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AMENDMENT TO COOPERATION AGREEMENT
Made this 10th day of Jan, 2016 2017
BY AND BETWEEN
THE CITY OF PITTSBURGH
Hereinafter referred to as "City"
AND
MOUNT WASHINGTON COMMUNITY DEVELOPMENT CORPORATION
Hereinafter referred to as "MWCDC"

WITNESSETH:

WHEREAS, pursuant to Resolution No. 769 of 2005, effective December 30, 2005, the City entered into a Cooperation Agreement (the "MWCDC Cooperation Agreement") dated April 27, 2007 with the MWCDC to form an alliance to provide improvement, special care and restoration for Grandview Scenic Byway Park, now called Emerald View Park ("EVP");

WHEREAS, Emerald View Park is the City's newest and fifth regional park;

WHEREAS, pursuant to Resolution No. 285 of 1998, effective May 29, 1998, the City entered into a Cooperation Agreement (the "PPC Cooperation Agreement") dated April 10, 2000 with The Pittsburgh Parks Conservancy ("PPC") to establish an alliance to provide improvements, special care and restoration for the City's regional parks, which agreement was renewed and extended on December 12, 2011, pursuant to Resolution No. 364, effective May 26, 2011;

WHEREAS, MWCDC and PPC have entered into an Alliance Agreement dated June 1, 2016 whereby PPC will assume the role of MWCDC under its agreements with the City and other parties relating to EVP; and

WHEREAS, MWCDC and PPC have determined that it is in the best interest of EVP for EVP to become part of the group of Regional Parks stewarded by PPC, and have notified representatives of the City that MWCDC and PPC wish to have EVP be governed by the PPC Cooperation Agreement going forward.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto, intending to be legally bound hereby, agree to the following:

1. MWCDC and the City confirm their agreement that PPC shall assume MWCDC's obligations under MWCDC's agreements with the City relating to EVP, with appropriate amendments to such other agreements to be entered into to document this change.

2. MWCDC and the City confirm their agreement that EVP shall be stewarded by PPC under the PPC Cooperation Agreement, and that the MWCDC Cooperation Agreement shall no longer be applicable to EVP, effective as of June 1, 2016.

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

ATTEST:

CITY OF PITTSBURGH

By: _____
William Peduto, Mayor

By: _____
James Griffin, Director, Parks and Recreation

By: Michael Gable 12/28/16
Michael Gable, Director, Department of Public Works

ATTEST:

MOUNT WASHINGTON COMMUNITY DEVELOPMENT CORPORATION

By: _____
Laura Guralnick, Acting Executive Director

The Pittsburgh Parks Conservancy, by its duly authorized officers, hereby confirms its agreement to the foregoing as of the date first above written in accordance with the Alliance Agreement dated June 1, 2016 between Mount Washington Community Development Corporation and Pittsburgh Parks Conservancy.

ATTEST:

THE PITTSBURGH PARKS CONSERVANCY

By: _____
Mary M. Cheever, President & CEO

EXAMINED BY: _____
Assistant City Solicitor

APPROVED AS TO FORM: _____
City Solicitor

COOPERATION AGREEMENT

MADE April 23, 2007.

BETWEEN

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

AND

MOUNT WASHINGTON COMMUNITY DEVELOPMENT CORPORATION, a non-profit corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 301 Shiloh Street, Pittsburgh, PA 15211 (hereinafter "MWCDC").

WHEREAS, the Department of Parks and Recreation and the Department of Public Works of the 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 newest park, the Grandview Scenic Byway Park (hereinafter referred to as the " Park"), is a major asset of the City requiring a high level of maintenance and management commensurate with its value and importance to the greater Pittsburgh area; and

WHEREAS, the MWCDC has offered to provide co-stewardship and planning assistance to the City and is currently working with area foundations, corporate and government sources for funding to restore and improve the natural habitat, create recreational opportunities and improve public enjoyment of the Park;

WHEREAS, the MWCDC and City wish to form an alliance that will complement and enhance the City's ability to operate, maintain and enhance the attractiveness of the Park.

NOW, THEREFORE, the parties hereto agree as follows

I. SCOPE OF COOPERATION:

A. 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 the Departments of Parks and Recreation and Public Works.

B. General Duties and Responsibilities

1. PROJECT FUNDING, APPROVAL & MANAGEMENT

a. The MWCDC shall provide suggestions to the City concerning the preservation, maintenance, improvement, protection and restoration of the Park.

b. The MWCDC shall obtain and apply revenues to fund capital projects and operational programming approved by the City for the Regional Parks (the "Projects"). The MWCDC 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 Park. Before beginning any solicitation, the MWCDC 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 MWCDC shall enter into a project agreement with the City complying with the terms herein (a "Project Agreement.") Each Project Agreement may also involve a lease or license and shall require prior approval of City Council.

d. With regard to all capital projects and other programs that are applicable to the Park, the MWCDC 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 MWCDC.

e. The MWCDC shall prepare and present to the City its Master Implementation Plan for the Park and shall thereafter provide updates thereto on an annual basis.

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f. The MWCDC shall be required to communicate to community-based organizations and property owners adjacent to the Park about any plans or activities affecting change therein. Specifically, MWCDC shall duly advertise and host public forums for any significant changes to the park. MWCDC shall confirm with the City's Director of City Planning in advance as to whether a particular change to the park is viewed by the City as being significant so as to require a public meeting.

2. OWNERSHIP BY CITY

a. Any improvements undertaken by the MWCDC pursuant to this Cooperation 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 maintenance of said improvements prior to the commencement of work on a Project.

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

3. AFFECT ON BARGAINING UNIT WORK & OTHER PROJECTS

a. The services, projects and professional advice which the MWCDC 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 MWCDC does or may replace or offset an existing City function in violation of a collective bargaining agreement, the City may request that the MWCDC immediately cease said work.

b. If MWCDC has undertaken a project pursuant to this Agreement that partially or wholly overlaps a project of another organization or person rendering a service to the City, the City will work with both the MWCDC and such organization to accomplish a solution of mutual

benefit to the City, the MWCDC, and the organization. However, at the City's request and upon sixty (60) days advance written notice from the City, the MWCDC shall cease such project work, or part thereof, that conflicts with or duplicates the project of such other organization or person.

c. The City and the MWCDC 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 MWCDC 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 MWCDC nor those of the City shall be deemed to be employees or agents of the other entity.

B. The City shall generally keep the MWCDC apprised of any plans it has formed regarding the Park. The City shall consider, but shall not be obligated to implement, any suggestions the MWCDC may make in regard to such plans.

II. <u>TERM OF AGREEMENT</u>: The term of this Agreement shall be for five (5) years. Subject to City Council approval, this Agreement may be renewed upon mutual written agreement of the parties.

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

IV. <u>MONITORING AND EVALUATION:</u> 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 program activity, in a form approved by City, as City may, from time to time, require. MWCDC 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 MWCDC 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 MWCDC 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 Park 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 MWCDC. City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any such Data. Data involving the MWCDC's solicitation of funds and other information with respect to MWCDC'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 MWCDC in the United States of America or in any other country. MWCDC hereby relinquishes, or shall cause to be relinquished, any and all copyrights and/or privileges to such Data without any additional payment to MWCDC therefore. MWCDC 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**: MWCDC 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 Public Works.

VII. **WORKER'S COMPENSATION**: For each Project Agreement, MWCDC 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 in conjunction with a signed Project Agreement, the MWCDC shall not conduct any on-site activity within the Regional Parks.

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

IX. ANTI-DISCRIMINATION: In each Project Agreement, MWCDC 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, MWCDC 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, MWCDC 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, MWCDC 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: MWCDC shall not assign this Agreement 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 Public Works shall be final.

XII. INSURANCE: The MWCDC 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 any Project Agreement. Upon receipt of such insurance, the MWCDC 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, which insurance shall be noncancellable, except upon thirty (30) days prior written notice to City:

	Individual Occurrence	Aggregate
General Liability		
Bodily injury, including death	$500,000.00	$1,000,000.00
Property damage	$ 50,000.00	$ 100,000.00
Automobile Liability	$500,000.00	$1,000,000.00
Worker's Compensation	$100,000.00	$ 500,000.00

All premiums shall be at the expense of MWCDC. All policies must be made on an occurrence basis. Claims-made policies are not acceptable. In the event that the term of

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[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

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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, 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. The City reserves the right to request additional and/or modified insurance requirements depending on the Project.

XIII. DEBARMENT: MWCDC 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 "A" 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, 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. In every Project Agreement, MWCDC 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 MWCDC or its employees, or property damage suffered by any person, including MWCDC 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 Project Agreement.

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 MWCDC 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. 769 of 2005, effective December 30, 2005.

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

ATTEST:

CITY OF PITTSBURGH

BY: _____
Mayor

BY: _____
Director, Parks and Recreation

BY: _____ 4-18-07
Director, Public Works

ATTEST:

MOUNT WASHINGTON COMMUNITY DEVEOPMENT CORPORATION

BY: _____

TITLE: Executive Director

TAX I.D. NO.

EXAMINED BY: _____
Assistant City Solicitor

APPROVED AS TO FORM: _____
City Solicitor

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

DEBARMENT AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared Ethan Raup who, being duly sworn according to law, and under penalty of perjury, deposes and says that neither he nor, to the best of his actual knowledge, information or belief, The Mount Washington Community Development Corporation 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).

Name:
Title: Executive Director, MWCDC

SWORN TO and subscribed
before me this 5th day of
April, 2007.

Notary Public

(SEAL)

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Janice P. Koczerzat, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires Mar. 10, 2009
Member, Pennsylvania Association of Notaries