contractor to do the work needed for the Project under Contract/Spec. No. 47956/6756 by letter dated July 15, 2015; and

WHEREAS, the CITY and PPC have agreed to pay their respective contributions directly to JOHNSTON and JOHNSTON will accept from the CITY the CITY'S monetary responsibility for the Project and subsequently, directly from PPC, PPC's monetary responsibility for the Project as described above, there being no additional funding required from the City as this amendment describes merely a method of payment.

Be it resolved by the Council of the City of Pittsburgh as follows:

Section 1. Resolution 505 of 2013, effective August 5, 2013 is amended insofar as the Mayor and the Director of the Department of Public Works are hereby now authorized to enter into a Three-Party Project Assistance And Payment Agreement with The Pittsburgh Parks Conservancy, and K.J. Johnston, Ltd., for the Schenley Park Westinghouse Memorial Pond Restoration to allow the Pittsburgh Parks Conservancy to remit its portion of the Project's funding directly to the contractor K.J. Johnston, and for the contractor K.J. Johnston to accept payment by the Pittsburgh Parks Conservancy toward the Project.

Any Resolution or Ordinance or part thereof conflicting with the provisions of this Resolution is hereby repealed so far as the same affects this Resolution.

I certify that this is a true copy of Resolution No. 641, passed by Council on 10/6/2015, approved by the Mayor on 10/7/2015. Effective Date 10/7/2015.

Attest: Mary Beth Doheny
Mary Beth Doheny, City Clerk

October 14, 2015
Date Certified



City of Pittsburgh
Certified Copy

510 City-County Building
414 Grant Street
Pittsburgh, PA 15219

State of Pennsylvania

Bill No: 2013-2020

I, Linda M. Johnson-Wasler, the duly appointed Clerk of Council of the City of Pittsburgh, do hereby certify that the foregoing is a true and correct copy of:

Resolution No. 741

Resolution authorizing the Mayor and the Directors of the Department of Parks and Recreation and Public Works to enter into a Project Assistance and Reimbursement Agreement with the Pittsburgh Parks Conservancy in connection with its provision of design review and funding for consulting services relating to the City's restoration of the Schenley Park Westinghouse Memorial Pond.

WHEREAS, pursuant to Resolution No. 285 of 1998, effective May 29, 1998, the City entered into a Cooperation Agreement, dated April 10, 2000, with the Pittsburgh Parks Conservancy ("PPC") to establish an alliance to provide infrastructure improvements, special care, and restoration for the City's four regional parks: Frick, Schenley, Highland and Riverview; and

WHEREAS, pursuant to Resolution No. 364 of 2011, effective May 26, 2011, the City and the PPC agreed to extend the term of the Cooperation Agreement; and

WHEREAS, the PPC now desires to volunteer its services pursuant to said Cooperation Agreement, and has offered to provide design review and funding for consulting services relating to the City's restoration of the Schenley Park Westinghouse Memorial Pond;

WHEREAS, the PPC and CITY now wish to enter into a Project Assistance and Reimbursement Agreement in order to document the responsibilities of the parties.

Be it resolved by the Council of the City of Pittsburgh as follows:

Section 1. The Mayor and the Directors of the Department of Parks and Recreation and Public Works are hereby authorized to enter into a Project Assistance and Reimbursement Agreement (the "Agreement") with the PPC, pursuant to which the PPC will provide design review and financial assistance in an amount not to exceed Eighty-Eight Thousand, Five Hundred Ninety-Nine Dollars (\$88,599.00) for consulting services relating to the development of construction documents by MTR Landscape Architects, LLC, for the restoration of the Schenley Park Westinghouse Memorial Pond. The PPC's financial contribution will be in the nature of reimbursement to the City upon the City's presentation of invoices and supporting documentation for incurred costs. The form and substance of such Agreement is subject to the approval of the City Solicitor. Amounts reimbursed to the City from the PPC shall be deposited into the following account: 4029400095.48311.00, Budget Year 2013.

Section 2. Monies paid for MTR Landscape Architects, LLC (for PPC portion of invoices) will be paid from the following account: 4029400095.500000.00.

Finally, that any Ordinance or Resolution or part thereof conflicting with the provisions of this Resolution, is hereby repealed so far as the same affects this Resolution.

Mayor's Approval Date: November 20, 2013

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of November, A.D. 2013.


Linda M. Johnson-Wasler, City Clerk

November 21, 2013

Effective Date



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
7/21/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Rodgers Insurance Group Foster Plaza V 651 Holiday Drive Pittsburgh PA 15220	CONTACT NAME: Trisha Frantz		
	PHONE (AG. No. Ext): (412) 922-1651	FAX (AG. No): (412) 922-5117	
INSURED K.J. Johnston, Limited 12 Western Avenue Pittsburgh PA 15202	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A DON - Atlantic States Insurance		22586
	INSURER B DON - Donegal Mutual Ins Co		13692
	INSURER C DON - Peninsula Insurance		14958
	INSURER D:		
	INSURER E:		

COVERAGES **CERTIFICATE NUMBER: CL1571313465** REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			CPA0114998	7/31/2015	7/31/2016	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X					MED EXP (Any one person) \$ 10,000
	GENL AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC			GENERAL AGGREGATE \$ 2,000,000			PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY			CAA0117447	7/31/2015	7/31/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$
				First Party Benefits \$ 5,000			
B	<input checked="" type="checkbox"/> UMBRELLA LIAB			CXL0007730	7/31/2015	7/31/2016	EACH OCCURRENCE \$ 4,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> OCCUR					AGGREGATE \$ 4,000,000
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	<input type="checkbox"/> CLAIMS-MADE					
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WCI0029918	7/31/2015	7/31/2016	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y <input type="checkbox"/> N	N/A				E.L. EACH ACCIDENT \$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 500,000
							E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Certificate holder is added as additional insured to the General Liability policy in regards to work performed by the named insured.

RE: Schenley Park Westinghouse Memorial Rehabilitation

CERTIFICATE HOLDER

City of Pittsburgh
414 Grant Street
Pittsburgh, PA 15219

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Tony Reda/TZ

**THREE-PARTY PROJECT ASSISTANCE AND
PAYMENT AGREEMENT BETWEEN
THE CITY OF PITTSBURGH, THE PITTSBURGH
PARKS CONSERVANCY, AND K.J. JOHNSTON,
LTD., FOR SCHENLEY PARK WESTINGHOUSE
MEMORIAL POND RESTORATION
FOR SIGNATURE(S)**

PLEASE SIGN AND RETURN TO:
JOANNE HADUCH – 412-255-2731 joanne.haduch@pittsburghpa.gov

October 1, 2015

**RE: Three-Party Agreement
Schenley Park
Westinghouse Memorial Pond Restoration**

FOR SIGNATURE	DATE DELIVERED	DATE RETURNED
MICHAEL GABLE - DPW	9/17/15	9/17/15
JIM GRIFFIN – PARKS & RECREATION	10/1/15	10/2/15
SAM ASHBAUGH - OMB <i>Mayor Peduto</i>	10/2/15	10-28-15
MICHAEL LAMB - CONTROLLER	10-26-15	11-24-15