

09A-0656



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Project, License, and Reimbursement Agreement

Made this 28th day of October 2009

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"

For Restoration of the Walled Garden In Mellon Park

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 infrastructure improvements, special care, and restoration for the City's parks, which 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 restore elements of, and to add seating areas and incorporate new public artwork in, the Walled Garden in Mellon Park; and

Whereas, the City has received and approved PPC's plans for said improvements to the Walled Garden, and agreed to undertake certain improvements of its own.

THEREFORE, in consideration of the mutual premises and intending to be fully and lawfully advised 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, PPC has agreed to undertake a rehabilitation and improvement project for the Walled Garden in Mellon Park (the "Project Site"). The PPC will perform certain specified work and provide certain materials in the Walled Garden at its own cost and expense, as more fully described in Exhibit "B", which is attached hereto. The City has agreed to perform certain complementary tasks and to provide certain materials at its own expense, as also described on Exhibit B.

CITY hereby grants to PPC, its agents, contractors, and subcontractors, a license to go upon the Project Site to perform the Project work. PPC is authorized to move and/or store its equipment, materials, and trailers on said Project Site and to use them as lay down and/or staging areas to facilitate the Project. The CITY shall be permitted to grant other licenses for the same Project Site during the term of this Project, License and Reimbursement Agreement (this "Agreement") so long as such other licenses are consistent with and do not interfere with the rights granted herein.

2. **TERM OF AGREEMENT:** The term of this Agreement shall commence on the date first written above and shall conclude on the later of (i) June 30, 2010 or (ii) the Completion Date of the Project.
3. **MONITORING AND EVALUATION; AUDITS:** All services provided under this Agreement shall be subject to monitoring and evaluation by City or its authorized representatives. PPC 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 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 shall be preserved by PPC for a period of three (3) years after the termination of this Agreement.
4. **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 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.
5. **COMPLIANCE WITH LAWS:** PPC and any subcontractors hereunder 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. PPC and/or its subcontractors shall

promptly notify the Department 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.

6. **ANTI-DISCRIMINATION:** PPC 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. PPC shall comply with the applicable provisions of the Pittsburgh Code, Title Six - Conduct, Article V-Discrimination, and any amendments thereto. PPC shall also comply with the applicable provisions of Title I and Title II of the Americans with Disabilities Act, any amendments thereto and any regulations issued thereunder. PPC 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.

7. **INSURANCE:** PPC and any prime contractor hired to perform Project Work shall maintain insurance in the amount specified in this Section and shall keep the City as an additional insured on such policy throughout the term of this Agreement. Attached hereto as Exhibit "C" and incorporated herein is a certificate of insurance 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:

| | <u>Individual Occurrence</u> | <u>Aggregate</u> |
|---------------------------------|----------------------------------|------------------|
| General Liability | | |
| Bodily injury, including death | \$ 1,000,000 | \$2,000,000 |
| Real & Personal Property damage | \$ 1,000,000 | \$2,000,000 |
| Worker's Compensation | Statutory Limits | |

All premiums shall 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 shall expire prior to the expiration of the term of this Agreement or the completion of all services required hereunder, whichever shall occur later, PPC 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.

8. **GOVERNING LAW:** This Agreement shall, in all respects, be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.
9. **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; *provided, however,* that the parties do contemplate entering into a separate agreement regarding the long-term maintenance of the Walled Garden. 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 thirty (30) days prior written notice.
10. **PITTSBURGH HOME RULE CHARTER:** This agreement is subject to the provisions of the Pittsburgh Home Rule Charter.
11. **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 shall be limited to authorized representatives or designees of the PPC or its subcontractors. PPC shall secure appropriate security for any machinery and/or materials used for the Project and agrees that the City shall not be liable for any damages to or loss of its property or property of its subcontractors for any reason.
12. **OWNERSHIP OF IMPROVEMENTS:** Ownership of all alterations, additions or capital improvements constructed and paid for by PPC at the Project Site shall vest in City upon installation, without compensation being paid therefor.
13. **ASSIGNMENT; SUBCONTRACTING:** PPC shall not assign this Agreement without the written consent of CITY.
14. **PROHIBITION AGAINST ENCUMBERANCES:** 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 Site or any part thereof having any priority or preference over or ranking on a parity with the estate, rights and interest of City in the Project Site or any part thereof.

15. **WAIVER OF MECHANIC'S LIENS:** PPC shall 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.
16. **ZONING:** PPC shall be responsible for complying with all applicable zoning guidelines and laws relative to the Project Site. With the prior approval of the City, PPC shall file for approval of any zoning variances that may be required for the intended use of the Project Site.
17. **CONSENTS:** In any case under this Agreement, when the prior written approval or consent of City shall have been requested by PPC, such approval or consent shall not be unreasonably withheld or delayed by City.
18. **APPROVALS FOR REHABILITATIONS:** PPC shall accomplish the rehabilitation and improvements of the Project in accordance with the scope of work described on Exhibit "B" hereto as previously approved by the City. The Project shall 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 shall be timely provided in writing and provide detail sufficient for the PPC to respond to its concerns.
19. **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.
20. **RIGHT TO INSPECT; RIGHT TO TAKE EMERGENCY ACTION:** City shall have the right to enter the Project Site at all times for the purposes of inspecting the same or determining whether PPC and/or its subcontractors are complying with the terms and conditions hereof. City shall have the right (but not the duty) to enter the Project Site without the consent of PPC at any time to correct any situation which, in the reasonable discretion of City, is deemed to be of an emergency nature.

21. **NON-OBLIGATION OF CITY TO REPAIR.** In the event of casualty to the Project Site, regardless of the amount of damage or destruction, City shall be under no obligation to repair and/or replace the Project, *except* insofar as the parties may agree in a separate written agreement regarding the long-term maintenance of the Walled Garden.
22. **NON-OBLIGATION OF CITY TO REPAY ANY PRIVATE MONIES OR GRANTS.** In the event that this Agreement is terminated by City as permitted under this Agreement or the Cooperation Agreement, or in the event of bankruptcy of PPC, City shall not be obligated to repay any private monies obtained by PPC for improvements to the Project Sites.
23. **AUTHORIZING RESOLUTION:** This Agreement is entered into by CITY pursuant to Resolution No. 1010 of 2009, effective OCT 28, 2009.
24. **SURVIVAL OF PROVISIONS:** It is the intent of the parties that the provision set forth in Paragraphs 7 (Compliance with Laws) and 21 (Indemnity) shall survive the expiration of the term of this Agreement
25. **RECLAMATION:** Upon completion of its work, PPC shall ensure that it/its agents, contractors and subcontractors restore, repair, replace, re-seed, or rebuild the Project Site *and* any surrounding areas disturbed by the Project to its visual and functional equivalent immediately prior to the work. Such restoration, repair, replacement, re-seeding, or rebuilding shall be performed in accordance with prior plans and specifications approved in writing by CITY prior to the commencement of the reclamation. Such reclamation shall be completed within sixty (60) days after the completion of the Project.

-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

Laurie Dreiker
Witness:

By: Luke Ravenstahl
Luke Ravenstahl, Mayor

City of Pittsburgh
Department of Parks and Recreation

Frances Knuefl
Witness:

By: Duane Ashley
Director, Duane Ashley

City of Pittsburgh
Department of Public Works

Beverly Ochs-Policki
Witness:

By: Guy Costa
Director, Guy Costa

Pittsburgh Parks Conservancy, Inc.

Doreen E. Bean
Witness:

By: Mary M. Cherr
Title: President & CEO

Examined: [Signature]
Assistant City Solicitor

Approved as to form by: [Signature]
City Solicitor

Countersigned by: [Signature]
City Controller

EXHIBIT A
COOPERATION AGREEMENT

COOPERATION AGREEMENT

MADE April 10, 2000.

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N

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. Sandra Gangelone

Francis Knight

Mary Whitwood

ATTEST:

Alfred S. Lopez

CITY OF PITTSBURGH

BY: [Signature]
Mayor

BY: [Signature]
Director, Parks and Recreation

BY: [Signature]
Director, Public Works

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)
)
COUNTY OF ALLEGHENY) SS:

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 ^{SHF}he nor, to the best of ^{HEA}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 10TH 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.

~~Resolved by the Council of the City of Pittsburgh as follows:~~

~~Section~~

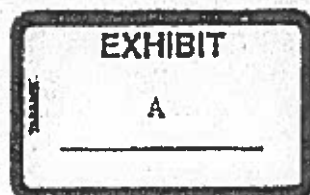
WHEREAS, the said regional parks are in need of infrastructure improvements, special care and restoration so that they may reach their optimum potential as major recreational facilities attracting citizens from a wide geographic area; and

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:

- SECTION 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.



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 Waale
CITY CLERK

EXHIBIT B

PROJECT SITE DESCRIPTION, PLANS, and SCOPE OF WORK

Project Description:

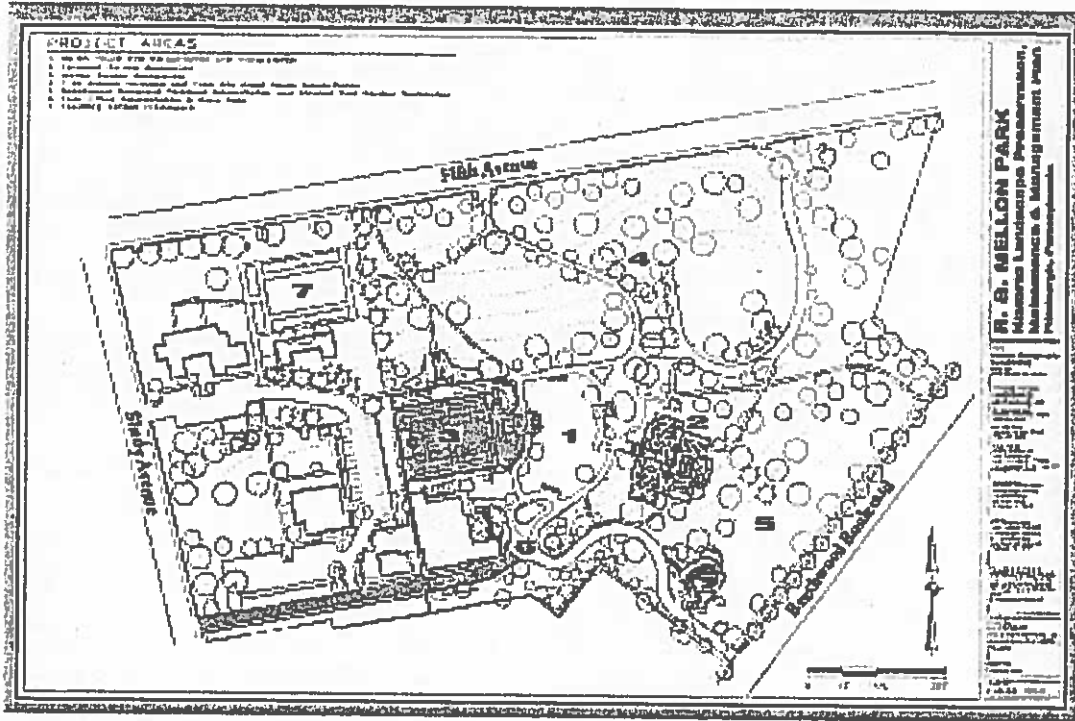
PPC has conferred with the City concerning its plans, and has provided the City with engineering drawings and construction plans for the Project Site. This project will restore elements of the Walled Garden in Mellon Park (see location map below), add seating areas, and will incorporate a new public artwork.

Pittsburgh Parks Conservancy Scope of Work (as funds allow):

- Restore/replace octagonal entrance feature, paving, benches, limestone steps, and urns, with interpretive inscriptions in stone elements.
- Reconstruct the central lawn panel with improved drainage and irrigation.
- Install stone band around lawn and planting beds.
- Install up lighting for brick walls.
- Renovate planting beds with new topsoil and irrigation.
- Install artwork consisting of approximately 150 fiber optic lights, surrounded by small masonry discs, in the lawn. Illuminator boxes containing the light sources will be placed within the planting beds.
- Replace current brick retaining wall (not original) with limestone steps to new observation area, including interpretive plaque and donor recognition.
- Construct seating courts.
- Restore ornamental ironwork.
- Re-plumb and restore fountain.
- Restore finish of frog sculpture and relocate to rock garden; clean rocks.
- Act as construction site manager.

City of Pittsburgh Scope of Work:

- Remove existing plant material and plant new trees, shrubs, perennials, plants, vines, and bulbs throughout.
- Salvage plant material deemed worthy of being transplanted outside project site.
- Prune two (2) large elm trees near project site.
- Relocate water service; provide 2" copper line to vault.
- Relocate two ornamental lions within Mellon Park to the extent they can be safely moved by City without damage; otherwise PPC must secure contractor for relocation.
- Provide onsite staging area with prior approval on location from the Department of Parks and Recreation to ensure no interference with concurrent programming at the Site.
- Provide site for top soil and subsoils.
- Provide site for excavated/salvaged materials generated by this project.
- Provide inspectors to ensure final work complies with City standards.



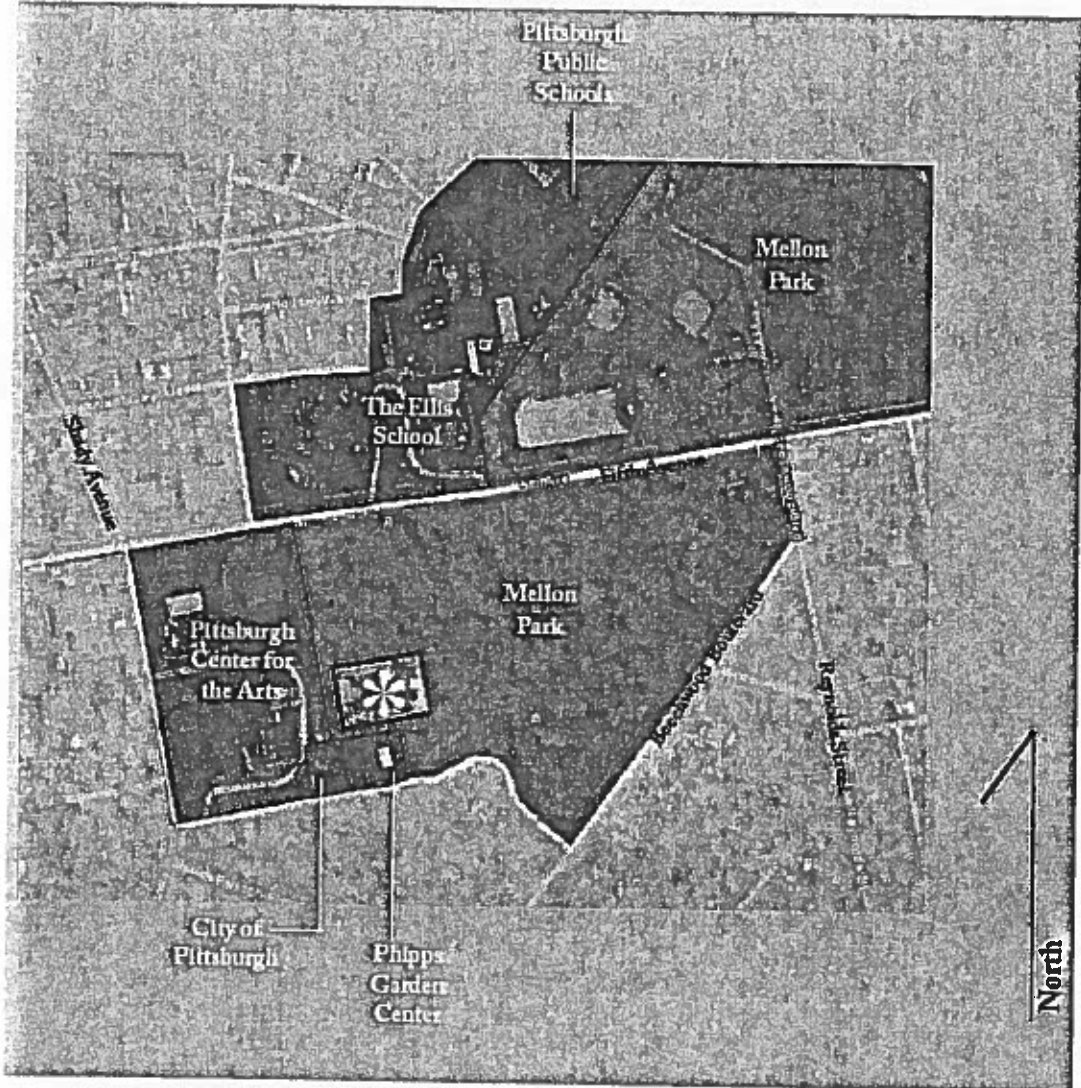


EXHIBIT C

INSURANCE CERTIFICATE(S)

ACORD INSURANCE BINDER

DATE (MM/DD/YYYY)

03/03/2008

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

| | | | | | |
|---|--|--|--|---|--|
| AGENCY Simpson & McCrady LLC 33 Grant Street Suite 1320 Pittsburgh, PA 15219 | | COMPANY Charter Oak Fire Insurance Co. | | BINDER # B08030304528 | |
| PHONE (A/C, No, Ext) (412)261-2222 | | FAX (A/C, No) (412)261-3437 | | DESCRIPTION OF OPERATIONS/VEHICLES/PROPERTY (Including Location) | |
| CODE: OHE609 | | SUB CODE: | | THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY #: | |
| AGENCY CUSTOMER ID: 00009146 | | INSURED Pittsburgh Parks Conservancy 2000 Technology Drive Suite 300 Pittsburgh, PA 15219 | | DATE EFFECTIVE TIME: 03/01/2008 12:01 X AM PM EXPIRATION DATE TIME: 03/31/2008 X 12:01 AM NOON | |

| COVERAGES | | LIMITS | | |
|--|---|------------|---------|---|
| TYPE OF INSURANCE | COVERAGE/FORMS | DEDUCTIBLE | COINS % | AMOUNT |
| PROPERTY CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPEC | | | | |
| GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR | RETRO DATE FOR CLAIMS MADE: | | | EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ |
| AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS | RETRO DATE FOR CLAIMS MADE: | | | COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$ MEDICAL PAYMENTS \$ PERSONAL INJURY PROT \$ UNINSURED MOTORIST \$ |
| AUTO PHYSICAL DAMAGE DEDUCTIBLE COLLISION: _____ OTHER THAN COL: _____ | <input type="checkbox"/> ALL VEHICLES <input type="checkbox"/> SCHEDULED VEHICLES | | | ACTUAL CASH VALUE STATED AMOUNT \$ OTHER |
| GARAGE LIABILITY <input type="checkbox"/> ANY AUTO | | | | AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$ |
| EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM | RETRO DATE FOR CLAIMS MADE: | | | EACH OCCURRENCE \$ AGGREGATE \$ SELF-INSURED RETENTION \$ |
| WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY | | | | WC STATUTORY LIMITS E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000 |
| SPECIAL CONDITIONS/ OTHER COVERAGES | | | | FEES \$ TAXES \$ ESTIMATED TOTAL PREMIUM \$ |

NAME & ADDRESS

| | | |
|---|--|---|
| <input type="checkbox"/> MORTGAGEE <input type="checkbox"/> LOSS PAYEE | | <input type="checkbox"/> ADDITIONAL INSURED |
| LOAN # | | |
| AUTHORIZED REPRESENTATIVE Donna Sebesta/DONNA <i>Donna Sebesta</i> | | |

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/9/2009

PRODUCER (412)261-2222 FAX: (412)261-3437
 Simpson & McCrady LLC
 330 Grant Street
 Suite 1320
 Pittsburgh PA 15219

INSURED
 Pittsburgh Parks Conservancy
 2000 Technology Drive
 Suite 300
 Pittsburgh PA 15219

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.

| INSURERS AFFORDING COVERAGE | NAIC # |
|------------------------------------|--------|
| INSURER A: Phoenix Insurance Co | 25623 |
| INSURER B: Travelers Prop Casualty | 36161 |
| INSURER C: Travelers Indemnity | 25658 |
| 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 LTR) | INSRD | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS |
|------------------|-------|--|----------------|----------------------------------|-----------------------------------|--|
| A | | GENERAL LIABILITY | 6601402C440PHX | 3/1/2009 | 3/1/2010 | EACH OCCURRENCE \$ 1,000,000 |
| | | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 |
| | | CLAIMS MADE <input checked="" type="checkbox"/> OCCUR | | | | MED EXP (Any one person) \$ 10,000 |
| | | | | | | PERSONAL & ADV INJURY \$ 1,000,000 |
| | | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | GENERAL AGGREGATE \$ 2,000,000 |
| | | <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC | | | | PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| B | | AUTOMOBILE LIABILITY | BA3272C716 | 3/1/2009 | 3/1/2010 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 |
| | | <input checked="" type="checkbox"/> ANY AUTO | | | | BODILY INJURY (Per person) \$ |
| | | <input type="checkbox"/> ALL OWNED AUTOS | | | | BODILY INJURY (Per accident) \$ |
| | | <input type="checkbox"/> SCHEDULED AUTOS | | | | PROPERTY DAMAGE (Per accident) \$ |
| | | <input checked="" type="checkbox"/> HIRED AUTOS | | | | AUTO ONLY - EA ACCIDENT \$ |
| | | <input checked="" type="checkbox"/> NON-OWNED AUTOS | | | | OTHER THAN AUTO ONLY: EA ACC \$ |
| | | | | | | AGG \$ |
| C | | EXCESS/UMBRELLA LIABILITY | CUP3355Y136IND | 3/1/2009 | 3/1/2010 | EACH OCCURRENCE \$ 2,000,000 |
| | | <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE | | | | AGGREGATE \$ 2,000,000 |
| | | <input type="checkbox"/> DEDUCTIBLE | | | | \$ |
| | | <input checked="" type="checkbox"/> RETENTION \$ 5,000 | | | | \$ |
| C | | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | IKUB3702C49309 | 3/1/2009 | 3/1/2010 | <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER |
| | | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? | | | | E.L. EACH ACCIDENT \$ 500,000 |
| | | If yes, describe under SPECIAL PROVISIONS below | | | | E.L. DISEASE - EA EMPLOYEE \$ 500,000 |
| | | OTHER | | | | E.L. DISEASE - POLICY LIMIT \$ 500,000 |

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 City of Pittsburgh is named as additional insured with respects to Mellon Park and Mellon Square.

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
 Donna Sebesta/DONNA *Donna Sebesta*



City of Pittsburgh
Certified Copy

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

State of Pennsylvania

Bill No: 2009-1790

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

Resolution No. 610

Resolution authorizing the Mayor and the Directors of the Department of Parks and Recreation and the Department of Public Works to enter into a Project and License Agreement with the Pittsburgh Parks Conservancy in connection with improvements to the Walled Garden in Mellon Park.

WHEREAS, pursuant to Resolution No. 285 of 1998, effective May 29, 1998, the City of Pittsburgh 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, the PPC now desires to volunteer its services pursuant to said Cooperation Agreement, and has offered to restore elements of, add seating areas to, and incorporate new artwork in the Walled Garden in Mellon Park; and

WHEREAS, the PPC and CITY now wish to enter into a project and License Agreement to define the scope of the services to be provided

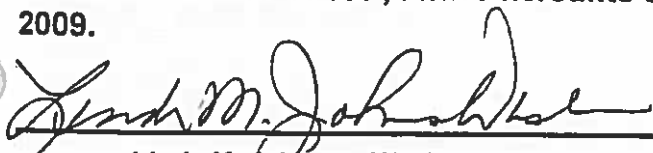
Be it resolved by the Council of the City of Pittsburgh as follows:

Section 1. The Mayor and the Directors of the Department of Parks and Recreation and the Department of Public Works are hereby authorized to enter into a Project and License Agreement with the PPC will provide improvements to the Walled Garden in Mellon Park. The form and substance of the Agreement shall be subject to the approval of the City Solicitor.

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

Mayor's Approval Date: October 23, 2009

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of October, A.D. 2009.



Linda M. Johnson-Wasler, City Clerk

October 28, 2009

Effective Date