

DRAFT: 5/04/04 Subject to modification.



COOPERATION AND ACCESS AGREEMENT

MADE and entered into as of the _____ day of _____, 2004, by and between the CITY OF PITTSBURGH, ("the City") and the UNIVERSITY OF PITTSBURGH - OF THE COMMONWEALTH SYSTEM OF HIGHER EDUCATION (the "University.")

WITNESSETH:

WHEREAS, pursuant to Resolution No. 285 of 1998, effective May 29, 1998, the City entered into a Cooperation Agreement 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, the PPC has proposed to offer its services in connection with the restoration, operation, and maintenance of Schenley Plaza in Schenley Park for use as a vibrant public space and will be seeking to enter into a separate agreement with the City to set forth terms of its assistance therefore; and

WHEREAS, with the financial assistance of the Oakland Investment Committee and other private funding sources, the PPC plans to undertake capital improvements for Schenley Plaza (the "Project"), which improvements will require both design and construction phases; and

WHEREAS, the PPC has engaged the University as its Agent to assist with the management of the design and construction phases; and

WHEREAS, in connection with and to facilitate the Project, there are plans for surrounding roadwork and other infrastructure modifications (the "Infrastructure Modifications") as well, which will also be funded by private sources; and

WHEREAS, the City has approved the Plans and Specifications for the Project and Infrastructure Modifications attached as EXHIBIT B.

WHEREAS, the University has agreed to assist the PPC as its Agent with administering these Infrastructure Modifications as aforesaid and as part of its management, design and construction, on behalf of PPC, subject at all times to final City approval and acceptance; and

WHEREAS, in order to implement the Infrastructure Modifications, the parties now wish to enter into this Cooperation and Access Agreement to set forth their respective responsibilities.

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

1. INCORPORATION OF RECITALS: The above recitals are incorporated herein by reference. By entering into this Agreement, the City is neither intending to delegate its duties nor abdicate its responsibilities for municipal improvements.

2. GRANT OF LICENSE/ACCESS. CITY grants to the University, on behalf of PPC, its contractors, and subcontractors, the license and right to enter onto, under and over the certain real property owned and/or maintained by the City (the "Property" or the "Site") as is more fully identified on the drawing attached hereto and marked EXHIBIT A for activities relating to the Infrastructure Modifications. The University's contractor(s) and subcontractors are authorized to move and/or store equipment, materials, and trailers on said Property and to use portions as a lay down and staging area to facilitate the Infrastructure Modifications in accordance with the approved traffic control plans.

3. SCOPE OF COOPERATION: The following is agreed to by the parties:

- A. The design firm of Wilbur Smith Associates ("WSA") was hired to turn the current conceptual plan into construction documents.
- B. City-approved Plans and Project Specifications are attached hereto as EXHIBIT B.
- C. TEDCO will serve as the University's Construction Manager ("CM"). TEDCO is responsible for providing all inspections necessary to ensure that all work is performed according to the Plans, Project Specifications, and City standards.
- D. Subject to applicable laws, the University will handle public bidding and the hiring of other contractors as needed.
- E. WSA will obtain a Highway Occupancy Permit from the Commonwealth of Pennsylvania for work to be performed on state-owned portions of Forbes Avenue.
- F. The City will assign one full-time inspector (the "field inspector") to the Site during the work on Infrastructure Modifications to be the City's on-site representative.
- G. If it is determined that a portion of Infrastructure Modifications cannot be performed according to the Plans and Project Specifications, the University will agree to pay for extra work in the field due to unforeseen conditions or design error. The City will agree to provide the University with good and sound engineering reasons for any such requested changes. The University and the City agree to confer on the designs and specifications for any extra work necessitated by unforeseen conditions or design error. In the event of any disagreement as to such changes, the decision of the City's Director of the Department of Engineering and Construction ("DEC") shall be final as to modifications proposed by either the University or by the City for such unforeseen conditions or design error. The City agrees that it shall not unreasonably withhold approval for requested changes.
- H. Any requests by the City for design changes which do not result from unforeseen conditions or design error shall be deemed to be "Changes in Scope." For the purposes of this Agreement, a Change in Scope is defined as any change to the approved Plans and Specifications which had not heretofore been deemed to be necessary for the proper

functioning of the Infrastructure Modifications and the Project as originally intended. Any such Changes in Scope shall be paid for by the City after necessary authorization of City Council. Examples of a Change in Scope are the addition of a traffic signal, additional lights or different types of lighting, an additional crosswalk or the like that is not currently shown on Exhibit B. A Change in Scope shall also be deemed to be present for purposes of this Agreement when unforeseen conditions arise that are unrelated to the Plans and Specifications. An example of this type of Change in Scope is a broken or deteriorated main sewer line, which shall not be the responsibility of the City or the University. It is agreed that the City will not require any Change in Scope to the Infrastructure Modifications which will impede or delay the schedule for the Infrastructure Modifications and/or the Project unless mutually agreed to by all parties in writing.

- I. Any changes to the design package must be approved by the City in writing. The City's field inspector may approve small changes not directly affecting the intent of the design.
- J. The University will ensure that its CM follows all traffic control plans set forth in the Plans and Project Specifications. It is specifically agreed that the contra-flow lane adjacent to Forbes Avenue cannot be completely removed until the DEC approves and bi-directional traffic is implemented on Roberto Clemente Drive and Pennant Place, per the construction documents.
- K. After the Infrastructure Modifications are completed, the CM will perform a final inspection. The City will attend this inspection and has the final right of acceptance. Until the City signs off as having accepted all Infrastructure Modifications, the City may require the University to make changes or repairs as deemed necessary by City's Director of the Department of Engineering and Construction; provided, however, that such changes or repairs shall be required to conform the Infrastructure Modifications to the Plans and Specifications and shall be required only in accordance with the spirit and purpose of paragraphs 3(G) and (H) hereof. The City shall not unreasonably withhold final acceptance.
- L. Upon City's written acceptance of the work performed, all warranties and bonds and any other rights in favor of the University relating to the design and/or construction of the Infrastructure Modifications shall be assigned and transferred to City. University shall include this requirement in all subcontracts and make a written affirmation to City after each such transfer. Additionally, the University shall either retain responsibility for latent defects relating to the Infrastructure Modifications or shall ensure in writing that its rights against the applicable contractor are assigned to the City.
- M. The University will ensure that its CM makes certain that "as-builts" of the City's infrastructure are kept current at each progress meeting. All records, including test reports, as-builts, and inspector logs shall become the property of City upon completion of the Infrastructure Modifications.
- N. The University will further ensure that its CM guarantees in writing that all materials are certified according to Pennsylvania Department of Transportation specifications and regulations and the Project Special Provisions, that it will conduct all necessary testing,

and that all work shall be performed in accordance with applicable grades and specifications.

- O. The City and University agree that due to the Project, it would be beneficial to the public to place appropriate signage directing visitors to public parking locations. In the event funds become available through the efforts of the Oakland Investment Committee, other private funding sources, and the PPC, the City agrees that the University shall include in its Scope of Work under this Project and Agreement the distribution and placement of the signage in accordance with the plans attached hereto as EXHIBIT C. [Plans to come.] It is agreed that final signage and locations thereof are subject to the approval of the City's Department of Engineering and Construction.
- P. The estimated Uses of Funds for the Project is set forth on EXHIBIT D attached hereto.

4. **ADDITIONAL APPROVALS.** University shall be separately required to obtain any and all permits from the City's Department of Public Works and the Department of Engineering and Construction. The City agrees to waive any and all fees for permits. Should the University's planned usage of the Property as set forth in Paragraphs 2 and 3 and EXHIBITS A and B herein change during the scope of the Infrastructure Modifications, the University shall be required to obtain the prior written consent(s) of the City. The University understands that it is responsible for obtaining any and all permits and approvals relating to the Infrastructure Modifications prior to commencing any activities on the Property;

5. **SECURITY.** The University shall ensure that its contractors and subcontractors shall take all reasonable measures to secure the Property from pedestrians and other persons who may wish to travel through the Site while the Infrastructure Modification work is in progress, so as to minimize the hazards to said persons posed by the work being performed.

6. **TERM OF AGREEMENT:** The term of this Agreement shall commence on the date set forth above, and conclude upon completion and written acceptance by City of all Infrastructure Modifications.

7. **RECLAMATION.** Upon completion of its work, the University shall restore, repair, replace, re-seed, or rebuild the Property *and* any surrounding areas disturbed by the Infrastructure Modifications work to its visual and functional equivalent immediately prior to the commencement of work. Such restoration, repair, replacement, re-seeding, or rebuilding shall be performed in accordance with prior plans and specifications approved herein. Such reclamation shall be completed within sixty (60) days after the completion of the Infrastructure Modifications.

8. **USE OF LICENSED AREA.** The University shall only use so much of the Site is necessary to carry out the Infrastructure Modifications and shall not damage, destroy, deface or injure any other property in performing its work.

9. **COST OF ACTIVITIES; POSTPONEMENT; ABANDONMENT.**

a. The Infrastructure Modification work and activities, including reclamation, shall be performed at no cost to the City; provided, however, that should the City assign one

or more field or other inspectors or personnel to the Project, it shall be at the sole cost and expense of the City.

b. It is understood by the parties that the City has not budgeted City funds for the Infrastructure Modifications. Therefore, the parties agree that the Infrastructure Modifications will have to be stopped or postponed once the private funds are exhausted at a logical termination point as determined by the City's Department of Engineering and Construction.

c. In the event that the Schenley Plaza Project is abandoned, the University agrees to restore the Infrastructure Modifications to their original condition or as is otherwise acceptable to the City's Department of Engineering and Construction. Such restoration shall occur at no cost to the City.

10. **INSURANCE.** At the time this Agreement is executed, the University shall ensure that *it, its Construction Manager, and its prime contractor* have obtained the following coverages and specifically identifying CITY as an additional insured, which insurance shall be non-cancelable except upon thirty (30) days prior written notice to CITY:

General Liability:

Bodily Injury, including death and Property Damage Liability:	<i>Each Occurrence</i>	\$1,000,000
	<i>Aggregate</i>	\$ 500,000
Automobile Liability:	<i>Each Occurrence</i>	\$1,000,000
	<i>Aggregate</i>	\$ 500,000
Workers' Compensation	<i>Statutory Requirements</i>	

All Premiums shall be at the expense of University and/or 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 termination of this Agreement, the University shall ensure that its prime contractor has renewed said insurance in a timely manner. Applicable certificates are attached hereto as part of EXHIBIT E.

The University shall also provide the City with evidence of errors and omissions insurance coverage with respect to the final design firm of record.

11. **WORKER'S COMPENSATION.** The University will ensure that it and its prime contractor (and all other contractors and subcontractors working on the Infrastructure Improvements) have accepted the provisions of the Worker's Compensation and Occupational Disease Acts, as amended and supplemented, insofar as the work covered by this License Agreement is concerned, and that affected parties have insured liability thereunder in accordance with the terms of the said Acts or that it has duly filed a proper certificate of exemption from insurance with the Pennsylvania Department of Labor and Industry. Applicable certificates are attached hereto as part of EXHIBIT E.

12. INDEMNIFICATION.

a) The University agrees to indemnify, save and hold harmless and defend City, its officers, agents and employees from and against any and all liens, charges, claims, demands, losses, court costs, attorneys fees, judgments, damages, and/or liabilities, including but not limited to those in connection with loss of life, personal injury, or damage to or loss of property occasioned wholly or in part by the University's use of the Property or any city property as permitted hereunder; or in any manner related to any act, error or omission of the University, its officers, any agent, employee, licensee, invitee, contractor or subcontractor permitted or required hereunder; or related to any breach by the University of any of the terms, conditions, or provisions of this Agreement.

b) The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

13. GOVERNING LAW. The laws of the Commonwealth of Pennsylvania shall in all respects govern this Agreement.

14. MECHANIC'S LIENS. The University shall ensure that its prime contractor, for itself and its contractors and subcontractors, waives the right to file any mechanics or other lien against the subject Property.

15. COMPLIANCE WITH LAWS. The University shall fully obey and comply with all federal, state and local laws, statutes, ordinances, resolutions and administrative regulations, which are applicable to this Agreement. In all of its activities relating to this Agreement, the University shall conform to all applicable anti-discrimination provisions of the Pittsburgh Code, specifically those appearing in Title Six "Conduct," Article V, "Discrimination," and any amendments thereto.

16. ASSIGNMENT. This Agreement may not be assigned by the University absent prior written permission of the CITY.

17. AMENDMENT. This Agreement contains all the 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.

18. TERMINATION. City may terminate this Agreement in the event of a default by University of any terms of this Agreement upon providing thirty (30) day's advance written notice of its intention to terminate. In any event, this Agreement shall automatically terminate upon completion of the Infrastructure Modifications and subsequent acceptance by City in writing. The University understands that it remains subject to the reclamation provisions provided herein in the event of any and all terminations.

19. HOME RULE CHARTER: LIABILITY OF CITY. This Agreement is subject to the provisions of the Pittsburgh Home Rule Charter.

20. PERSONAL PROPERTY. CITY does not assume responsibility for any damage or loss that may occur to any personal property or equipment of the University, its visitors, agents, contractors, or subcontractors located or stored on the Site.

21. RIGHT OF ENTRY. CITY reserves the privilege of coming upon the Property for any lawful purpose.

22. CITY OWNERSHIP: This Agreement is not intended to vest in the University any easement or interests in the Property whatsoever. Accordingly, the University shall not record this Agreement at any time in the office of Recorder of Deeds in and for the County of Allegheny, Commonwealth of Pennsylvania.

23. AUTHORIZING RESOLUTIONS: This Agreement is entered into by the City of Pittsburgh pursuant to Resolution _____, effective _____.

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

ATTEST:

CITY OF PITTSBURGH

By: _____
Mayor

WITNESS:

By: _____
Director, Department of Engineering
& Construction

WITNESS:

By: _____
Director, Department of Public Works

ATTEST:

UNIVERSITY OF PITTSBURGH

Name:
Title:

By: _____
Name:
Title:

EXAMINED BY: _____
Assistant City Solicitor

APPROVED AS TO FORM: _____
City Solicitor

EXHIBIT A: SITE MAP

EXHIBIT B: PLANS AND SPECIFICATIONS

EXHIBIT C: PLANS FOR SIGNAGE

EXHIBIT D: USES OF FUNDS

Base Budget	
1. Plaza Design and Construction	\$4,980,000
2. Plaza Roadway	\$1,634,000
3. Construction Claims Contingency	\$600,000
Subtotal 1-3	\$7,214,000
4. PPC/PNC Carousel	\$350,000
Subtotal Base Budget 1- 4	\$7,564,000
Operating Support	
5. PPC Operating Support- 3 Years	\$1,900,000
6. Carousel Operating Support	\$150,000
Operating Subtotal 5- 6	\$2,050,000
Total Base Budget With Operating 1- 6	\$9,614,000
7. PPC Additions Approved by the OIC	
Interior Build Out of the Four Kiosks	\$300,000
Construction Phase Tree & Soil Improvements	\$137,000
Signage (design, fabrication and installation)	\$100,000
Subtotal 7	\$537,000
Total 1-7	\$10,151,000
8. City of Pittsburgh Land (est. value)	\$6,000,000
Total 1-8	\$16,151,000

EXHIBIT E: INSURANCE CERTIFICATES