

18A-1015

CN# 52598



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**Project License and Maintenance Agreement between the City of  
Pittsburgh and the Pittsburgh Parks Conservancy to Improve  
Allegheny Commons Park: Northeast Fountain and Promenade**

Made this 8th day of August, 2018

**BY AND BETWEEN**

**THE CITY OF PITTSBURGH,**

(the "City")

AND

**THE PITTSBURGH PARKS CONSERVANCY**

("PPC")

**Whereas**, pursuant to Resolution No. 285 of 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, which Cooperation Agreement is attached hereto and incorporated herein as Exhibit "A"; and

**Whereas**, the PPC, consistent with the Cooperation Agreement, has obtained and set aside certain funds to improve the Northeast Fountain and Promenade of Allegheny Commons Park (the "Project"); and

**Whereas**, the City has received and approved PPC's plans for those Project improvements to Allegheny Commons Park, and

**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:** Subject to all terms and conditions set forth below and within the attached exhibits, in addition to the aforementioned recitals which are all incorporated into the Agreement, PPC has agreed to undertake a rehabilitation and improvement project for the Northeast Fountain and Promenade at Allegheny Commons Park (the "Project Site"). The PPC will perform certain specified work and provide certain materials in Allegheny Commons Park at its own cost and expense, and the City, Department of Public Works, will perform certain specified work and provide certain materials at the City's cost and expense, as more fully described in Exhibit "B," which is attached hereto and incorporated herein.

City hereby grants to PPC, its agents, contractors, and subcontractors, a non-exclusive license to go upon the Project Site to perform Allegheny Commons Park work (the "PPC Construction Work"). For PPC Construction Work, PPC is authorized to move and/or store its equipment, materials, and trailers on the Project Site and to use them as lay down and/or staging areas to facilitate the Allegheny Commons Park project. Additional staging areas may be designated by the Department of Public Works as needed.

The PPC Construction Work shall be accomplished in accordance with applicable laws and all design plans/construction documents shall be subject to the prior approval of the City. The City's approval shall include a review and approval of plans and specifications by the City's Department of Public Works ("DPW") and the Art Commission, as applicable. DPW shall approve or object to Project plans within sixty (60) days of receipt of complete plans and specifications. Any objections shall be provided in writing and provide detail sufficient for the PPC to respond to its concerns.

Upon completion of each Project phase (as further detailed in Exhibit B) by the PPC, the PPC will notify the City in writing of the completed PPC Construction Work prior to accepting the contractor's work. Upon receipt of such notification the City will inspect the Contractor's completed PPC Construction Work to ensure it was installed properly. DPW will designate a representative to participate in bid selection, job progress meetings, and in any other regular meetings of the Project team during construction, and will also assign an inspector for the Project. In addition, DPW will designate a representative to participate in meetings regarding the pre-final punch list and final punch list.

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 PPC written approval of the Director of the Department of Public Works to accept said work. In the event of an objection, the City will provide PPC with a written statement of the objection(s). Within ten (10) days of receiving such statement, PPC will prepare a written plan as to how such objections will be cured.

2. **TERM OF AGREEMENT:** The term of the License granted under Section 1 will

commence on the date first written above and will conclude on the later of (i) December 31, 2019 or (ii) the completion date of the Project. The term of this Agreement shall commence as of the date set forth above, and unless otherwise terminated earlier shall run for a period of (10) years from the Effective Date, the ("Term").

3. **MONITORING AND EVALUATION; AUDITS:** All PPC Construction Work and PPC work provided under Section 20 herein ("PPC Maintenance Work") will be subject to monitoring and evaluation by City or its authorized representatives. PPC will provide the City with a monthly Project Status Report during the construction period, including a schedule of values for construction and a pending construction schedule. The PPC shall also include a section in each Project Status Report regarding any cost overrun exceeding five percent (5%). Authorized representatives of City will have access to the books and records maintained by PPC 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 will be preserved by PPC for a period of three (3) years after the termination of this Agreement.
4. **DOCUMENTS:** In accordance with Section 1, prior to construction PPC will provide City with all bid, design and construction documents including but not limited to a construction schedule, a schedule of values, design drawings and specifications. Upon completion of construction, PPC will provide City with all close-out documents, including but not limited to as-built drawings, record drawings, warranty documents, operation and maintenance manuals, job progress minutes, and submittals. These documents will be provided at no cost to the City.
5. **WORKER'S COMPENSATION:** PPC 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 there under 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 any subcontractors hereunder will fully obey and comply with all laws, ordinances, resolutions, and administrative regulations which are or become applicable to any work performed under this Agreement. PPC and/or its subcontractors will promptly notify the Department of Public Works of any known vandalism or other illegal activities at the Project Site, which come to their attention. PPC 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 PPC has or will comply with any of these laws or their applicability to the Project. The PPC may consult with the City if it has questions on the applicability of such laws to this project.

7. **COMPLIANCE WITH NPDES RESPONSIBILITIES:** PPC as of the execution date of this agreement, agrees to complete the Project in compliance with all requirements under the NPDES permit issued March 27, 2018 for the Project. In addition to compliance with the NPDES permit,, PPC and CITY agree to the following:

a. Prior to the start of PPC Construction Work, PPC will cause any prime contractor it hires to perform work at the Project Site, to become a co-permittee on the NPDES permit if required for the NPDES permit.

b. PPC will itself, and will cause any prime contractor it hires performing work in the area defined by the NPDES permit, to provide reports to the City Department of Public Works on its compliance with all NPDES requirements as requested from time to time.

c. CITY may enter at any time and inspect the worksite to ensure compliance with NPDES obligations.

d. If PPC, or any prime contractor it hires to perform work at the Project Site, is not complying with NPDES requirements, City may enter the work site to satisfy NPDES compliance and any necessary expenses incurred as a result are to be borne solely by PPC.

8. **ANTI-DISCRIMINATION:** PPC will 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. PPC will comply with the applicable provisions of the Pittsburgh Code, Title Six - Conduct, Article V-Discrimination, and any amendments thereto. PPC will 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 there under. PPC will 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.

9. **INSURANCE:** PPC and any prime contractor hired by it to perform PPC Construction Work or PPC Maintenance Work will maintain insurance in the amount specified in this Section and will keep the City Department of Public Works as an additional insured on that policy throughout the term of this Agreement. Attached hereto as Exhibit "C" 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 will be non-cancellable, except upon thirty (30) days prior written notice to City:

Individual  
Occurrence \_\_\_\_\_ Aggregate \_\_\_\_\_

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

All premiums will be at the expense of PPC 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 will expire prior to the expiration of the term of this Agreement or the completion of all services required hereunder, whichever will occur later, PPC will renew that insurance in a timely manner and will 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.

10. **GOVERNING LAW:** This Agreement will, in all respects, be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.
11. **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. Either party may terminate this Agreement upon 90 days' written notice in the event of a material breach by the other party which is not cured within said period.
12. **PITTSBURGH HOME RULE CHARTER:** This Agreement is subject to the provisions of the Pittsburgh Home Rule Charter. The liability of the City hereunder is zero (0) dollars.
13. **STORAGE:** PPC and/or its subcontractors may store equipment at the Project Site if approved ahead of time by the Director of the Department of Public Works. Access to the Project Site for storage purposes will be limited to authorized representatives or designees of the PPC or its subcontractors. PPC will secure appropriate security for any machinery and/or materials used for the Project and agrees that the City will not be liable for any damages to or loss of its property or property of its subcontractors for any reason.
14. **OWNERSHIP OF IMPROVEMENTS:** Ownership of all alterations, additions or capital improvements constructed and paid for by PPC at the Project Site will vest in City upon installation, without compensation being paid therefore.
15. **ASSIGNMENT:** PPC will not assign this Agreement without the written consent of

City.

16. **PROHIBITION AGAINST ENCUMBRANCES:** PPC 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 Site or any part thereof having any priority or preference over or on a parity with the estate, rights and interest of City in the Project Site or any part thereof.
17. **WAIVER OF MECHANIC'S LIENS:** PPC will not cause or permit any work to be done upon or any materials or services furnished to any portion of the Project Site 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 Project Site or any part thereof.
18. **ZONING:** PPC will be responsible for complying with all applicable zoning guidelines and laws relative to the Project Site. With the prior approval of the City, PPC will file for approval of any zoning variances that may be required for the intended use of the Project Site.
19. **APPROVALS FOR REHABILITATIONS:** PPC will accomplish the rehabilitation and improvements of Allegheny Commons Park in accordance with the Scope of Work described on Exhibit "B" hereto as previously approved by the City. PPC's Construction Work will be accomplished in accordance with applicable laws. Any alteration in plans previously approved by City must be submitted in writing to the City's Department of Public Works prior to such planned amendments. Any objections by the Director of Public Works will be timely provided in writing and provide detail sufficient for the PPC to respond to its concerns.
20. **MAINTENANCE:** The City and PPC, respectively, will be responsible for maintenance at the site during the term of this Agreement as set forth in Exhibit "D" attached hereto and incorporated herein. In order to allow PPC to perform PPC Maintenance Work, the City hereby grants PPC, its agents, contractors, subcontractors, and volunteers, a non-exclusive license for access to the Project Site. PPC will coordinate PPC Maintenance Work with the City Department of Public Works so as to not conflict with City work or events. All City maintenance obligations in this Agreement shall be subject to the discretion of the Director of the Department of Public Works, allocated funding, and workforce capacity.
21. **FUNDRAISING:** The City recognizes and acknowledges that PPC will undertake a capital campaign in support of Allegheny Commons which may include donor recognition opportunities similar to those offered at other projects completed by PPC and previously approved by the City.
22. **INDEMNITY:** PPC 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 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.

23. **RIGHT TO INSPECT; RIGHT TO TAKE EMERGENCY ACTION:** The licenses provided herein are non-exclusive licenses to a City-owned park. Thus, City will have the right to enter the Project Site at all times for the purposes of inspecting it or determining whether PPC and/or its subcontractors are complying with the terms and conditions hereof. City will have the right (but not the duty) to enter the Project Site without the consent of PPC at any time to correct any situation which, in the reasonable discretion of City, is deemed to be of an emergency
24. **NON-OBLIGATION OF CITY TO REPAIR.** In the event of casualty to the Project Site, regardless of the amount of damage or destruction, City will be under no obligation to repair and/or replace, except as provided in this Agreement and Exhibit "D" hereto. Any obligation of City to repair or replace any casualty to the Project Site is subject to the discretion of the Director of the Department of Public Works, allocated funding, and workforce capacity.
25. **NON-OBLIGATION OF CITY TO REPAY ANY PRIVATE MONIES OR GRANTS.** In no event will City be obligated to repay any private monies or grants obtained by PPC for improvements to the Project Site.
26. **AUTHORIZING RESOLUTION:** This Agreement is entered into by City pursuant to Resolution No. 194 of 2017, effective April 24, 2017. The resolution is attached herein as Exhibit "E" and incorporated into this Agreement.
27. **SURVIVAL OF PROVISIONS:** It is the intent of the parties that the provisions set forth in Paragraphs 6 (Compliance with Laws), and 22 (Indemnity) will survive the expiration of the term of this Agreement.
28. **RECLAMATION:** Upon completion of PPC Construction Work, PPC will ensure that its agents, contractors and subcontractors restore, repair, replace, re-seed, or rebuild the Project Site and any surrounding areas disturbed by the PPC's work at Allegheny Commons Park to its visual and functional equivalent, immediately prior to the work. Such restoration, repair, replacement, re-seeding, or rebuilding will be performed in accordance with prior plans and specifications approved in writing by City prior to the commencement of the reclamation. Such reclamation will comply with all NPDES permit requirements. Such reclamation will be completed within sixty (60) days after the completion of the Project.

**29. FORM OF NOTICES:** Except where otherwise provided for herein, notice hereunder shall be provided to the following

For PPC:

Jayne Miller, President and CEO  
45 South 23<sup>rd</sup> Street, Suite 101  
Pittsburgh, PA 15203-2120

For City:

Michael Gable, CPRP  
City of Pittsburgh, Dept. of Public Works  
414 Grant Street  
City-County Building, Room 301  
Pittsburgh, PA 15219

**30. NO WAIVER:** No failure by either party to this Agreement to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such covenant, agreement, term or condition.

**31. SEVERABILITY:** If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

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

Witness:

City of Pittsburgh

Jamie Dishes

By:

[Signature]

William Peduto, Mayor

Witness:

City of Pittsburgh  
Department of Parks and Recreation

[Signature]

By:

[Signature]  
Ross Chapman, Acting Director

Witness:

City of Pittsburgh  
Department of Public Works

[Signature]

By:

[Signature] 6/25/18  
Mike Gable, Director

Witness:

The Pittsburgh Parks Conservancy

[Signature]

By:

[Signature]  
Jayne Miller, President & CEO

Examined:

Anthony Bilan

Assistant City Solicitor

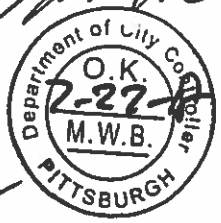
Approved as to form by:

[Signature]  
City Solicitor

Countersigned by:

[Signature] 8-8-18  
City Controller

52598



**EXHIBIT A**

**COOPERATION AGREEMENT RENEWAL AND EXTENSION**

EXHIBIT A

COOPERATION AGREEMENT

MADE April 10, 2000.

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the *CITY OF PITTSBURGH*, a municipal corporation of the Commonwealth of Pennsylvania ("City")

AND

*THE PITTSBURGH PARKS CONSERVANCY, INC.*, a non-profit corporation, organized and existing under the laws of the Commonwealth of Pennsylvania ("Conservancy"), with its principal place of business located at 242 McKee Place, Pittsburgh, PA 15213.

WHEREAS, the Department of Parks and Recreation and the Department of Public Works of City, through their respective Directors and subject to the supervision of the Mayor, are responsible for the care, management and control of all lands, buildings and recreational activity in City parks pursuant to Article XI, Sections 471.01 et seq., of the Pittsburgh Code of Ordinances; and

WHEREAS, the City's regional parks, which consist of Schenley Park, Frick Park, Highland Park and Riverview Park (hereinafter referred to as the "Regional Parks"), are major assets of the City requiring a high level of maintenance and management commensurate with their value and importance to the greater Pittsburgh area, and are in need of long-range planning and funds to implement said planning for their future stability and development; and

WHEREAS, the Conservancy is an organization whose principal purpose is to preserve, restore and maintain the Regional Parks and to raise money to finance capital improvement projects, coordinate volunteer activity and foster greater appreciation for the Regional Parks through special programs and events; and

WHEREAS, the Conservancy and City wish to form an alliance, in effect a public/private partnership, which will complement and augment the City's ability to operate, maintain and enhance the attractiveness of the Regional Parks.

NOW, THEREFORE, the parties hereto agree as follows

**I. CONSERVANCY'S AND CITY'S DUTIES AND RESPONSIBILITIES:**

For purposes of this Agreement, City approval or notice to the City shall be accomplished by written notice to the Mayor and the Directors of Parks and Public Works. The Mayor shall obtain such approval of City Council to the extent required by Resolution 285 of 1998, effective May 29, 1998, attached hereto as Exhibit "A".

A. Subject to the City's approval, the Conservancy shall do as follows:

**1. PROJECT FUNDING, APPROVAL & MANAGEMENT**

- a. The Conservancy shall provide professional advice to the City concerning the preservation, maintenance, improvement, protection and restoration of the Regional Parks. At Council's request, the Conservancy will appear before it during the annual operating and capital budget proceedings to comment on Council's proposed operating and capital budgets as they relate to the Regional Parks.
- b. The Conservancy shall obtain and apply revenues to fund capital projects and operational programming approved by the City for the Regional Parks (the "Projects"). The Conservancy shall solicit funds from private and governmental donors and shall expend those funds, including any City funds it receives, for the sole purpose of preserving, restoring, maintaining, and improving the Regional Parks, and educational activities related thereto. Before beginning any solicitation, the Conservancy shall inform the City of such plans. It shall also inform the City on a regular basis of its planned and actual expenditures and disbursements.
- c. For each Project, the Conservancy shall enter into a project agreement with the City complying with the terms herein (a "Project Agreement.") The term "Project Agreement" may also include a Lease Agreement incorporating the terms herein.

- d. With regard to all capital projects and other programs that are applicable to the Regional Parks, the Conservancy shall have final authority over the actual disbursement of its own funds for any particular project or program; however, such authority does not supercede City's right of final approval over all aspects of proposed Projects before any action is taken by the Conservancy.
- e. The Conservancy shall prepare and present to the City a proposed strategic plan for the Regional Parks for the City's review.
- f. The Conservancy may establish and manage projects that benefit the Regional Parks, such as rehabilitation of land and facilities, beautification, sightseeing tours, nature excursions, design of recreational sites, and educational activities.
- g. Programming decisions for activities in the Regional Parks should be made in consultation with the City. All proposed program fees for such activities should be presented to and approved by the City prior to any assessment thereof. Waivers releasing the City from liability in regard to such activities will be used.
- h. The Conservancy shall make its best efforts to communicate to community-based organizations and property owners adjacent to the four (4) Regional Parks about any plans or activities affecting changes in the parks. The City Planning department shall provide relevant names and addresses.
- i. To the extent possible or deemed appropriate by the City, and should additional resources be available, the Conservancy shall review park operations in non-regional parks and assist in the improvements in the capital and operational needs of these neighborhood park areas.

## 2. OWNERSHIP BY CITY

- a. Any improvements undertaken by the Conservancy pursuant to this Agreement, including, but not limited

to, construction, landscaping, plantings and installations, shall become the property of City upon completion. The parties hereto shall reach a mutually satisfactory agreement as to control and maintenance of said improvements prior to the commencement of work on a Project.

- b. Nothing contained in this Agreement shall have the effect of relinquishing to the Conservancy the ultimate control and authority of City over the Regional Parks; nor shall this Agreement have the effect of transferring to the Conservancy any right, title or interest of City in and to the Regional Parks.

### 3. AFFECT ON BARGAINING UNIT WORK & OTHER PROJECTS

- a. The services, projects and professional advice which the Conservancy provides pursuant to this Agreement shall complement and augment existing City functions and shall in no way replace or offset any programs or services of City in violation of a collective bargaining agreement. In the event that the City determines that any work of the Conservancy does or may replace or offset an existing City function in violation of a collective bargaining agreement, the City may request that the Conservancy immediately cease said work.
- b. If Conservancy has undertaken a Regional Parks project pursuant to this Agreement, which partially or wholly overlaps a Regional Parks project of another organization or person rendering a service to the City, the City will work with both the Conservancy and such organization to accomplish a solution of mutual benefit to the City, the Conservancy, and the organization. However, at the City's request and upon sixty (60) days advance written notice from the City, the Conservancy shall cease such project, or part thereof, that conflicts with or duplicates the project of such other organization or person.
- c. The City and the Conservancy acknowledge that the Projects contemplated by this agreement are described herein only in general terms. Prior to the

commencement of a Project, a detailed proposal of the work anticipated shall be forwarded to the City for review. To the extent any Project or portion thereof would give rise to a violation of a collective bargaining agreement for City of Pittsburgh employees, the City will give notice to the bargaining unit representative. The City will either request that the Conservancy comply with any lawful terms and conditions imposed under the collective bargaining agreement in the performance of such work or obtain an appropriate waiver from the bargaining unit.

#### 4. EMPLOYEE STATUS

Neither the employees of the Conservancy nor those of the City shall be deemed to be employees or agents of the other entity; under the supervision of the relevant City Director, employees of either party may work in collaboration with the other party's employees.

#### 5. APPOINTMENT OF BOARD MEMBERS

Conservancy by-laws shall provide for the appointment of various ex-officio members to its board of directors as well as for the appointment of certain other directors by the Mayor. In particular, the appointment of at least 5 Board members shall be the power of the Mayor with the confirmation of City Council. In addition, ex officio members of the board shall include the Mayor, the Director of the City's Department of Parks and Recreation, the Director of the Department of Public Works and the Director of City Planning.

- B. The City shall keep the Conservancy apprised of any plans the City has formed to conduct events or projects in the Regional Parks; the City shall consider, but shall not be obligated to implement, any suggestions the Conservancy may make in regard to such plans.

II. TERM OF AGREEMENT: The term of this Agreement shall be for the longer of ten years, commencing upon the date first above written, or until such time as a Project Agreement is outstanding pursuant to the terms hereof. This Agreement may

be renewed upon mutual written agreement of the parties.

III. COST OF ACTIVITIES: The Conservancy's work and activities, as well as those of any of its agents, shall be performed at no cost or fee to the City. City shall have no obligation to compensate the Conservancy for the performance of any services hereunder.

IV. MONITORING AND EVALUATION: All services provided under this Agreement shall be subject to monitoring and evaluation by City or its authorized representatives. Conservancy shall supply City with written reports on program activity, in a form approved by City, as City may, from time to time, require. Conservancy shall provide City with such additional information and data as may be periodically required by federal or state authorities, or by City itself. Authorized representatives of City shall have access to the books and records maintained by Conservancy with respect to any services or materials provided to City pursuant to this Agreement at all reasonable times and for all reasonable purposes, including, but not limited to, inspecting and copying any books, records, memoranda, checks, correspondence or other relevant documents. All such books and records shall be preserved by Conservancy for a period of three (3) years after the termination of this Agreement.

V. RIGHTS IN DATA; COPYRIGHTS; DISCLOSURE:

a. Definition. The term "data", as used in this Agreement, includes written reports, studies, drawings, or other graphic, electronic, chemical or mechanical representations.

b. Rights in data. All data developed pursuant to this Agreement which involves the rehabilitation or improvement of land or facilities in the Regional Parks or plans with respect thereto shall belong solely and exclusively to City, and City shall have the full right to use such Data for any official purpose and in whatever manner is deemed desirable and appropriate, including making it available to the general public. Such use shall be without any additional payment to or approval by Conservancy. City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any such Data. Data involving the Conservancy's solicitation of funds and other information with respect to Conservancy's donors shall not be included within this paragraph.

c. Copyrights. No Data, as defined above in subparagraph b, shall be subject to copyright by Conservancy in the United States of America or in any other country. Conservancy hereby relinquishes, or shall cause to be relinquished, any and all copyrights and/or privileges to such Data without any additional payment to Conservancy therefore. Conservancy agrees at the request of the City to include a copyright notice indicating the date of publication and identifying City as the owner in any such Data.



VI. CONFIDENTIALITY: Conservancy agrees not to divulge or release any information or data developed or obtained in conjunction with any aspect of its performance under this Agreement, unless such information or data was prepared with the intention of being released to the public for educational or informational purposes, or to donors or prospective donors for the purpose of soliciting donations, except to authorized City personnel or upon prior written approval of the Director of the Department of Parks and Recreation of City.

VII. WORKER'S COMPENSATION: For each Project Agreement, Conservancy must 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, and will deliver a certificate of insurance to the City or evidence that it has duly filed a proper certificate of exemption from insurance with the Pennsylvania Department of Labor and Industry. Until it has delivered such a certificate of insurance or evidence of an exemption to the City for each Project, the Conservancy shall not conduct any on-site activity within the Regional Parks.

VIII. COMPLIANCE WITH LAWS: Conservancy shall fully obey and comply with all laws, ordinances, resolutions, and administrative regulations which are or should be applicable to any work performed under this Agreement. Conservancy shall also comply with all applicable terms and conditions of any wills, deeds or other instruments governing the Regional Parks.

IX. ANTI-DISCRIMINATION: In each Project Agreement, Conservancy shall agree not to 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 during the term of this Agreement. For each Project Agreement, Conservancy shall also comply with the applicable provisions of the Pittsburgh Code, Title Six - Conduct, Article V-Discrimination, and any amendments thereto. For each Project Agreement, Conservancy shall further 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. For each Project Agreement, Conservancy shall also 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.

X. ASSIGNMENT; SUBCONTRACTING: Conservancy shall not assign this Agreement or any right to monies to be paid hereunder without the written consent of City. None of the services covered by this Agreement shall be subcontracted without the prior written approval of City.

XI. INTERPRETATION: In the event of any dispute as to the interpretation of the terms of this Agreement, the decision of the Director of the Department of Parks and Recreation shall be final.

XII. INSURANCE: The Conservancy shall maintain insurance in the amount specified in this Section and shall keep the City as an additional insured on such policy for each Project throughout the term of the Project Agreement. Upon receipt of such insurance, the Conservancy shall deliver to the City a certificate of insurance duly executed by the 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 any policy of general liability insurance, which insurance shall be noncancellable, except upon thirty (30) days prior written notice to City:

	<u>Individual Occurrence</u>	<u>Aggregate</u>
General Liability		
Bodily injury, including death	\$1,000,000	\$1,000,000
Real and Personal Property Damage	\$1,000,000	\$1,000,000

Worker's Compensation

Statutory Limits

All premiums shall be at the expense of Conservancy. Until it has delivered the certificate of insurance to the City, the Conservancy shall not conduct any on-site activity within the Regional Parks.

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 any Project or the completion of all services required hereunder, whichever shall occur later, Conservancy 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 Parks and Recreation.

XIII. DEBARMENT: Conservancy warrants that it is not prohibited from entering into this Agreement with the City by reason of disqualification under subsection (b) of Section 161.22 of the Pittsburgh Code. An affidavit certifying compliance with this Section is attached hereto as Exhibit "B" and incorporated into and made a part of this Agreement.

XIV. GOVERNING LAW: This Agreement shall, in all respects, be governed by the laws of the Commonwealth of Pennsylvania.

**XV. INDEMNITY:** For every Project Agreement entered into pursuant to this Agreement, Conservancy 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 Conservancy of any services under this Agreement; any act, error or omission of Conservancy or of an agent, employee, licensee, contractor or subcontractor of Conservancy; and any breach by Conservancy of any of the terms conditions or provisions of this Agreement. In every Project Agreement, Conservancy shall indemnify and save harmless the City of Pittsburgh against and from any and all claims, demands, actions, causes of action, suits and all other liabilities arising from or growing out of personal injuries or death to any person, including Conservancy or its employees, or property damage suffered by any person, including Conservancy and its employees, whether the same results from the actual or alleged negligence of the City or its employees or otherwise, it being the intent of this provision to absolve and protect City of Pittsburgh from any and all loss by reason of the premises or anything related in any way whatsoever to the contract.

**XVI. FURTHER ASSURANCES:** The parties covenant and agree to perform, execute and deliver, or cause to be performed, executed and delivered, any and all such further acts, instruments, and assurances as either party may reasonably require of the other party for the purpose of or in connection with perfecting the transactions contemplated herein.

**XVII. 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. This Agreement may not be changed, modified, discharged or extended except by written amendment, duly executed by the parties.

**XVIII. TERMINATION:** City or the Conservancy may terminate this Agreement at any time, without cause or liability, by giving the other party one hundred eighty (180) days advance written notice of its intention to terminate. In the event of termination, any other agreements between the parties hereto, including Project Agreements, regarding maintenance and management of projects or improvements shall not automatically terminate, unless specifically stipulated in said agreements.

**XIX. HOME RULE CHARTER:** This Agreement and any Project Agreements entered into pursuant hereto is subject to the provisions of the Pittsburgh Home Rule Charter.

**XX. AUTHORIZING RESOLUTION:** This Agreement is entered into by the City of Pittsburgh pursuant to Resolution No. 285 of 1998.

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

ATTEST:

M. Linda Gungewere

Francis A. Knight

Mary Whitwood

CITY OF PITTSBURGH

BY: [Signature]  
Mayor

BY: [Signature]  
Director, Parks and Recreation

BY: [Signature]  
Director, Public Works

ATTEST:

Albert S. Lopez

THE PITTSBURGH PARKS  
CONSERVANCY, INC.

BY: [Signature]

TITLE: Chairman of the Board

TAX I.D. NO. 23-2882145

EXAMINED BY: [Signature]  
Assistant City Solicitor

APPROVED AS TO FORM: [Signature]  
City Solicitor

EXHIBIT B

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF ALLEGHENY )

DEBARMENT AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared MARLEE S. MYERS, who, being duly sworn according to law, and under penalty of perjury, deposes and says that neither <sup>SHE</sup>he nor, to the best of <sup>HER</sup>his actual knowledge, information or belief, **THE PITTSBURGH PARKS CONSERVANCY, INC.** or any affiliated individual is prohibited from entering a bid or participating in a City of Pittsburgh contract by reason of disqualification as set forth at Pittsburgh Code §161.22(b).

Marlee S. Myers  
Name: MARLEE S. MYERS  
Title: CHAIRMAN OF THE BOARD

SWORN TO and subscribed  
before me this 10<sup>TH</sup> day of  
APRIL, 2000

Alice M. Steigerwald  
Notary Public

(SEAL)

Notarial Seal  
Alice M. Steigerwald, Notary Public  
Pittsburgh, Allegheny County  
My Commission Expires May 20, 2000  
Member, Pennsylvania Association of Notaries

# RESOLUTION



AUTHORIZING THE MAYOR, THE DIRECTOR OF THE DEPARTMENT OF PARKS AND RECREATION AND THE DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO AN AGREEMENT OR AGREEMENTS WITH THE PITTSBURGH PARKS CONSERVANCY TO UTILIZE THE LATTER ORGANIZATION'S FUND-RAISING AND PLANNING CAPABILITIES FOR THE BETTERMENT OF THE CITY'S FOUR REGIONAL PARKS: FRICK, SCHENLEY, HIGHLAND AND RIVERVIEW.

~~Be it enacted by the Council of the City of Pittsburgh as follows:~~

~~Section~~

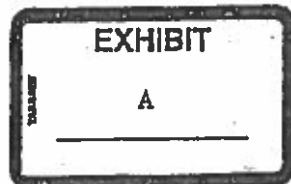
WHEREAS, the said regional parks are in need of infrastructure improvements, special care and restoration so that they may reach their optimum potential as major recreational facilities attracting citizens from a wide geographic area; and

WHEREAS, the Pittsburgh Parks Conservancy is a non-profit corporation whose purpose is to solicit money from both government and private sources to provide funds for the construction of improvements in and the repair and restoration of the four regional parks in the City; and

WHEREAS, the City wishes to establish an alliance with the Pittsburgh Parks Conservancy whereby the aforesaid improvements to the regional parks may be accomplished through a cooperative effort.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PITTSBURGH AS FOLLOWS:

- ON 1. The Mayor, the Director of the Department of Parks and Recreation and the Director of the Department of Public Works are authorized to enter into an Agreement or Agreements, in such form as shall be approved by the Solicitor, with the Pittsburgh Parks Conservancy to establish an alliance between the City and Conservancy and to permit the Conservancy to carry out its mission of restoring and improving the City of Pittsburgh's four regional parks, Frick, Schenley, Highland and Riverview, through fund-raising, planning and related activities.



SECTION 2. The final cooperation agreement pursuant to this Resolution shall include the following amended language:

- (1) The agreement shall be for a ten year period. (page 4, number 2).
- (2) City Council as a legislative body will be specifically mentioned where the agreement presently only refers to the Mayor or City (page 2, (1) b, c, d, e, f).
- (3) The appointment of the Chairman of the Board, Executive Director and at least 5 Board members shall be the power of the Mayor with the confirmation of City Council (Page 4, (1) n).
- (4) The Conservancy shall issue an annual report of its activities to the public and City Council and shall appear before City Council during the annual operating and capital budget proceedings. City Council specifically requests the Conservancy to comment on both the operating, maintenance and capital budgets as they relate to Highland, Riverview, Schenley and Frick Parks (Page 2 (1) b).
- (5) Add phrase: "The Conservancy shall make its best efforts to communicate to community based organizations and property owners adjacent to the 4 regional parks about any plans or activities affecting changes in the parks. The City Planning Department shall provide relevant names and addresses.
- (6) To the extent possible or deemed appropriate, and should additional resources be available, the Conservancy shall review park operations in non-RAD funded parks and offer suggestions for assist in the improvements in the capital and operational needs of these neighborhood park areas.

**SECTION 3.** 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.

SECTION 3. That 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.

Enacted in Council, this 18th day of May A.D. 1998

Bob O'Connor  
President of Council

ATTEST: John R. Mascio  
Clerk of Council

MAYOR'S OFFICE May 26, 1998

APPROVED: \_\_\_\_\_ Tom Murphy  
Mayor

ATTEST: M. Linda Gangewere  
Mayor's Secretary

Recorded in Resolution Book, Vol. 132 Page 234 29th day of May, 1998

EFFECTIVE DATE: MAY 29, 1998  
I HEREBY CERTIFY THAT THE ABOVE  
IS TRUE AND CORRECT

Linda M. Johnson-Walker  
CITY CLERK





**Cooperation Agreement Renewal And Extension**

Made this 12<sup>th</sup> day of December 2011

**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"

**WITNESSETH:**

**WHEREAS**, Pursuant to Resolution No. 285 of 1998, approved May 29, 1998 and effective May 29, 1998, the City entered into a Cooperation Agreement (the "Cooperation Agreement"), dated April 10, 2000, with the PPC to establish an alliance to provide improvements, special care, and restoration for the City's four regional parks; and

**WHEREAS**, the Resolution No. 285 and the Cooperation Agreement provide for a limited term; and

**WHEREAS**, the Cooperation Agreement expressly provides that it "may be renewed upon mutual written agreement of the parties"; and

**WHEREAS**, the PPC and the City now wish to renew and extend the Cooperation Agreement to reflect their desire and intention to continue to cooperate in preserving, restoring, improving, and maintaining the City's regional parks and such other parks as may be specified by the City.

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

**I. Initial Renewal Term**

The Parties agree that the term of the Cooperation Agreement shall be renewed and extended through and including December 31, 2020.

II. Automatic Annual Renewal After Initial Renewal Term

Starting on January 1, 2021, and on each January 1st thereafter unless and until a timely notice of intent to terminate has been provided by either party, the Cooperation Agreement shall automatically be extended by one year. As specified in Paragraph XVIII of the Cooperation Agreement, a terminating party must give the other party six months advance written notice of its intent to terminate.

III. Cooperation Agreement Remains In Effect

In all other respects, the terms of the original Cooperation Agreement shall remain in effect, except that certain provisions are hereby amended as follows:

A. The preamble to Article I is hereby amended to read:

For the purposes of this Agreement, City approval or notice to the City shall be accomplished by written notice to the Mayor and the Directors of Parks and Recreation, City Planning, and Public Works. In all references to "City" herein, the City shall be defined as the Mayor and the Directors of Parks and Recreation, City Planning, and Public Works. The Mayor shall obtain such approval of City Council to the extent required by Resolution 285 of 1998, effective May 29, 1998, attached hereto as Exhibit "A".

B. Section I.A.1.e is hereby amended to read:

The Conservancy shall prepare and present to the City a proposed strategic plan for the Regional Parks for the City's review. To this end, the City and the Conservancy hereby establish that the Conservancy shall schedule quarterly or as-needed meetings of the Parks Oversight Committee, which will create an ongoing forum during which the Conservancy shall update the City on the progress of current projects and concepts of future projects. The Oversight Committee shall consist of the Conservancy and City staff authorized by the Mayor and the Directors of Parks and Recreation, City Planning, and Public Works to be representatives of the City on this Committee.

C. Section I.A.1.h. is hereby amended to read:

The Conservancy shall make its best efforts to communicate to community-based organizations and property owners adjacent to the four (4) Regional Parks about any plans or activities affecting changes in the parks. Prior to the Conservancy's communication to any community group regarding any planned changes or activities in the parks, the City Planning Department shall be consulted and involved in the planning process in regard to public meetings, existing community groups and engagement. The Conservancy and the City Planning Director shall agree on a standard process for such consultation and involvement. Attached hereto as Exhibit A is the General Project Protocol, which is subject to revision by mutual consent of the parties during the term of this Cooperation Agreement. It is understood that this process is not meant to and does not supersede any City Code or other approval requirements of applicable Commissions (as may be amended from time to time).

IV. Authorizing Resolution

This Amendment is authorized pursuant to Resolution No. 364, effective May 26, 2011.

[The remainder of this page is intentionally left blank.]

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

City of Pittsburgh

Attest:

Laurie Dierke

By: Luke Ravenstahl  
Luke Ravenstahl, Mayor

Department of Parks and Recreation

Yelena Gibson

By: Michael T. Radley  
Director, Mike Radley

Department of Public Works

Deanne Byrne

By: Robert Kaczorowski 2/11/12  
Director, Robert Kaczorowski

Department of City Planning

Meredith Gray

By: Noor Ismail  
Director, Noor Ismail

Pittsburgh Parks Conservancy, Inc.

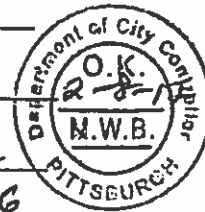
Richard Ruff

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

Examined: [Signature]  
Associate City Solicitor

Approved as to form by: [Signature]  
City Solicitor

Countersigned by: Michael E. Lane 3-9-12  
City Controller



49506

## EXHIBIT A: GENERAL PROJECT PROTOCOL

For each Project being proposed by the Conservancy, it will strive to follow the following protocol:

1. Present Project idea to City Directors of Public Works, Planning, and Parks and Recreation for initial conceptual approval of plans and location.
2. Engage affected community groups by making them aware of the Project plans in concert with City Planners and other City staff as needed.
3. Present Project conceptual and subsequent final designs and plans of projects to the pertinent City Commissions (e.g. members of Art Commission) who have purview over the proposed Project/location.
4. Coordinate with affected City department(s) that will be drafting/presenting a resolution to City Council authorizing the relevant Project Agreement.
5. Work with affected City Departments to draft and execute a Project Agreement, subject to approval of applicable Directors and the City Solicitor.
6. Upon completion of the Project, provide as-built documents to the City Directors of Public Works, Planning, and Parks as well as any pertinent Commissions that may require said documentation.

## **EXHIBIT B**

### **PROJECT SITE DESCRIPTION, PLANS, and SCOPE OF WORK**

#### **Project Description:**

PPC has conferred with the City concerning its plans, and it has provided the City with engineering drawings and construction plans for the Project Site. This project will renovate the Northeast Fountain and Promenade in Allegheny Commons Park (see location map below) as Phase III of four Phases, with Phases I and II already being complete. Phase III addresses the fountain and adjacent promenade from just west of Suisman Street to the Martin Luther King School. Phase IV will address the promenade from the Martin Luther King School to Arch Street. All work will be done to City standards and specifications and all warranties for PPC Construction Work, which PPC must obtain if available, will be made applicable to the City.

#### **Pittsburgh Parks Conservancy Scope of Work:**

- Construct fountain, including vault and mechanical systems.
- Install interior pathways.
- Install historic pipe railing at entries.
- Improve site grading and underdrainage.
- Construct stormwater management improvements and adhere to requirements as described in NPDES documents.
- Install electrical service, conduit, and foundations for lighting.
- Install signage, including temporary construction sign, and permanent park identification, interpretive, and regulatory signs, and funders plaque, all subject to prior written approval by the City and its Art Commission as applicable.
- Plant trees, shrubs, and ground covers.
- Provide construction fencing.

#### **City of Pittsburgh, Department of Public Works, Scope of Work**

- Complete visual inspection of sewer as required by PWSA.
- Cap old water line if required by PWSA.
- Remove and replace concrete entry paving and curb.
- Remove and replace perimeter concrete sidewalks, curb, curb ramps, and crosswalks.
- Demolish existing interior pathways and remove asphalt material.
- Remove 5 existing light poles, foundations and wiring.
- Provide and install wiring, new light poles with LED fixtures (Allegheny Commons Lighting Standard), and entry sign uprights.
- Retrofit eighteen (18) light fixtures to LED.

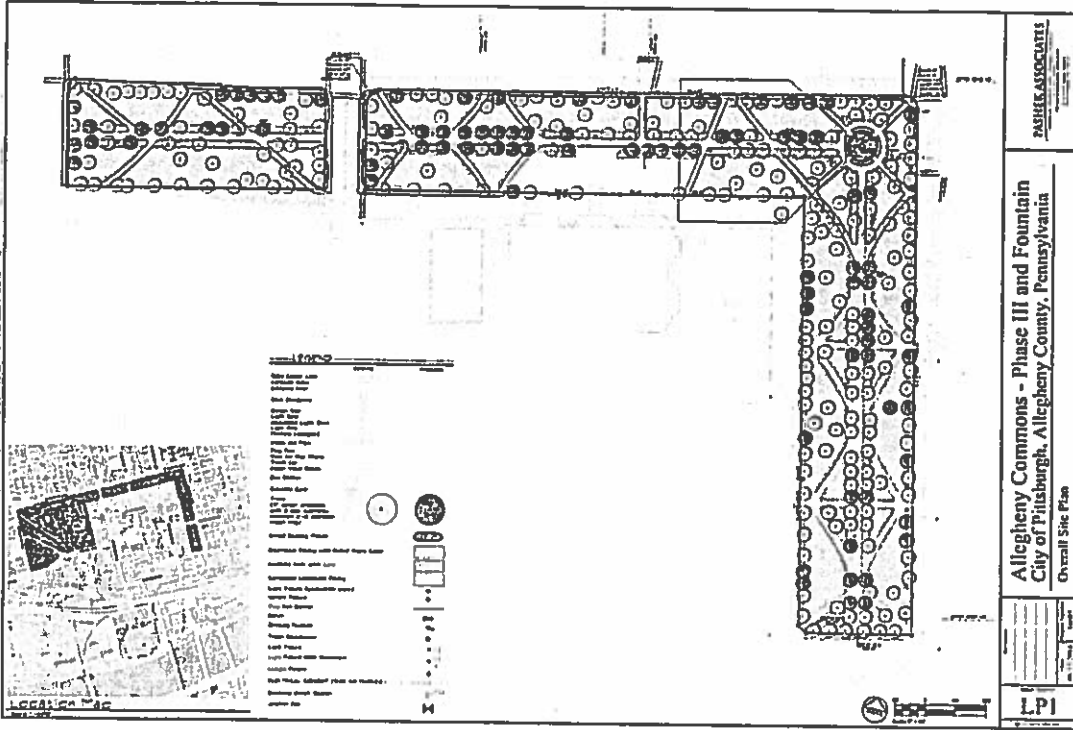
- Remove existing site furnishings and install new benches, historic drinking fountain, waste receptacles, and bike racks.
- Install temporary tree protection measures.
- Remove and prune trees as needed.
- Provide and plant new trees as needed.

### Location Map



*Phase III and IV project areas outlined in red.*

### Site Plan





**EXHIBIT C**

**INSURANCE CERTIFICATES**



EXHIBIT C

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/28/2018

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.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

PRODUCER: Simpson & McCrady LLC, 310-330 Grant Street, Suite 1320, Pittsburgh, PA 15218-2233. CONTACT NAME: Donna Sebasta, PHONE: (412)281-2222, FAX: (412)261-3437, E-MAIL: donna@simpson-mccrady.com. INSURER(S) AFFORDING COVERAGE: INSURER A: The Cincinnati Insurance Company, INSURER B: Northstone Insurance Company, INSURER C, D, E, F.

COVERAGES CERTIFICATE NUMBER: 18-19 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.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liability, and Workers Compensation and Employers' Liability.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
City of Pittsburgh is named as additional insured regarding Allegheny Commons.

CERTIFICATE HOLDER: City of Pittsburgh. 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: [Signature]

**EXHIBIT D**

**MAINTENANCE PLAN**

## EXHIBIT D—MAINTENANCE PLAN

### Allegheny Commons Phase III and Fountain Project

**Overview:** The City of Pittsburgh (“City”) and Pittsburgh Parks Conservancy (“PPC”) shall be responsible for maintenance for the Allegheny Commons Phase III and Fountain Project as set forth on the Maintenance Schedule attached hereto. All City maintenance obligations shall be subject to the discretion of the Director of the Department of Public Works, allocated funding, and workforce capacity. The requirements in the NPDES permit for the Project are set forth verbatim below, for the convenience of the parties.

**Additional Assistance for Fountain Maintenance:** The City and PPC have agreed that PPC will assist the City with Fountain maintenance responsibilities in the event the City is unable to timely perform its obligations. The parties acknowledge that, absent unusual conditions, the Fountain should normally be started up and operational no later than May 15 of each year, and should normally be shut down and winterized no later than November 15 of each year. The City will endeavor to meet this schedule in good faith. Each year, PPC’s designated representative shall provide a written request to the Department of Public Works Facilities Manager for the City to perform the Fountain maintenance, and the City will endeavor in good faith to notify PPC in writing within 14 days of receipt of PPC’s request as to which Fountain maintenance items the City will be able to perform for that particular year. In the event that the City will not perform a Fountain maintenance item for a given year, PPC will arrange for work, up to but not exceeding \$5,000 in cost, to be performed as necessary, in coordination with the City’s normal maintenance work. In no event will PPC be required to spend more than \$5,000 per year for Fountain maintenance under this provision. City will not be responsible for costs of any work arranged by PPC.

### **Maintenance Program (as provided under the NPDES Permit No. PACO20240 issued March 27, 2018):**

To provide effective operation of the stormwater management system, the following operations and maintenance program shall be implemented for this project. The Owner (City of Pittsburgh) shall inspect and maintain stormwater management facilities. Inspection of the facilities shall occur after each runoff-producing event, but not less than once per month. A log showing inspection dates as well as any deficiencies found and the date they were corrected shall be maintained on the site and be made available to regulatory authorities as required.

Maintenance of the stormwater management system shall consist of the following:

1. Existing Trees—Trees shall be maintained and protected for the life of the project (50 years) or until replacement occurs. An escrow account shall be provided for the replacement of trees that die within five years of construction. Dead trees shall be replaced within six months.
2. Subsurface Infiltration Bed—Visually inspect each facility a minimum of four times per year and after major storms (greater than 2 inches in 24 hours) or rapid ice build up. Any sediment, debris, or trash that accumulates in the facility should be cleared as soon as possible. Overlying vegetation should be maintained in good condition and bare spots should be reseeded/mulched as

soon as possible. Mow facilities (when dry) to ensure proper operation and to suppress weeds and invasive vegetation. Care should be taken to avoid excess compaction by mowers.

3. Soil Amendment and Restoration—Visually inspect amended areas a minimum of four times per year and after major storms (greater than 2 inches in 24 hours). Soils may become re-compacted over time due to foot traffic and mowing; repeat the soil restoration process in areas where runoff ponds for longer than 24 hours.

The Owner shall be obligated to record an instrument to be attached to the deed detailing PCSM BMPs and their operations and maintenance obligations. This shall be in the form of a covenant that conveys with the land in the case of any land transfer.

**MAINTENANCE SCHEDULE**

**Allegheny Commons Northeast Fountain and associated landscape**

No.	Item	CITY	PPC
	<b>General maintenance</b>		
1	Mow turf areas as required	X	
2	Prune and maintain trees existing trees	X	
	Prune and maintain newly planted trees trees until established		X
3	Inspect and maintain trail surfaces	X	
4	Site inspection and safety audit	X	
5	Repair/maintain paving	X	
6	Repair/maintain fountain and mechanical equipment, including vault and fountain basin	X	X
7	Repair/maintain fountain piping	X	
8	Repair/maintain electrical panels and service lines	X	
9	Repair/maintain park signs	X	
10	Repair/maintain benches and bollards	X	
11	Repair/maintain all lights and light sources	X	
12	Supply water treatment products (if recommended by fountain maintenance consultant)	X	
13	Litter pick/remove graffiti	X	
14	Inspect and set time clock for lighting and aerators	X	
15	Coordination of Site Maintenance	X	X
16	Empty Site Trash/Recycling Receptacles Weekdays	X	
17	Site horticulture		X
	<b>Green infrastructure</b>		
18	Maintain green infrastructure plantings; Monitor rain gardens for washout	X	
19	Remove invasive species	X	X
20	Mow as-directed based on season and number of years since installation	X	
21	Inspect, clean and maintain catch basins, manholes, and storm pipes	X	
	<b>Seasonal Work Tasks - Spring (April, May, June)</b>		
22	Drain, clean, and refill fountain basin	X	
23	Fountain - Start Operation after Risk of Hard Frost (April 20)	X	
24	Spring clean-up of site leaves and litter	X	
25	Mow, fertilize, apply disease and insect controls - Turf Lawn	X	
26	Provide and install mulch in Planting Beds and Rain Gardens	X	
27	Prune, fertilize, disease and insect control - Perennials		X
28	Deadhead perennials		X
29	Test water quality, apply WQ chemicals as needed	X	
30	Clean debris from fountain surface weekly and after storm events	X	
	<b>Seasonal Work Tasks - Summer (July, August, September)</b>		
31	Repeat spring tasks	X	X
32	Sample soil in turf and planting beds		X
33	Recommend fertilizer, weed control, and pesticides as needed		X
34	Reset time clocks for lighting	X	
	<b>Seasonal Work Tasks - Fall (October, November, December)</b>		
35	Winterize fountain equipment	X	
36	Rake and remove leaves	X	
37	Cut back perennials		X
38	Haul garden debris and herbaceous material off site	X	
39	Reset time clocks for lighting	X	
	<b>Seasonal Work Tasks - Winter (January, February, March)</b>		
40	Prune small trees for structural improvement		X
41	Assist PPC with pruning/cutting large trees	X	

**EXHIBIT E**

**RESOLUTION**



EXHIBIT E  
City of Pittsburgh

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

Text File

Introduced: 3/24/2017

Bill No: 2017-1351, Version: 1

Committee: Committee on Public Works

Status: Passed Finally

Resolution authorizing the Mayor and the Director of the Department of Public Works, on behalf of the City, to enter into an Agreement or Agreements with the Pittsburgh Parks Conservancy, in connection with a rehabilitation and improvement project for the Northeast Fountain and Promenade at Allegheny Commons.

WHEREAS, pursuant to Resolution No. 285 of 1998, effective May 29, 1998, the City of Pittsburgh (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. 741 of 2013, effective November 21, 2013, the City and the PPC agreed to extend the term of the Cooperation Agreement; and

WHEREAS, the PPC has set aside funds to improve the Northeast Fountain and Promenade at Allegheny Commons (the Project); and

WHEREAS, the Project requires compliance with certain requirements under an NPDES Permit for Discharges Associated with Construction Activity (PAG-02000216019); and

WHEREAS, the Project's NPDES permit requires long term operation and maintenance of certain stormwater management practices.

WHEREAS, the City, through its Department of Public Works, will perform certain specified work and provide certain materials at the City's expense; and

WHEREAS, the City has approved PPC's plans for the Project; and

WHEREAS, the City now wishes to formally enter into an agreement to document the responsibilities of each party.

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

**Section 1.** The Mayor and Director of the Department of Public Works, on behalf of the City, are now authorized to enter into an Agreement or Agreements with the PPC to rehabilitate and improve the Northeast Fountain and Promenade at Allegheny Commons and comply with any NPDES permit requirements, pursuant to which the PPC will perform certain specified work and provide certain materials at its own cost, and the City will perform certain specified work and provide certain materials at the City's own cost.