

10A-0678 CN# NOT LISTED



Project and License Agreement

Made this 20th day of August 2010

BY AND BETWEEN

THE CITY OF PITTSBURGH, Department of Parks and Recreation

Hereinafter referred to as "City,"

AND

MOUNT WASHINGTON COMMUNITY DEVELOPMENT CORPORATION

Providing Improvements for Grandview Scenic Byway Park

Hereinafter referred to as the "MWCDC"

WITNESSETH:

Whereas, pursuant to Resolution No. 769, effective December 30, 2005, the City entered into a Cooperation Agreement (the "Cooperation Agreement") with the MWCDC to establish an alliance to provide infrastructure improvements, special care, and restoration for the City's Grandview Scenic Byway Park, which has since been renamed Emerald View Park (the "Park"); and

Whereas, the MWCDC now desires to volunteer its services pursuant to said Cooperation Agreement and has offered to install leased coin-operated viewing machines along Grandview Avenue to increase public enjoyment of the Park view from specific vantage points.

Whereas, the City has received and approved MWCDC's plans for said improvements.

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

1. **SCOPE OF IMPROVEMENTS & GRANT OF LICENSE:**

- A. **Grant of License:** Subject to all terms and conditions set forth below and within the attached exhibits, MWCDC has agreed to install leased coin-operated viewing machines ("Viewfinders") at its own sole cost and expense, including all materials and equipment. The scope of the Project and description of the three sign locations ("Project Sites") are more fully provided in Exhibit "A", which is attached hereto and incorporated herein. The City hereby grants to MWCDC, its agents, contractors, and subcontractors, (including but not limited to The Tower Optical Company, Inc., hereinafter "Tower Optical") a license to go upon the Project Sites to perform the Project Work, including installation, maintenance, money collections, and repair. The Viewfinders may be installed after receipt of any permits required by the Bureau of Building Inspection.
- B. **Collection of Monies:** MWCDC agrees that the share of monies collected hereunder that are not paid to Tower Optical as rental (i.e. 40% of income collected or any such amount that MWCDC retains upon renegotiation with Tower Optical), shall be deposited into a fund that is restricted for MWCDC to use for the benefit of the Park. MWCDC shall provide an annual report to the City regarding all funds collected for this purpose.
- C. **Exclusivity.** MWCDC shall ensure in its agreement with Tower Optical that only locations specifically set forth herein this License Agreement are subject to any exclusivity provision.
2. **TERM OF AGREEMENT:** The term of this Project and License Agreement (the "Agreement") shall commence on the date first written above and shall last through September 30, 2015, unless terminated earlier as permitted in Paragraph 10 herein. Upon mutual written agreement, the parties may thereafter extend the term of this Agreement for an additional five (5) years.
3. **INTERRUPTION; POSTPONEMENT; ABANDONMENT:** In the event that the work herein contemplated, or any part thereof, shall be interrupted, postponed, or abandoned due to circumstances which City considers to be in its best interests, MWCDC shall not be entitled to reimbursement from City for any funds expended on the Project.
4. **MONITORING AND EVALUATION; AUDITS:** All services provided under this Agreement shall be subject to monitoring and evaluation by City or its authorized representatives. MWCDC shall supply City with written reports on Project activity as City may, from time to time, require. Authorized representatives of City shall have access to the books and records maintained by MWCDC with respect to any services or materials provided to

City pursuant to this Agreement at all reasonable times and for all reasonable purposes. All books and records pertaining to the Project shall be preserved by MWDCD for a period of three (3) years after the termination of this Agreement.

5. **WORKER'S COMPENSATION:** MWDCD hereby certifies 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:** MWDCD and any subcontractors hereunder shall fully obey and comply with all laws, ordinances, resolutions, and administrative regulations which are applicable to any work performed under this Agreement. MWDCD and/or its subcontractors shall promptly notify the Department of any known vandalism or other illegal activities at the Site, which come to their attention. MWDCD is aware that the CITY has 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 MWDCD has or will comply with any of these laws.
7. **ANTI-DISCRIMINATION:** MWDCD shall not discriminate in its employment on the basis of race, color, religion, ancestry, national origin, place of birth, sex, age, disability, non job-related handicap, or sexual orientation. MWDCD shall comply with the applicable provisions of the Pittsburgh Code, Title Six - Conduct, Article V-Discrimination, and any amendments thereto. MWDCD 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. MWDCD shall incorporate in any subcontracts which may be permitted under the terms of this Agreement a requirement that said subcontractors also comply with the provisions of this Section.
8. **INSURANCE:** MWDCD 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. MWDCD shall also ensure that Tower Optical keeps the City as an additional insured for at least the same amounts via its "Articles of Agreement" with Tower Optical. Attached hereto as Exhibit "B" and incorporated herein is a certificate of insurance duly executed by officers or authorized representatives of a responsible and non-assessable insurance company, evidencing the following minimum coverages and specifically identifying City as an additional insured on all general liability

policies, which insurance shall be noncancellable, except upon thirty (30) days prior written notice to City:

General Liability	<u>Individual Occurrence</u>	<u>Aggregate</u>
Bodily injury, including death	\$ 500,000	\$1,000,000
Real & Personal Property damage	\$ 500,000	\$1,000,000
Worker's Compensation	Statutory Limits	

All premiums shall be at the expense of MWDC and, if applicable, its prime contractor. 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, MWDC shall renew said insurance in a timely manner and shall promptly cause a certificate of insurance evidencing such renewal, and also identifying City as an additional insured, to be forwarded to the Director of the Department of Public Works.

9. **GOVERNING LAW:** This Agreement shall, in all respects, be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.
10. **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, shall 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. Either party may terminate this Agreement upon one hundred eighty (180) days prior written notice. MWDC will ensure that the termination provision in its Articles of Agreement with Tower Optical is consistent with this provision.
11. **PITTSBURGH HOME RULE CHARTER:** This Agreement is subject to the provisions of the Pittsburgh Home Rule Charter.
12. **SECURITY:** MWDC shall ensure that there is appropriate security for any equipment, machinery and/or materials used for the Project Work and agrees that the City shall not be liable for any damages to or loss of its property or property of its agents, contractors, or subcontractors for any reason.

- 13. ASSIGNMENT; SUBCONTRACTING:** MWDC shall not assign or subcontract this Agreement without the written consent of City.
- 14. PROHIBITION AGAINST ENCUMBERANCES:** MWDC 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 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 Sites or any part thereof.
- 15. WAIVER OF MECHANIC'S LIENS:** MWDC shall not cause or permit any work to be done upon or any materials or services furnished to any portion of the Sites in connection with the improvement, alteration or repair thereof, except under a contract or contracts which effectively waive to the fullest extent permitted by law any right to file a mechanic's lien or claim against the Sites or any part thereof.
- 16. ART COMMISSION APPROVAL:** MWDC represents that it has obtained the approval of the Art Commission for the planned Viewfinders.
- 17. INDEMNITY:** MWDC hereby agrees 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 MWDC of any services under this Agreement; any act, error or omission of MWDC or of an agent, employee, licensee, contractor or subcontractor of MWDC; and any breach by MWDC of any of the terms conditions or provisions of this Agreement.
- 18. RIGHT TO INSPECT; RIGHT TO TAKE EMERGENCY ACTION:** City shall have the right to enter the Project Sites at all times for the purposes of inspecting the same or determining whether MWDC and/or its subcontractors are complying with the terms and conditions hereof. City shall have the right (but not the duty) to enter the Sites without the consent of MWDC at any time to correct any situation which, in the reasonable discretion of City, is deemed to be of an emergency nature.
- 19. NON-OBLIGATION OF CITY TO REPAIR.** In the event of casualty to the Site, regardless of the amount of damage or destruction, City shall be under no obligation to repair and/or replace the Project/Viewfinders.

20. **NON-OBLIGATION OF CITY TO REPAY ANY PRIVATE MONIES OR GRANTS.** In the event that this Agreement is terminated by City as permitted hereunder or the proposed Cooperation Agreement for any reason, the City shall not be obligated to repay any private monies obtained by MWCDC for Viewfinder installations or other work relating thereto.

21. **AUTHORIZING RESOLUTION:** This Agreement is entered into by CITY pursuant to Resolution No. 657, effective 9/24, 2010.

22. **SURVIVAL OF PROVISIONS:** It is the intent of the parties that the provision set forth in Paragraphs 6 (Compliance with Laws) and 17 (Indemnity) shall survive the expiration of the term of this Agreement

23. **RECLAMATION:** Upon termination of this Agreement as permitted herein (i.e. removal of the Viewfinders), MWCDC shall ensure that it/its agents, contractors and subcontractors restore, repair, replace, re-seed, or rebuild any Park areas disturbed by such Project Work to their visual and functional equivalent immediately prior to the work. Such reclamation shall be completed prior to the expiration of this Agreement and final approval is required from the Director of the Department of Public Works.

-REMAINDER OF PAGE INTENTIONALLY BLANK-

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

Witness:

City of Pittsburgh

Melissa M. Berne By: [Signature]
Witness: Luke Ravenstahl, Mayor

City of Pittsburgh
Department of Parks and Recreation

[Signature] By: [Signature]
Witness: Director, Mike Radley

City of Pittsburgh
Department of Public Works

[Signature] By: [Signature] 7-30-10
Witness: Director, Rob Kaczorowski

MOUNT WASHINGTON COMMUNITY
DEVELOPMENT CORPORATION

[Signature] By: [Signature]
Witness: Title Executive Director

Examined: [Signature]
Assistant City Solicitor

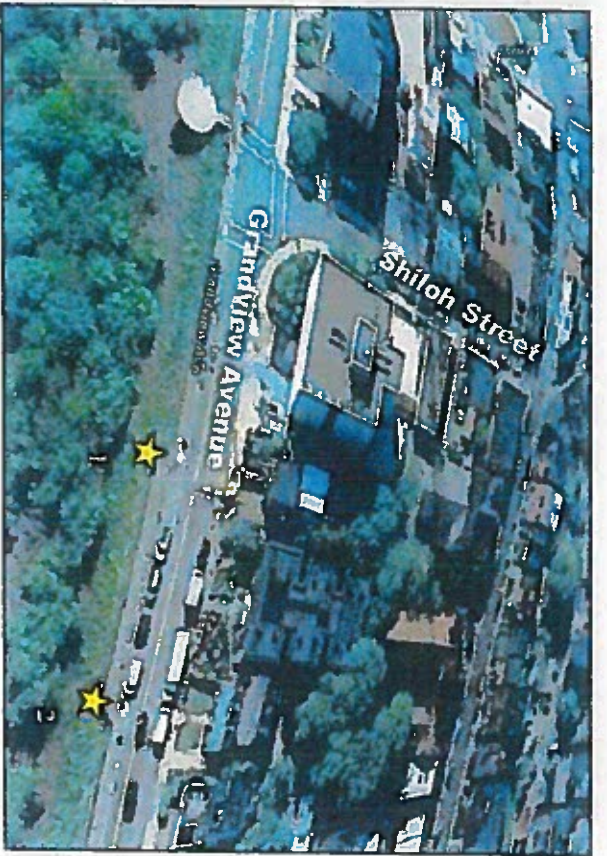
Approved as to form by: [Signature]
City Solicitor

EXHIBIT A

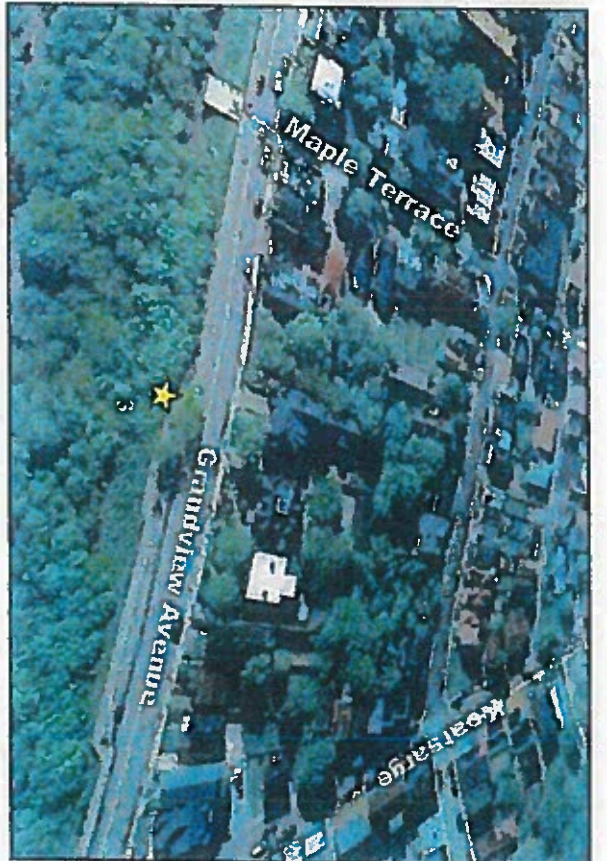
SITE DESCRIPTION & SCOPE OF WORK

The locations for the Viewfinders are identified on the map(s) attached hereto and set forth below:

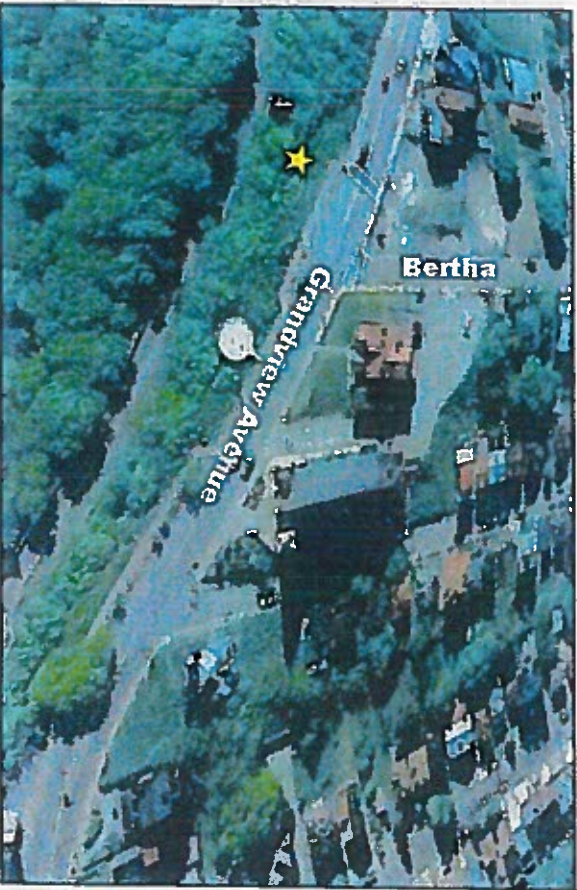
1. Across from 115 Grandview Avenue (40°25'54.86"N 80° 0'25.68"W)
2. Across from 127 Grandview Avenue (40°25'55.53"N 80° 0'26.98"W)
3. Across from 219 Grandview Avenue (40°25'58.03"N 80° 0'31.42"W)
4. Across from a vacant lot (Craig Cozza lot) (40°26'2.96"N 80° 0'39.39"W)
5. At the Guyasuta/George Washington statue (40°26'21.54"N 80° 1'16.71"W)



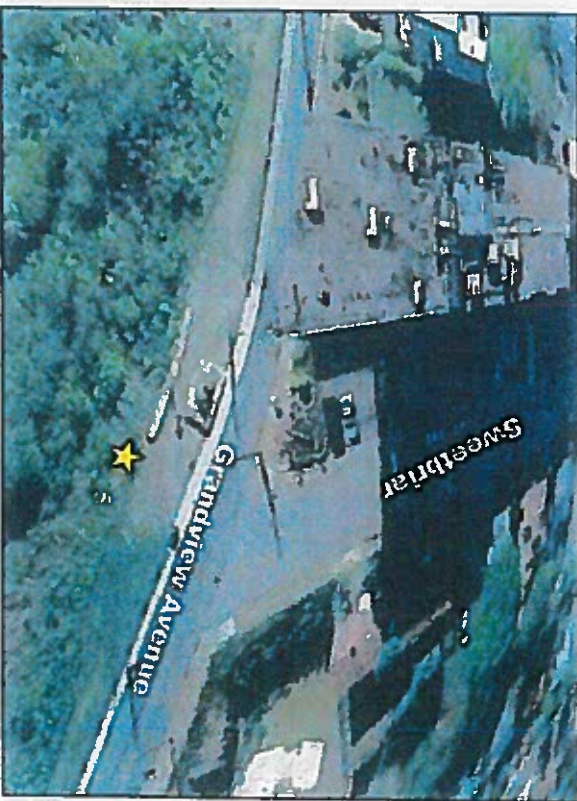
East Grandview



East Grandview



East Grandview

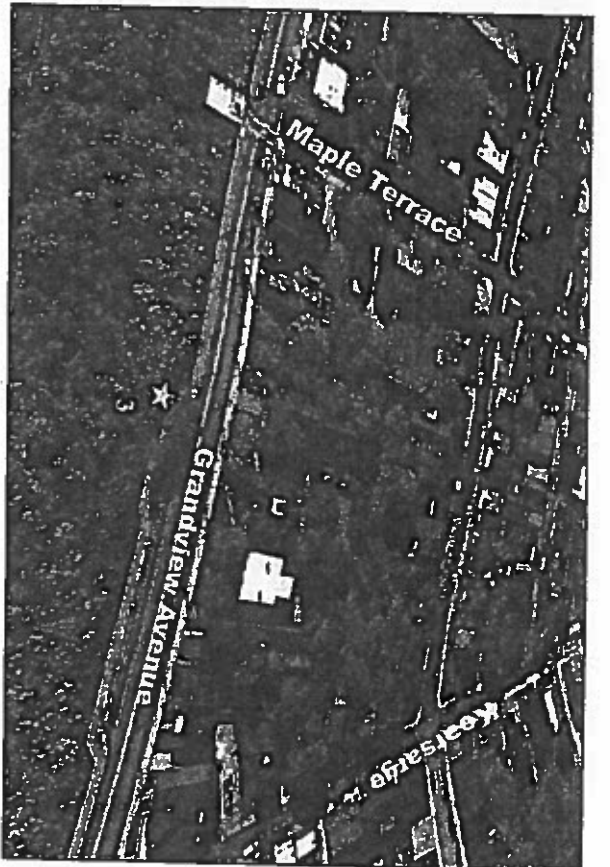


West Grandview Point of View Park

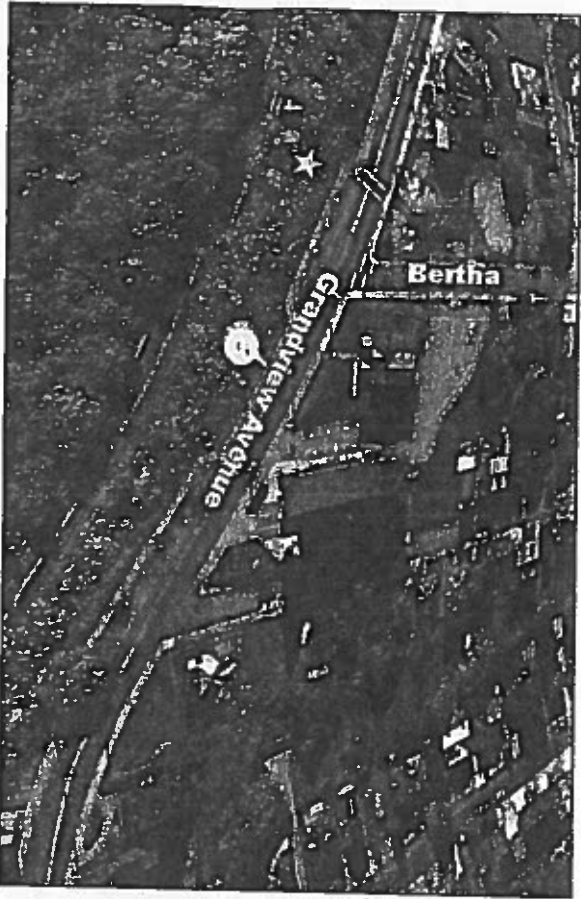
**Proposed locations for coin operated viewing machines
Grandview Avenue - Mount Washington**



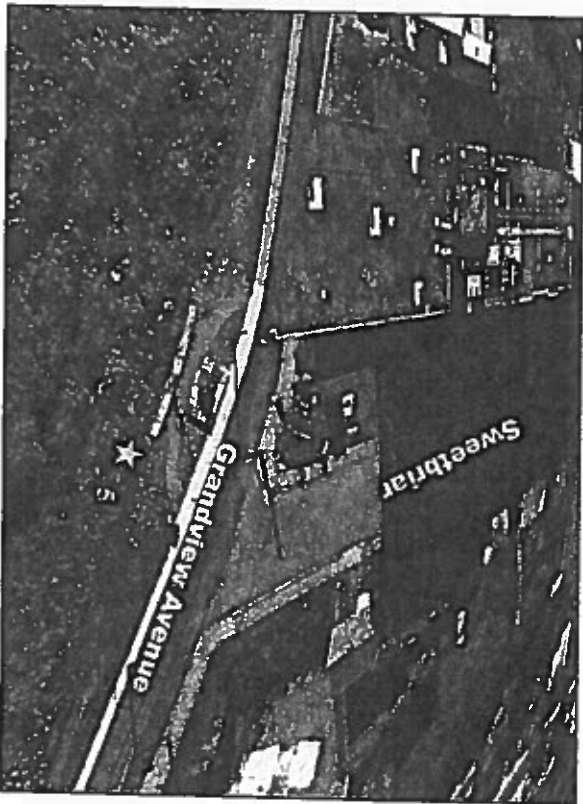
East Grandview



East Grandview



East Grandview



West Grandview Point of View Park

**Proposed locations for coin operated viewing machines
Grandview Avenue - Mount Washington**

EXHIBIT B

INSURANCE CERTIFICATE(S)

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
6/10/2010

PRODUCER (412) 681-2700 FAX: (412) 622-0488

Wagner Agency, Inc.
5020 Centre Avenue

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

Pittsburgh PA 15213-1898

INSURED
Mt. Washington Community Development
301 Shiloh Street

Pittsburgh PA 15211

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A Millers Mutual Ins. Co. 14575

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	GENERAL LIABILITY	BOP 0610169 11	3/5/2010	3/5/2011	EACH OCCURRENCE \$ 1,000,000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A		AUTOMOBILE LIABILITY	BOP 0610169 11	3/5/2010	3/5/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
		<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
		<input type="checkbox"/> ANY AUTO EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				OTHER THAN EA ACC \$ AUTO ONLY: AGG \$ EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WCV 0682692	12/15/2009	12/15/2010	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
		OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
Additional insured: City of Pittsburgh

CERTIFICATE HOLDER

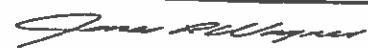
City of Pittsburgh

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

James Wagner/DGR



ACORD 25 (2001/08)

INSR25 (10/01) 08-3

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