

B9A-0943

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**Project Agreement for  
License and Maintenance**

Made this 1<sup>st</sup> day of December 2009

**BY AND BETWEEN**

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

Hereinafter referred to as "City,"

**AND**

**MOUNT WASHINGTON COMMUNITY DEVELOPMENT CORPORATION**

Providing Improvements for Grandview Scenic Byway Park

Hereinafter referred to as the "MWCDC"

**WITNESSETH:**

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

**Whereas**, the MWCDC now desires to volunteer its services pursuant to said Cooperation Agreement and has offered to provide capital improvements in the form of view and habitat restoration signs.

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

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

- 1. SCOPE OF IMPROVEMENTS & GRANT OF LICENSE:** Subject to all terms and conditions set forth below and within the attached exhibits, MWCDC has agreed to provide and assist with maintaining three (3) view and habitat restoration signs in Grandview Scenic Byway Park (the "Project Work") at its

own sole cost and expense, including all materials and equipment. The scope of the Project and description of the three sign locations ("Project Sites") are more fully provided in Exhibit "A", which is attached hereto and incorporated herein. The CITY hereby grants to MWCDC, its agents, contractors, and subcontractors, a license to go upon the Project Sites to perform the Project Work, including installation, maintenance and repair. The signs may be installed after receipt of any final approvals required by the Art Commission and/or the Bureau of Building Inspection.

2. **TERM OF AGREEMENT:** The term of this Agreement shall commence on the date first written above and shall last through for a period of ten (10) years unless earlier terminated as permitted in Paragraph 10 herein.
3. **INTERRUPTION; POSTPONEMENT; ABANDONMENT:** In the event that the work herein contemplated, or any part thereof, shall be interrupted, postponed, or abandoned due to circumstances which City considers to be in its best interests, MWCDC shall not be entitled to reimbursement from City for any funds expended on the Project.
4. **MONITORING AND EVALUATION; AUDITS:** All services provided under this Agreement shall be subject to monitoring and evaluation by City or its authorized representatives. MWCDC shall supply City with written reports on Project activity as City may, from time to time, require. Authorized representatives of City shall have access to the books and records maintained by MWCDC with respect to any services or materials provided to City pursuant to this Agreement at all reasonable times and for all reasonable purposes. All books and records pertaining to the Project shall be preserved by MWCDC for a period of three (3) years after the termination of this Agreement.
5. **WORKER'S COMPENSATION:** MWCDC hereby certifies that it has accepted the provisions of the Worker's Compensation and Occupational Disease Acts, as amended and supplemented, insofar as the work covered by this Agreement is concerned, and that it has insured its liability thereunder in accordance with the terms of the said Acts, as evidenced by the certificate of insurance it has caused to be attached hereto, or that it has duly filed a proper certificate of exemption from insurance with the Pennsylvania Department of Labor and Industry.
6. **COMPLIANCE WITH LAWS:** MWCDC and any subcontractors hereunder shall fully obey and comply with all laws, ordinances, resolutions, and administrative regulations which are applicable to any work performed under this Agreement. MWCDC and/or its subcontractors shall promptly notify the Department of any known vandalism or other illegal activities at the Site, which come to their attention. MWCDC 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 MWCDC has or will comply with any of these laws.

7. **ANTI-DISCRIMINATION:** MWCDC 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. MWCDC shall comply with the applicable provisions of the Pittsburgh Code, Title Six - Conduct, Article V-Discrimination, and any amendments thereto. MWCDC 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. MWCDC shall incorporate in any subcontracts which may be permitted under the terms of this Agreement a requirement that said subcontractors also comply with the provisions of this Section.
8. **INSURANCE:** MWCDC 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 "B" and incorporated herein is a certificate of insurance duly executed by officers or authorized representatives of a responsible and non-assessable insurance company, evidencing the following minimum coverages and specifically identifying City as an additional insured on all general liability policies, which insurance shall be noncancellable, except upon thirty (30) days prior written notice to City:

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

All premiums shall be at the expense of MWCDC 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, MWCDC shall renew said insurance in a timely manner and shall promptly cause a certificate of insurance evidencing such renewal, and also identifying City as an additional insured, to be forwarded to the Director of the Department of

Public Works. MWCDC is not required to procure automobile liability insurance to the extent it is not using automobiles to perform Project Work hereunder.

9. **GOVERNING LAW:** This Agreement shall, in all respects, be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.
10. **AMENDMENT AND TERMINATION:** This Agreement contains all terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind any of the parties hereto. This Agreement may not be changed, modified, discharged or extended except by prior written amendment, duly executed by the parties. Either party may terminate this Agreement upon thirty (30) days prior written notice.
11. **PITTSBURGH HOME RULE CHARTER:** This agreement is subject to the provisions of the Pittsburgh Home Rule Charter.
12. **SECURITY:** MWCDC shall ensure that there is appropriate security for any equipment, machinery and/or materials used for the Project Work and agrees that the City shall not be liable for any damages to or loss of its property or property of its agents or subcontractors for any reason.
13. **OWNERSHIP OF IMPROVEMENTS:** Ownership of all alterations, additions or capital improvements constructed and paid for by MWCDC at the Project Sites shall vest in City upon installation, without compensation being paid therefor.
14. **ASSIGNMENT; SUBCONTRACTING:** MWCDC shall not assign or subcontract this Agreement without the written consent of City. Pursuant to the license granted herein MWCDC may allow Bunting Graphics, Inc. to install the subject signs without further written permission.
15. **PROHIBITION AGAINST ENCUMBERANCES:** MWCDC will not create or permit to be created or to remain, and will discharge, any lien, encumbrance or charge which might become a lien, encumbrance or charge upon the Sites or any part thereof having any priority or preference over or ranking on a parity with the estate, rights and interest of City in the Sites or any part thereof.

- 16. WAIVER OF MECHANIC'S LIENS:** MWCDC shall not cause or permit any work to be done upon or any materials or services furnished to any portion of the Sites in connection with the improvement, alteration or repair thereof, except under a contract or contracts which effectively waive to the fullest extent permitted by law any right to file a mechanic's lien or claim against the Sites or any part thereof.
- 17. ART COMMISSION APPROVAL:** MWCDC has obtained the approval of the Art Commission for the planned view and restoration signs.
- 18. APPROVALS FOR ALTERATIONS TO SIGNS:** MWCDC shall perform the Project Work in accordance with Exhibit "A" hereto as previously approved by the City. Any alteration in plans previously approved by City must be submitted in writing to the City's Director of the 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 MWCDC to respond to its concerns.
- 19. INDEMNITY:** MWCDC 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 MWCDC of any services under this Agreement; any act, error or omission of MWCDC or of an agent, employee, licensee, contractor or subcontractor of MWCDC; and any breach by MWCDC 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 Sites at all times for the purposes of inspecting the same or determining whether MWCDC and/or its subcontractors are complying with the terms and conditions hereof. City shall have the right (but not the duty) to enter the Sites without the consent of MWCDC 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 Site, regardless of the amount of damage or destruction, City shall be under no obligation to repair and/or replace the Project.
- 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 proposed Cooperation Agreement for any

reason, the City shall not be obligated to repay any private monies obtained by MWCDC for improvements to the Sites.

**23. AUTHORIZING RESOLUTION:** This Agreement is entered into by CITY pursuant to Resolution No. \_\_\_\_\_, effective \_\_\_\_\_, 2009.

**24. SURVIVAL OF PROVISIONS:** It is the intent of the parties that the provision set forth in Paragraphs 6 (Compliance with Laws) and 19 (Indemnity) shall survive the expiration of the term of this Agreement

**25. RECLAMATION:** Upon completion of its Project Work, MWCDC shall ensure that it/its agents, contractors and subcontractors restore, repair, replace, re-seed, or rebuild any Grand View Scenic Byway Park areas disturbed by such Project Work to their visual and functional equivalent immediately prior to the work. Such reclamation shall be completed prior to the expiration of this Agreement and final approval is required from the Director of the Department of Public Works.

**-REMAINDER OF PAGE INTENTIONALLY BLANK-**

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

Witness:

City of Pittsburgh

Laurie Drake  
Witness:

By:

Luke Ravenstahl  
Luke Ravenstahl, Mayor

City of Pittsburgh

Department of Parks and Recreation

Francis Knight  
Witness:

By:

Duane Ashley  
Director, Duane Ashley

City of Pittsburgh

Department of Public Works

Beverly Ads Pollock  
Witness:

By:

Rob Kaczorowski 10-28-09  
Acting Director, Rob Kaczorowski

MOUNT WASHINGTON COMMUNITY  
DEVELOPMENT CORPORATION

[Signature]  
Witness:

By:

[Signature]

Title

Executive Director

Examined :

[Signature]  
Assistant City Solicitor

Approved as to form by:

[Signature]  
City Solicitor

## **EXHIBIT A**

### **SITE DESCRIPTION & SCOPE OF WORK**

The locations for the following three sign sites are identified on the map(s) attached hereto:

1. Western Grandview (sign attached to single post and installed on concrete pad.)
2. Eastern Grandview (sign attached to railing).
3. Bigbee Field (sign attached to single post and installed on a concrete pad).

#### **Maintenance responsibilities of MWCDC:**

1. Biennial cleaning of signs.
2. Graffiti removal (initial attempt at removal for each occurrence of vandalism by MWCDC, thereafter will report to DPW for assistance).
3. Repair of signs (DPW will assist with removal if needed).

All maintenance costs (other than services set forth on this Exhibit to be provided for by DPW regarding graffiti removal and sign removal) are the responsibility of MWCDC.





Google

Jun 2007

40°26'00.77" N 80°00'36.45" W

**EXHIBIT B**  
**INSURANCE CERTIFICATE(S)**

**ACORD™ CERTIFICATE OF LIABILITY INSURANCE**DATE (MM/DD/YYYY)  
10/22/2009

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

Wagner Agency, Inc.

5020 Centre Avenue

Pittsburgh PA 15213-1898

INSURED

Mt Washington Community Development Corp  
301 Shiloh Street

Pittsburgh PA 15211

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. Millers Mutual Ins. Co. 14575

INSURER B. Cincinnati Insurance Co. 10677

INSURER C

INSURER D

INSURER E

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR/ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	GENERAL LIABILITY	BOP 0610169 10	3/5/2009	3/5/2010	EACH OCCURRENCE \$ 1,000,000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 5,000
		GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	X	AUTOMOBILE LIABILITY	BOP 0610169 10	3/5/2009	3/5/2010	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
		<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
		<input checked="" type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
<input checked="" type="checkbox"/> HIRED AUTOS						
<input checked="" type="checkbox"/> NON-OWNED AUTOS						
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
		<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC \$
						AUTO ONLY AGG \$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE \$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$
						\$
		DEDUCTIBLE				\$
		RETENTION \$				\$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WCV 0682692	12/15/2008	12/15/2009	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?	E.L. EACH ACCIDENT \$ 100,000				
	If yes, describe under SPECIAL PROVISIONS below	E.L. DISEASE - EA EMPLOYEE \$ 100,000				
		E.L. DISEASE - POLICY LIMIT \$ 500,000				
B		OTHER Directors & Officers Liability	BCP 8661449	9/10/2007	9/10/2010	Limit of Liability \$1,000,000

## DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Additional insured: City of Pittsburgh RE: Improvements for Grandview Scenic Byway Park

## CERTIFICATE HOLDER

City of Pittsburgh  
Department of Parks & Recreation  
414 Grant Street  
Pittsburgh, PA 15219

## CANCELLATION

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

AUTHORIZED REPRESENTATIVE

James Wagner/DGR