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**Project License Agreement**

Made this 23rd day of July 2014

**BY AND BETWEEN**

**THE CITY OF PITTSBURGH, Department of Parks and Recreation**

Hereinafter referred to as "City,"

AND

**The PITTSBURGH PARKS CONSERVANCY, INC.**

Hereinafter referred to as the "PPC"

AND

**The Allegheny County Sanitary Authority,**

Hereinafter referred to as "ALCOSAN"

AND

**The Pittsburgh Water and Sewer Authority**

Hereinafter referred to as "PWSA"

**For Panther Hollow Watershed Restoration Project in Schenley Park,**

Hereinafter referred to as "Panther Hollow Watershed"

**WITNESSETH:**

**Whereas**, pursuant to Resolution No. 285 of 1998, approved May 29, 1998 effective May 29, 1998 the City entered into a Cooperation Agreement (the "Cooperation Agreement"), dated April 10, 2000 and renewed and extended on December 11, 2011, with the PPC to establish an alliance to provide infrastructure improvements, special care, and restoration for the City's parks; and

**Whereas**, the City, PPC, ALCOSAN and PWSA have embarked on efforts to restore the hydrologic and ecological health of the Panther Hollow Watershed in Schenley Park, while at the same time capturing storm water within the Watershed project area; and

**Whereas**, the City, ALCOSAN and PWSA have received and approved "Restoring the Health of Panther Hollow: A Plan for Watershed Restoration," December 2011 ("the PHW Restoration Plan"), which identifies potential stormwater best management practices ("BMPs"); and

**WHEREAS**, two locations in Schenley Park: 1) Beacon/Bartlett Streets and 2) Schenley Drive (the "Project Site") have been identified for the first phase of proposed storm water pilot infrastructure interventions/best management practices through this extensive, multi-party planning process; and

**WHEREAS**, the PPC now desires to volunteer its services and financial assistance to assist the City with implementing the interventions at these two sites (the "Project"); and

**WHEREAS**, ALCOSAN has been awarded funding from the Environmental Protection Agency to contribute to Project expenses; and

**WHEREAS**, PWSA has also offered to provide funding and to assist with construction procurement and management services for the Project; and

**WHEREAS**, the City, the PPC, ALCOSAN, and PWSA now wish to enter into a Project License Agreement or Agreements to define the scope of the services to be provided by the various parties for the Project.

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

1. **INCORPORATION OF RECITALS:** The above recitals are incorporated herein by reference.
2. **SCOPE OF IMPROVEMENTS, SCOPE OF SERVICES & GRANT OF LICENSE:** Subject to all terms and conditions set forth below and within the attached exhibits, the parties have agreed to undertake the Project rehabilitation and storm water infrastructure improvements and maintenance at the aforementioned Project Site. A further description of Project work and Site Map are attached hereto and incorporated herein as

Exhibits A and A-1 respectively. In conjunction with the Project, City hereby grants to PPC and to PWSA, their agents, contractors, and subcontractors, a license to go upon the Project Site to perform Project work. The City shall be permitted to grant other licenses for the same Project Site during the term of this Project License Agreement (this "Agreement") so long as such other licenses are consistent with and do not interfere with the rights granted herein or with the construction of the improvements contemplated by this Agreement. For purposes of the Project, PWSA will be hiring the general contractor for the Project Work. PPC will be hiring the University of Pittsburgh as a contractor for purposes of soil water monitoring.

3. **TERM OF AGREEMENT:** The term of this Agreement shall commence on the date first written above and shall conclude on the later of (i) December 31, 2016 or (ii) the Completion Date of the Project, including maintenance responsibilities of newly-installed infrastructure interventions as included in Exhibits A and B.

4. **MONITORING AND EVALUATION; AUDITS:** All services provided under this Agreement shall be subject to monitoring and evaluation by City or its authorized representatives, as follows. PPC shall supply City with written reports on Panther Hollow Watershed activity as City may, from time to time, require. The PWSA shall make available to the City the bid materials, contracts, minutes of pre-construction and construction meetings, and such other records as the PWSA typically maintains for construction projects. Authorized representatives of City shall have access to the books and records maintained by PPC and PWSA with respect to any services or materials provided to City pursuant to this Agreement at all reasonable times and for all reasonable purposes; provided, however, that the City shall not have access to such other parties' records more frequently than once each month. All books and records pertaining to Panther Hollow Watershed shall be preserved by PPC and PWSA for a period of three (3) years after the termination of this Agreement.

5. **WORKER'S COMPENSATION:** PPC and PWSA each hereby certify that it has accepted the provisions of the Worker's Compensation and Occupational Disease Acts, as amended and supplemented, insofar as the work covered by this Agreement is concerned, and that it has insured its liability thereunder in accordance with the terms of the said Acts, as evidenced by the certificate of insurance it has caused to be attached hereto, or that it has duly filed a proper certificate of exemption from insurance with the Pennsylvania Department of Labor and Industry.

6. **COMPLIANCE WITH LAWS:** PPC and PWSA shall each comply and contractually require its contractors and any subcontractors providing Project work to fully obey and comply with all laws, ordinances, resolutions, and administrative regulations that are applicable to work performed under this Agreement. PPC and PWSA shall promptly notify the City's Department of Public Works ("DPW") of any known vandalism or other illegal activities at the Project Site that comes to its attention. Further, PWSA shall contractually require its prime contractor to promptly notify PWSA of any vandalism or other illegal

activities at the Project Site that comes to its attention; and PPC shall contractually require its prime contractor to promptly notify PPC of any vandalism or other illegal activities at the Project Site that comes to its attention. PPC acknowledges that the City ALCOSAN, and PWSA have obligations under state and other applicable laws concerning public bidding and the payment of prevailing wages for certain projects. By entering into this Agreement, the City Solicitor is expressing no opinion as to whether PPC or PWSA has or will comply with any of these laws.

7. **ANTI-DISCRIMINATION:** PPC and PWSA shall not discriminate in their employment on the basis of race, color, religion, ancestry, national origin, place of birth, sex, age, disability, non-job related handicap, or sexual orientation. PPC and PWSA shall comply with the applicable provisions of the Pittsburgh Code, Title Six - Conduct, Article V-Discrimination, and any amendments thereto. PPC and PWSA shall also comply with the applicable provisions of Title I and Title II of the Americans with Disabilities Act, any amendments thereto and any regulations issued thereunder. PPC and PWSA shall incorporate in any contracts that may be permitted under the terms of this Agreement a requirement that said contractor and its subcontractors also comply with the provisions of this Section.

8. **INSURANCE:** PPC shall maintain insurance in the amount specified in this Section and shall keep the City as an additional insured on such policy throughout the term of this Agreement. Attached hereto as Exhibit C and incorporated herein is a certificate of insurance evidencing insurance coverage in the amounts required herein issued by responsible and non-assessable insurance companies. The PWSA shall contractually require its contractor(s) to maintain insurance coverage in the amount specified in this Section, and shall require that the general and automobile liability policies be endorsed to identify the City and the PWSA as additional insureds. Prior to the commencement of any work on the Project Site, PPC and the PWSA shall deliver certificates of insurance, as aforesaid, evidencing the following minimum coverage and specifically identifying City as an additional insured on all general and automobile liability policies, which insurance shall be non-cancellable, except upon thirty (30) days prior written notice to City:

	Individual Occurrence	Aggregate
General Liability		
Bodily injury, including death	\$ 1,000,000	\$2,000,000
Physical injury to tangible property	\$ 1,000,000	\$2,000,000
Automobile Liability	\$1,000,000	\$2,000,000
Worker's Compensation	Statutory Limits	

All premiums shall be at the expense of the named insured. All policies must be made on an occurrence basis. Claims-made policies are not acceptable. In the event that the term of said insurance shall expire prior to the expiration of the term of this Agreement or the completion of all services required hereunder, whichever shall occur later, PPC and PWSA, or its contractor(s), shall renew said insurance in a timely manner and shall promptly secure a certificate of insurance evidencing such renewal, and also identifying City as an additional insured on the General and Automobile Liability policies, to be forwarded to the Director of DPW.

PPC shall also provide City with evidence of errors and omissions insurance coverage with respect to any design professionals of record for the Project.

9. **GOVERNING LAW:** This Agreement shall, in all respects, be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without reference to its conflicts-of-laws principles.

10. **AMENDMENT:** 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, shall be deemed to exist or to bind any of the parties hereto; provided, however, that the parties do contemplate entering into separate agreements regarding additional intervention projects and/or regarding the long-term maintenance of Panther Hollow Watershed. This Agreement may not be changed, modified, discharged or extended except by a written amendment, duly executed by all of the parties hereto.

11. **PITTSBURGH HOME RULE CHARTER:** This Agreement is subject to the provisions of the Pittsburgh Home Rule Charter.

12. **STORAGE:** PPC, and PWSA, and if applicable, its prime contractor, are authorized to move and/or store equipment, materials, and trailers on said Project Site and to use them as lay down and/or staging areas to facilitate the Panther Hollow Project. Additional staging areas may be designated by DPW as needed. Access to the Project Sites for storage purposes shall be limited to authorized representatives or designees of the PPC and the PWSA or their contractors and subcontractors. PPC and PWSA shall contractually require their contractors to provide appropriate security for any machinery and/or materials used for Panther Hollow Watershed, to waive any claims against the City and to indemnify the City from claims of damage to or loss of the contractor's property or the property of its subcontractors for any reason.

13. **OWNERSHIP OF IMPROVEMENTS:** Ownership of all alterations, additions or capital improvements constructed and paid for by PPC, ALCOSAN, or PWSA at the Project Sites shall vest in City upon installation, without compensation being paid therefor.

14. **ASSIGNMENT; SUBCONTRACTING:** No party shall assign this Agreement without the written consent of the other parties.

15. **PROHIBITION AGAINST ENCUMBRANCES:** PPC or PWSA will not create or permit to be created or to remain, and will discharge, any lien, encumbrance or charge which might become a lien, encumbrance or charge upon the Project Sites or any part thereof having any priority or preference over or ranking on a parity with the estate, rights and interest of City in the Project Sites or any part thereof.

16. Intentionally omitted.

17. **ZONING:** PPC and PWSA shall be responsible for complying with all applicable zoning guidelines and laws relative to the Project Sites. With the prior approval of the City, PPC shall file for approval of any zoning variances that may be required for the intended use of the Project Sites.

18. **CONSENTS:** In any case under this Agreement, when the prior written approval or consent of a party shall have been requested by another party, such approval or consent shall not be unreasonably withheld or delayed.

19. **APPROVALS FOR REHABILITATIONS:** PPC and PWSA shall accomplish the rehabilitation and improvements of Panther Hollow in accordance with the scope of work described on Exhibit A hereto and in accordance with applicable laws. Final engineering plans and construction drawings are to be approved by the City prior to initiation of Project work. The City shall review and pre-approve all construction schedules so that it can coordinate City activities and other special events and monitor delays. Any objections by the Director of Public Works shall be timely provided in writing and provide detail sufficient for the PPC and PWSA to respond to its concerns. Subject to Section 32 below, any alteration in plans or drawings previously approved by City must be submitted in writing to DPW and PPC prior to such planned amendments for re-approval. Additionally:

1). PWSA will notify the City and PPC in writing of the completed work prior to accepting its contractor's work. Upon receipt of such notification, the City will inspect the contractor's completed Project work to ensure it was installed properly.

2). Upon completing its inspection and absent any objection thereto or after any outstanding punch list items have been corrected in compliance with City requirements, the City will forward to PWSA and PPC written approval of said work.

3). In the event of an objection, the City or PPC will provide a written statement of the objection(s). Within ten (10) days of receiving such statement, PWSA will prepare a written plan as to how such objections will be cured.

4). PPC has Meliora Environmental Design (MED) under contract from the design phase for Construction Administration. MED designed the BMPs and will oversee parts of the construction and approve completion of the projects, subject to final approval of City.

5). PWSA shall assign all warranties for Project Work (as applicable and permissible) at the time of City acceptance for each Project Phase. If a warranty is not assignable, PWSA will cooperate with the City to ensure such warranty is honored.

6). PWSA shall provide a copy of all Contract Documents, Permits and Licenses, Construction Documents, Project Close Out Documents such As-Built and Record Drawings, Warranties, Operation and Maintenance Manuals/Videos, to the City, ALCOSAN, and PPC upon completion of Project in compact disk, in pdf format (drawings in PDF and AutoCAD or Revit format).

20. **MAINTENANCE:** The approved contractor hired by PWSA will be responsible for the first twelve (12) months of meadow, herbaceous, shrub, and tree maintenance and the first three (3) months of turf maintenance at the Site. Following that, the City will reference a Maintenance Guide (including any written updates provided to City) to outline suggested maintenance requirements for the Project Sites, including but not limited to inlet basket cleaning. The City will also review maintenance requirements with First Tee (relating to the Golf Course). For the remainder of the term of this Agreement (i.e., after completion of the maintenance performed by PWSA contractors), PPC will provide additional maintenance at the Site as further set forth in Exhibit B, which is attached hereto and incorporated herein.

21. **INDEMNITY:** PPC hereby agrees to indemnify, save and hold harmless, and defend City, ALCOSAN, and their respective officers, agents and employees from and against all liens, charges, claims, demands, losses, costs, judgments, liabilities, and damages of every kind and nature whatsoever, including court costs and attorney's fees arising by reason of: the performance by PPC of any services under this Agreement; any act, error or omission of PPC or of any agent, employee, licensee, invitee, contractor, subcontractor, or volunteer of PPC; and any breach by PPC of any of the terms conditions or provisions of this Agreement.

PWSA hereby agrees to contractually require its contractor to indemnify, save and hold harmless, and defend City, its officers, agents and employees from and against all liens, charges, claims, demands, losses, costs, judgments, liabilities, and damages of every kind and nature whatsoever, including court costs and attorney's fees arising by reason of: the performance by the contractor, its subcontractors, their employees and agents, of any work on the Project; any act, error or omission of the contractor or of any agent, employee, or subcontractor, or of any other person for whose acts the contractor may be liable.

22. **LIMITATION ON CITY'S LIABILITY:** The City shall not be liable for any claims or damages arising out of the conduct, operation or work performed on the Project Site by PPC or PWSA or by their respective officers, agents, employees, contractors, subcontractors, volunteers, or invitees. The City represents that any City employees performing maintenance work on or around the Project Site shall be covered by the City's Workers' Compensation Program. In no event shall any agent or employee of the City be deemed to be an agent or employee of PPC or PWSA nor shall any agent, contractor, volunteer, or employee of PPC or PWSA be deemed to be an agent, contractor, or employee of the City. Entering into this Agreement and performing requirements thereunder shall not create an agency relationship between the parties or establish a joint venture or legal partnership.

23. **PUBLIC SAFETY:** PWSA, the City, and PPC will cooperate in providing notice to the public of the construction of the BMP's and in planning for protection of the public from any hazards associated with the construction or the installed BMP's PWSA will contractually require its contractor to take reasonable steps to protect the public from any hazards associated with construction process. PPC and the City will take reasonable steps to alert and protect the public from any hazards associated with ongoing operation of installed BMPs authorized under this Agreement.

24. **RIGHT TO INSPECT; RIGHT TO TAKE EMERGENCY ACTION:** City shall have the right to enter the Project Site at all times for the purposes of inspecting the same or determining whether PPC, PWSA, and/or its contractors are complying with the terms and conditions hereof. City shall have the right (but not the duty) to enter the Project Site without the consent of PPC, ALCOSAN or PWSA at any time to correct any situation that, in the reasonable discretion of City, is deemed to be of an emergency nature. Provided, however, that prior to taking such action, City shall make reasonable efforts to contact PWSA's Project representative to inform the Representative of the nature of the emergency and attempt to secure the PWSA's consent and participation. The City, PPC, and ALCOSAN will not have the authority, or any obligation, to direct PWSA's contractor in the performance of the Project work or otherwise. If PPC, CITY or ALCOSAN need to communicate with PWSA's contractor about the project, all communications will be directed to PWSA's project representative as listed in Paragraph 30. PWSA's project contact will then contact PWSA's contractor with the PPC, City or ALCOSAN's concerns to be remedied in a timely manner. PPC, ALCOSAN, and the City may attend on-site job meetings with the PWSA and its contractor, typically held weekly.

25. **NON-OBLIGATION OF CITY TO REPAIR.** In the event of casualty to the Project Site during the performance of and related to the Project work, regardless of the amount of damage or destruction, City shall be under no obligation to repair and/or replace the Project Work or any portion of the Panther Hollow Watershed, *except* insofar as the parties may agree in a separate written agreement regarding the long-term maintenance of Panther Hollow.



26. **NON-OBLIGATION OF CITY TO REPAY ANY PRIVATE MONIES OR GRANTS.** In the event that this Agreement is terminated by City as permitted under this Agreement or the Cooperation Agreement, or in the event of bankruptcy of PPC, City and PWSA shall not be obligated to repay any private monies obtained by PPC for improvements to the Project Sites. The parties acknowledge that the foregoing does not apply to reimbursements required under Section 33 hereof.

27. **AUTHORIZING RESOLUTION:** This Agreement is entered into by City pursuant to Resolution No. 817 of 2013, effective January 3, 2014; by PWSA pursuant to Agenda Item No. 97 of 2013, adopted at a regular meeting of its Board of Directors on October 11, 2013; and by ALCOSAN pursuant to Resolution No. 2014-2-2 adopted at a regular meeting of its Board of Directors on February 27, 2014.

28. **SURVIVAL OF PROVISIONS:** It is the intent of the parties that Section 6 (Compliance with Laws), Section 21 (Indemnity), the reimbursement provisions of Section 33 (Alcosan and EPA Funding), and Section 39 (Dispute Resolution) shall survive the expiration or termination of this Agreement.

29. **RECLAMATION:** Upon completion of its work, and excepting the improvements anticipated by this Agreement, PPC and PWSA shall ensure that its agents, contractors and subcontractors restore, repair, replace, re-seed, or rebuild the Project Site(s) and any surrounding areas disturbed by work to its visual and functional equivalent immediately prior to the work. Such restoration, repair, replacement, re-seeding, or rebuilding shall be performed in accordance with prior plans and specifications approved in writing by City prior to the commencement of the reclamation. Such reclamation shall be completed within sixty (60) days after the completion of the Project Work; provided, however, that any trees or large bushes will be planted or replanted at a time appropriate to their health and growth. All tree removals and re-plantings shall be subject to the prior approval of the City.

30. **PROJECT MONITORING:** PPC will contract with the University of Pittsburgh and/or its agents for monitoring of the performance of BMP's and other aspects of the Project, including monitoring of surface water flows, of soil moisture levels, and of water flow at designated stations. The services to be performed and the form of the agreement between PPC and the University of Pittsburgh shall be reasonably acceptable to the City, and the compensation to be paid for the services shall be acceptable to the City, ALCOSAN, and the PWSA. PPC will invoice the PWSA for the monitoring services performed by the University or its agents, and PWSA will pay amounts due from the drawdown account addressed below.

31. **PROJECT REPRESENTATIVES:** Each of the parties will identify a Project Representative authorized to act on its behalf with respect to the Project. In addition, each party shall identify an Alternate authorized to act on its behalf. Each party, through its Project Representative or Alternate, will render decisions and take action on the

requests and submittals of the other parties promptly and in such time as not to delay the Project. The initial Project Representatives and Alternates shall be as follows:

Party:	Project Representative:	Alternate:
City	Director, DPW	Assistant Director, DPW
PPC	Senior Restoration Ecologist	Director of Management and Maintenance
ALCOSAN	Jan Oliver, Director, Regional Conveyance	
PWSA	Community Outreach Manager	Director of Engineering and Construction

A party may at any time change its Project Representative or Alternate by written notice to the other parties.

32. **CONSTRUCTION PROCUREMENT AND MANAGEMENT:** Each of the parties shall have the right and opportunity to review and approve the bid package. After sufficient funds have been collected and reserved for the costs of construction, and security reasonably satisfactory to the PWSA is in place, the PWSA will procure the services of a contractor in compliance with applicable law, will enter into the construction contract and assume thereby the responsibilities of administering the construction contract. PWSA will review and approve the contractor's applications for progress payments and for final payment. PWSA will assist ALCOSAN in the preparation of submissions to the Environmental Protection Agency in order to secure funds with which to pay the PWSA's contractor. At the commencement of the Project, PWSA will forward invoices to the City, ALCOSAN, and PPC for transfer of those funds specified in sections 33 through 35 below to be paid into the drawdown account established by the PWSA. Provided the conditions contained in section 33 below are met, ALCOSAN will pay the ALCOSAN Funding (defined below) into the drawdown account established by the PWSA in six equal monthly installments. Provided, however, that should construction of the Project outpace the delivery of the ALCOSAN deposits, such that money is due to the contractor for completed work before the necessary deposit from ALCOSAN is available, then PWSA will forward invoices to ALCOSAN for transfer of such funds to PWSA. PWSA acknowledges that the ALCOSAN Funding should be used in proportion to the funds contributed by PWSA, City and PPC (relative to the total amounts to be contributed by each party, including the value of in-kind services). PWSA will use these funds for payment of its contractor in accordance with the terms of the construction contract and this Agreement. PWSA covenants and agrees that, as the Project construction proceeds, it will use commercially reasonable efforts to manage withdrawals and payments from the drawdown account established for the funds contributed by the parties, any invoicing and payment from the funds contributed by ALCOSAN, and the invoicing and payment from the funds contributed by the EPA so that the EPA Funding (as defined below) will represent no more than 55% of the total Project cost at the conclusion or termination of

the Project. In addition, PWSA covenants and agrees that at the conclusion or termination of the Project, the EPA Funding will represent no more than 55% of the total Project cost through such completion or termination. For purposes of determining the total Project cost, PWSA shall be permitted to include the value of in-kind services contributed by a party, but only to the extent and in such amount as is approved by the EPA (as defined below).

After the construction contract has been executed, no change in the construction contract that would expand the scope of the contractor's work, the contract schedule or the contract sum will be permitted unless sufficient funds are available and committed to fund the change. Further, after the contractor has mobilized to the Project Site, the parties shall act on any proposed change within two (2) business days of receiving notice of the change or within such time as not to unreasonably delay the performance of the Project work. If the City, PPC, or ALCOSAN fails to act within the time permitted, its silence shall be deemed approval of the proposed change.

The parties agree that the PWSA will establish a construction contingency line item, ten percent of the estimated cost of construction, which may be used to accommodate unanticipated costs that cannot reasonably be back-charged to contractors, including, but not limited to, costs incurred to repair damaged work, costs incurred due to delays in the Project, general conditions overruns, change orders necessitated by conditions that could not be reasonably anticipated, and other change orders approved by all parties. Should the contingency fund be exhausted and additional funding is required, PWSA shall provide to each party hereto a detailed explanation as to the reasons for the excess spending and the amount of additional funding being required to complete the Project. Thereafter, each of the parties shall fund any excess of the total construction costs over the total of all parties' original contributions in the same proportion as that party's original contribution bore to the total of the parties' original contributions. Notwithstanding the foregoing, (a) additional City proportional contribution will be contingent upon Council authorization/appropriation if legally required, (b) the contribution proportions shall be calculated without taking into account any EPA Funding (as defined below), and (c) ALCOSAN's proportion of the additional contribution(s) shall not exceed 46.67%.

33. **ALCOSAN and EPA FUNDING.** ALCOSAN is eligible to receive up to \$412,500 in grant funds from the United States Environmental Protection Agency (the "EPA" and such funding, the "EPA Funding"). Subject to certain conditions described herein, ALCOSAN has agreed to direct the EPA Funding to the Project. In addition, ALCOSAN has agreed to contribute up to \$157,500 (the "ALCOSAN Funding") towards the Project, subject to the terms and conditions contained herein. ALCOSAN's obligation to contribute the EPA Funding is expressly contingent upon receipt of such funds from the EPA. In addition, ALCOSAN's obligation to contribute the EPA Funding and the ALCOSAN Funding (and PWSA's authority to expend any portion of ALCOSAN Funding previously contributed) shall each be contingent on each of the following: (a) the bidding having been performed in accordance with applicable laws and regulations; (b) the other parties' contribution of at

least \$180,000 to the Project, which amounts may be a combination of monetary funding and in-kind services (provided that the valuation of any in-kind services is approved by the EPA); and (c) no other party is in material breach of this Agreement. Further, ALCOSAN's obligation to contribute the EPA Funding and the ALCOSAN Funding (and PWSA's authority to expend any portion of ALCOSAN Funding previously contributed) upon receipt of an invoice shall be contingent upon (i) receipt by ALCOSAN of invoices for work performed with respect to the Project; (ii) such work shall have been performed in accordance with all applicable laws and regulations; and (iii) such work is in full compliance with EPA guidelines and requirements. Upon satisfaction of the foregoing contingencies, ALCOSAN will remit such funds due hereunder from the EPA Funding within 10 days following receipt of such funds by ALCOSAN from the EPA, and PWSA shall be authorized to use the applicable portion of the ALCOSAN Funding from the drawdown account for payment of the invoices previously delivered to ALCOSAN. If at the close of the Project, any audit of the Project discloses that more than 55 % of the total Project costs, calculated pursuant to section 32, was paid with EPA funds, then the PWSA will promptly reimburse ALCOSAN for the amount of such EPA funds expended in excess of the 55%, that ALCOSAN is required to refund to the EPA. Provided, however, that if and to the extent that the excess of EPA funds is caused by the EPA's failure to approve in-kind services or valuation of in-kind services in an amount less than the amount budgeted, then the party who contributed the in-kind services will promptly reimburse ALCOSAN. Any such payment due based on deficient in-kind valuation attributed to City services will be contingent upon Council authorization/appropriation if legally required; however, the parties agree that every effort will be made to obtain EPA's approval of in-kind services/valuation as early as possible to avoid any issues of this kind. If ALCOSAN is required for any other reason to reimburse EPA for all or any portion of the funds contributed by EPA, then the parties shall promptly meet in an attempt to equitably apportion the liability to such party(ies) who is/are responsible for causing the EPA to seek reimbursement for all or any portion of the EPA Funding, and such party(ies) shall promptly reimburse ALCOSAN in the amounts as agreed upon by the parties. In the event that the parties cannot reach agreement with respect to such allocation; then the parties shall submit the dispute to arbitration in accordance with Section 39 of this Agreement. The arbitrator shall equitably apportion the liability to such party(ies) who is/are responsible for causing the EPA to seek reimbursement for all or any portion of the EPA Funding, and such party(ies) shall reimburse ALCOSAN in accordance with the decision of the arbitrator. In the event that any portion of the ALCOSAN Funding remains unused in the draw down account (together with any amounts disbursed from the draw down account by PWSA that did not meet the conditions set forth above), PWSA shall promptly pay such amounts to ALCOSAN at the earlier of the conclusion or termination of the Project.

34. **CITY FUNDING/HOME RULE CHARTER LIABILITY:** CITY has agreed to provide Sixty thousand dollars (\$60,000.00) in funding towards the Project. This Agreement is subject to the Home Rule Charter of the City of Pittsburgh, and the City's liability hereunder shall not exceed Sixty Thousand Dollars (\$60,000.00). CITY's Project Funds shall be payable

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from the following account: JDE 40012.4024500013(2013) The City's funds will be payable to PWSA upon receipt of an authorized invoice. In the event that some or all funds are not used for the Project, remaining funds will be returned to the City upon written request.

35. **PPC FUNDING:** PPC has agreed to provide \$40,500 in funding towards the Project. PPC funds will be payable to the drawdown account instituted by PWSA for the project.

36. **PWSA FUNDING:** PWSA has agreed to provide \$60,000 in funding toward the Project. These funds shall be paid into the drawdown account established by PWSA for the Project.

37. **TERMINATION:** This Agreement shall be terminated upon the occurrence of any of the following events: (a) the written consent of all parties; (b) the City's decision, prior to the bidding of any construction contract, not to pursue the Project; or (c) completion of the Project, including all maintenance responsibilities of PPC and PWSA's contractor as set forth in Exhibits A and B, payment of all sums due any consultant or contractor performing services on the Project; and distribution of any funds or other assets previously dedicated to the Project, but not expended or used, in accordance with this Agreement and any amendment.

38. **PUBLICITY:** Except for communications intended solely for a party's employees, sureties, insurers, financial institutions, or advisors, no party shall issue any news release or other public announcement concerning this Agreement or the Project without the prior approval of the other parties. Any such release, announcement, advertisement, or other publicity shall give due credit to the contribution of each party.

39. **DISPUTE RESOLUTION:** In the event of any dispute among the parties, the parties shall exhaust all reasonable efforts to amicably resolve the dispute, including meetings of their chief executive officers/executive officials (as applicable) on at least two occasions. If efforts to resolve the dispute amicably are unsuccessful, the dispute shall be resolved by arbitration, as provided below.

Any and all disputes arising out of or relating to this Agreement shall be subject to binding arbitration in accordance with the Rules of the American Arbitration Association ("AAA") in effect at the time the demand for arbitration is filed ("AAA Rules"), as modified herein.

Arbitration shall take place in Pittsburgh, Pennsylvania. All disputes shall be initiated by the service of a written notice by one party to the other parties of the intent to arbitrate and filing of such notice with the AAA. Each party shall bear its own costs and expenses of arbitration and shall pay its pro rata share of any joint fees, costs, and expenses of arbitration including, without limitation, the costs and fees of the arbitrator and of AAA. The City's pro-rata contribution of fees and expenses shall be subject to any required appropriation by City Council.

The Parties shall jointly designate a single, independent arbitrator or otherwise have an arbitrator selected by the AAA in accordance with the AAA Rules.

The arbitration hearing must be conducted within four (4) months of the date of filing of the intent to arbitrate with the AAA. The hearing shall be conducted in accordance with the Federal Rules of Evidence then in effect. The decision of the arbitrator, including any remedy or relief granted, including specific performance, shall be in writing and shall be rendered no later than fourteen (14) days after the close of the hearing. The decision of the arbitrator shall be final, binding upon the parties, and non-appealable, and judgment thereon may be entered by any court of competent jurisdiction.

Each party in arbitration shall be entitled to discovery pursuant to the AAA Rules and the decisions of the arbitrator. However, all discovery shall be completed within sixty (60) days of the date of the appointment of the arbitrator. Further, all discovery must be completed no later than fifteen (15) days prior to the arbitration hearing. The time period for discovery may be extended by the arbitrator for good cause, provided that the arbitrator is able to meet the schedule specified above.

The arbitrator shall have no authority to change any provision of this Agreement.

Each party shall continue to perform under this Agreement, saving only the issue in dispute, during the pendency of the dispute.

40. **MISCELLANEOUS:**

1). All notices required under this Agreement shall be in writing, and shall be delivered by personal or courier delivery, or by certified or registered mail, return receipt requested, and shall be deemed given upon receipt. Notices shall be sent to the following persons or any other persons subsequently designated by a party by notice to the other parties:

The City: Director, Department of Public Works, with copy to the City Solicitor.

PPC: President and CEO, with copy to PPC Solicitor

ALCOSAN: Director, Regional Conveyance, with copy to the Alcosan Solicitor

PWSA: Community Outreach Manager, with copy to the PWSA Solicitor

2). This Agreement constitutes the entire agreement among the parties and supersedes any and all other agreements among the parties on this subject matter.

3). None of the provisions of this Agreement shall be for the benefit of or enforceable by any third party unless expressly so stated herein.

4). This Agreement may be executed in four or more counterparts, each of which shall be deemed an original and each of which shall constitute one instrument. This Agreement shall be binding upon and inure to the benefit of the parties, their successors, and permitted assigns.

5). In the event of any inconsistency between the language in the body of this Agreement and any exhibit or appendix to this Agreement, the language in the body of this Agreement will control.

6). This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

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

Witness:

City of Pittsburgh

Laurie Drake  
Witness:

By: [Signature]  
William Peduto, Mayor

City of Pittsburgh  
Department of Public Works

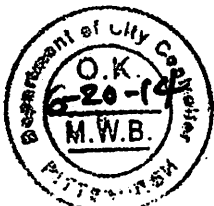
[Signature]  
Witness:

By: Michael Gable, CPPP  
Director, Michael Gable

Examined by: [Signature]  
Associate City Solicitor

Approved as to form by: [Signature]  
City Solicitor

Countersigned by: Michael E. Lane  
City Controller



CASE OF CONTRACT	CONTRACT NUMBER	APPROPRIATION ITEM	AMOUNT CHARGED
	6-20-14 50744	advised	\$60,000.00

WE HEREBY CERTIFY THE ABOVE CONTRACT IS NUMBERED IN THE ORDER OF ITS BOND AND THE AMOUNT THEREON IS CHARGED AGAINST THE 15% RESERVE OF APPROPRIATION WHICH IS COUNTERSIGNED SUBJECT TO THIS CONDITION.

CERTIFIED AND COUNTERSIGNED 7-23-14  
Michael E. Lane  
CITY CONTROLLER OR DEPUTY CITY CONTROLLER

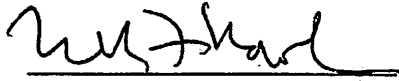
Pittsburgh Parks Conservancy

*Shirley A. Page*  
Witness:

By: *Mary M. Cheever*  
President & CEO, Mary M. Cheever

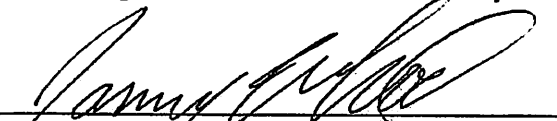


The Pittsburgh Water and Sewer Authority



Witness:

By:

  
Interim Executive Director James L. Good

Approved as to form by:

  
PWSA Solicitor

**Allegheny County Sanitary Authority**

*Jack Buford*  
Witness:

By: *Arletta Scott Williams*  
Executive Director Arletta Scott Williams

**EXHIBIT A: SCOPE OF PROJECT WORK**

## **EXHIBIT A: SCOPE OF PROJECT WORK**

### **PWSA**

- **Oversee bidding, construction, and first 12 months maintenance of the project**
  - **At the Beacon Street site construction includes installation of the new inlets, pipe, infiltration trench, path, meadow, shrubs, trees and herbaceous material**
  - **At the Schenley Drive site construction includes retentive grading, tree removal, and seeding**
- **Establish and maintain drawdown account**

### **CITY**

- **Repair Beacon Street after new inlets and piping are completed at the discretion of the Director of the Department of Public Works (DPW).**
- **Prune trees as needed**
- **Provide onsite staging area**
- **Provide temporary site for excavated/salvaged materials generated by this project**

### **PPC**

- **Oversee Design Professional completing construction administration**
- **Hold on-site meetings for members of collaboration and construction administration firms**
- **Develop signage language using the pre-approved park standard sign package to inform park users of the project**
- **Oversee scientific monitoring of the project**
- **Lead the effort in third party fundraising in collaboration with PWSA, ALCOSAN and CITY**
- **Work with DPW on maintenance after PWSAs contractor maintenance has ended (see Exhibit B)**

### **ALCOSAN**

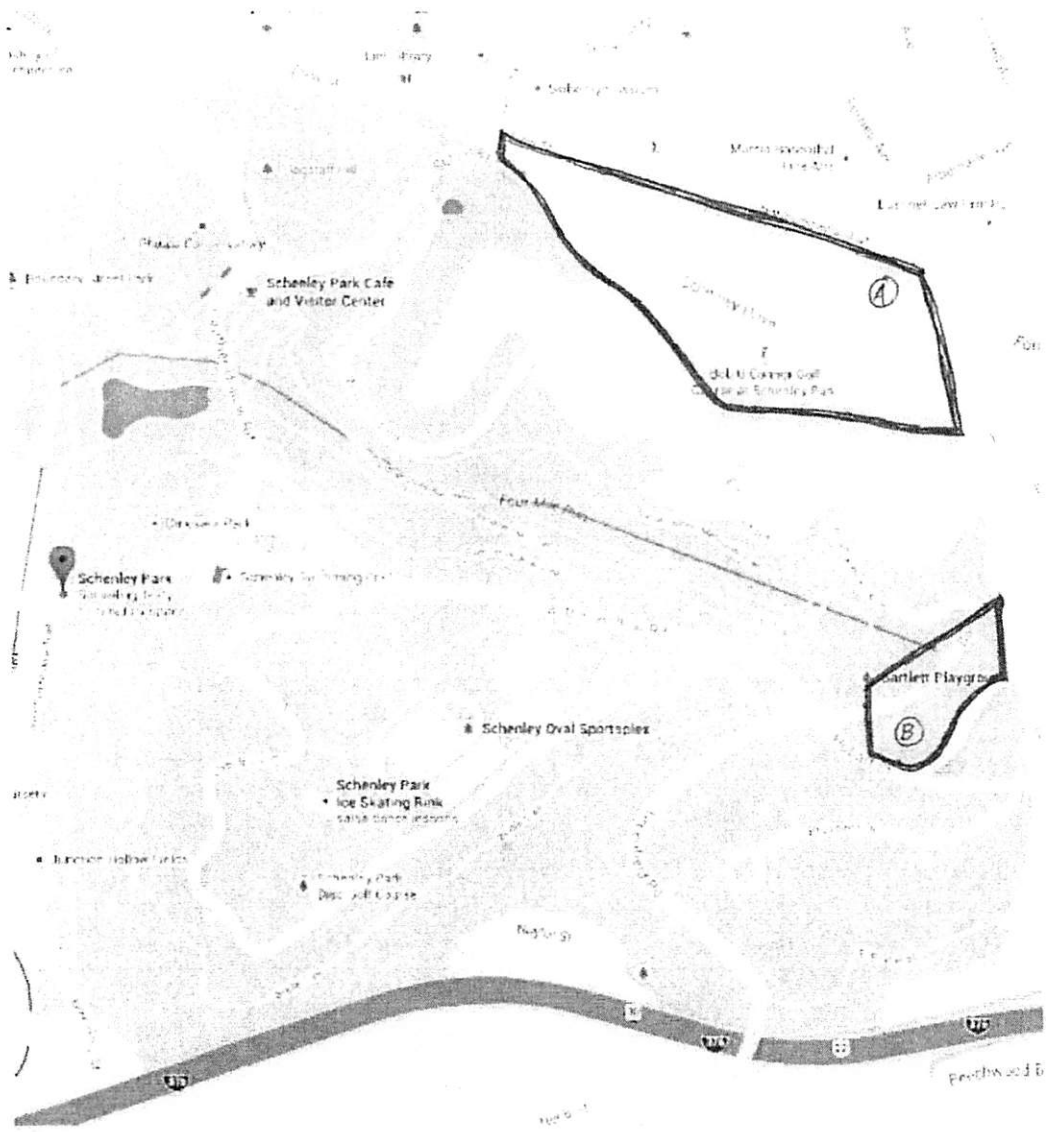
- **Apply for and manage EPA Funding, as provided for in the accompanying Project License Agreement**

**EXHIBIT A-1: SITE MAP**

11/17/2018



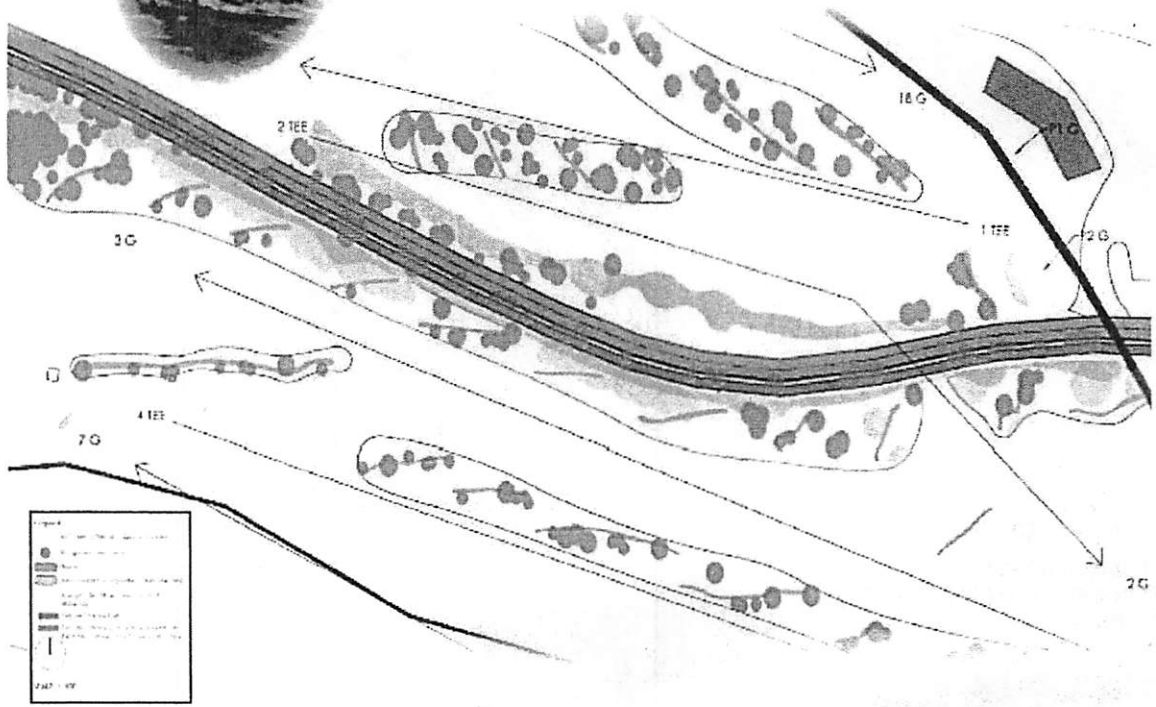
EXHIBIT A-1



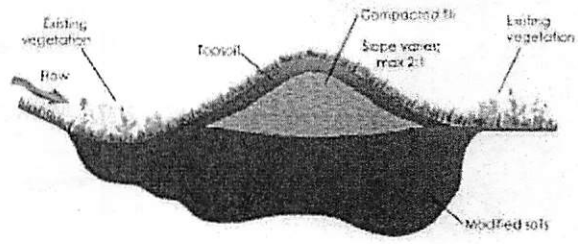
(A)



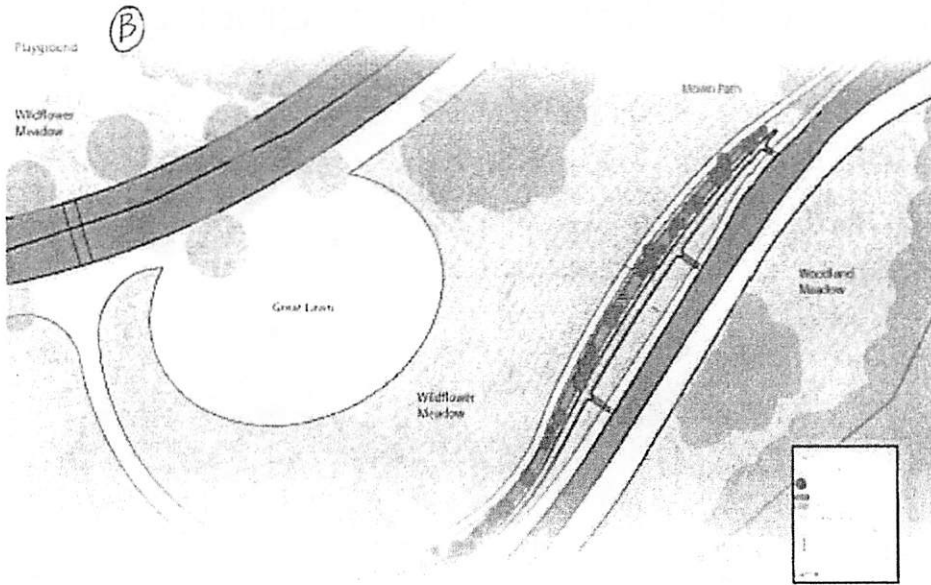
# Schenley Drive Retentive Grading



**Schenley Drive Golf Course**  
**Infiltration Berm – Reduces Runoff,**  
**Promotes Recharge**  
 Allows runoff to naturally pond along  
 the contour and infiltrate into the soil.

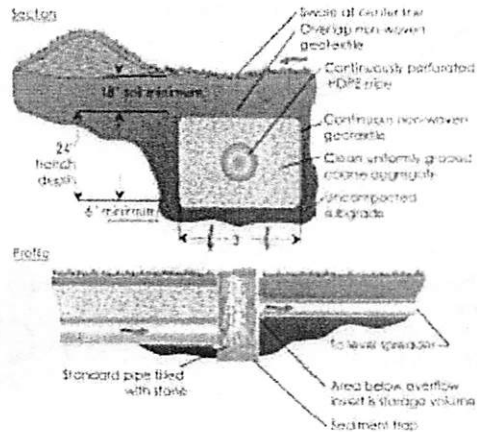


# Beacon Street Infiltration Trench, Meadow, and Path



## Beacon Street

**Infiltration Trench**  
Stone allows water to percolate into soil.





**EXHIBIT B: PPC MAINTENANCE POST-INSTALLATION OF INTERVENTIONS**

**EXHIBIT B: PPC MAINTENANCE POST-INSTALLATION OF INTERVENTIONS  
DURING TERM OF AGREEMENT**

**Beacon Street**

- Water the trees and shrubs (15 gallons per diameter inch) during the dry season in the second year after installation.
- Prune trees as needed.
- Work with DPW to spot treat invasive species in the newly established meadow.
- If there is a problem with the BMP, work with the DPW to determine the issue and fix it.
- Install additional vegetation if deemed necessary by DPW and PPC.

**Bob O'Connor Golf Course**

- Water the trees and shrubs (15 gallons per diameter inch) during the dry season in the second year after installation.
- Prune trees as needed.
- Work with DPW and / or First Tee staff to spot treat invasive species in the newly established meadow.
- If there is a problem with the BMP, work with DPW to determine the issue and fix it.
- Install additional vegetation if deemed necessary by DPW and PPC.

**EXHIBIT C: INSURANCE CERTIFICATE**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
4/2/2014

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 Simpson & McCrady LLC 310-330 Grant Street Suite 1320 Pittsburgh PA 15219	CONTACT NAME: Donna Sebesta	
	PHONE (A/C No. Ext): (412) 261-2222	FAX (A/C No.): (412) 261-3437
	E-MAIL ADDRESS: donna@simpson-mccrady.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Selective Way Ins. Co.	26301
	INSURER B: Highmark Life & Casualty Group	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: 14/15 Master 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	ADOL	SUBR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			S2061724	3/1/2014	3/1/2015	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						MED EXP (Any one person) \$ 15,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJ-JECT <input type="checkbox"/> LOC			GENERAL AGGREGATE \$ 2,000,000			PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY			S2061724	3/1/2014	3/1/2015	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 checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$
				Underinsured motorist \$ 1,000,000			
A	<input checked="" type="checkbox"/> UMBRELLA LIAB			S2061724	3/1/2014	3/1/2015	EACH OCCURRENCE \$ 2,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE					AGGREGATE \$ 2,000,000
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$	<input type="checkbox"/> C					\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			HMFA001408	3/1/2014	3/1/2015	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
	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)  
City of Pittsburgh & The Pittsburgh Water & Sewer Authority are named as additional insureds regarding the Panther Hollow Watershed Restoration Project in Schenley Park

## CERTIFICATE HOLDER

## CANCELLATION

City of Pittsburgh & The Pittsburgh Water & Sewer Authority	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  Donna Sebesta/DONNA