

COOPERATION AGREEMENT

Made _____

By and Between

THE CITY OF PITTSBURGH, a municipal corporation of the Commonwealth of Pennsylvania (hereinafter “City”)

AND

The WESTERN PENNSYLVANIA CONSERVANCY, a non-profit corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 800 Waterfront Drive, Pittsburgh, PA 15222 (hereinafter “WPC”).

WHEREAS, the City of Pittsburgh’s Department of Mobility and Infrastructure is charged, among other responsibilities, with the regulation of public rights-of-way; and

WHEREAS, the public rights-of-way contain planters in various locations throughout the City that provide environmental and aesthetic benefits to the public; and

WHEREAS, these planters require selection and maintenance of plantings; and

WHEREAS, the WPC is guided by its mission as an organization that “protects and restores exceptional places to provide our region with clean waters and healthy forests, wildlife and natural areas for the benefit of present and future generations. The Conservancy creates and maintain green spaces and gardens, contributing to the vitality of our cities and towns and preserves Fallingwater, a symbol of people living in harmony with nature;” and

WHEREAS, the WPC has long worked on city properties including vacant lots, rights of way, institutional and non-profit sites, by raising money to finance and sustain various projects to enhance the local landscapes, including community flower gardens, tree planting, hanging baskets and street planters, storm water green infrastructure, and vacant lots; and

WHEREAS, the WPC wishes to supply and maintain the contents of these various planters in the public right-of-way and the City wishes to accept the WPC’s work subject the terms and conditions herein.

NOW, THEREFORE, the parties hereto agree as follows:

1. PROJECT WORK

The Conservancy agrees to perform the tasks listed in Exhibit A (the “Work”) at the locations listed in Exhibit B (the “Sites”) subject to the terms and conditions of this Agreement. For any volunteers performing any Work at the Sites, the Conservancy, prior to entry, shall require each volunteer to execute a waiver in the form attached hereto as “Exhibit A-1”. Conservancy shall provide evidence of such waivers to City upon request.

2. OWNERSHIP BY CITY

a. Any improvements undertaken by the Conservancy herein, including but not limited to, construction, landscaping, plantings, and installations, shall become the property of the City upon completion.

b. Nothing contained in this Agreement shall have the effect of relinquishing control and authority of City over the land and public right-of-way; nor shall this Agreement have the effect of transferring to the Conservancy any right, title, interest, license, or permit of City in and to the Sites. The Conservancy shall be responsible for applying for all applicable permits from the City’s Department of Mobility and Infrastructure (DOMI) prior to commencing any Work in the public right-of-way. DOMI will ultimately determine applicability for all permits and therefore can determine if projects do not have or need any applicable permits.

c. WPC understands and agrees that City is under no obligation to repair or replace any item provided by Work herein. In no event will City be responsible for repayment of any grant funds or otherwise associated with the Work hereunder. WPC understands and agrees that City may remove any aspect or component of completed work if deemed by City to be in its best interest.

3. AFFECT ON BARGAINING UNIT WORK

The Work which the WPC 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 WPC does or may replace or offset any existing City function in violation of a collective bargaining agreement, the City may request that the WPC immediately cease said work.

4. EMPLOYEE STATUS

Neither the employees of the WPC nor those of the City shall be deemed to be employees or agents of the other entity.

5. TERM OF AGREEMENT: The term of this agreement shall be for ten (10) years.

6. COST OF ACTIVITIES: The WPC'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 WPC for the performance of any Work hereunder.

7. MONITORING AND EVALUATION: All services provided under this Agreement shall be subject to monitoring and evaluation by City or its authorized representatives. WPC 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 WPC with respect to any Work 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 WPC for a period of three (3) years after the termination of this Agreement.

8. 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 shall belong solely and exclusively to City, and the 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 WPC. CITY shall have unrestricted authority to public, disclose, distribute and otherwise use, in whole or in part, any data developed or prepared under the Agreement.

c. Release of Copyrights/Use and Release of Data by WPC. No data developed or prepared in whole or in part under this Agreement shall be subject to copyright by WPC in the United States of America or in any other country. WPC shall also have access to the data developed pursuant to this Agreement, but it shall not release any data unless WPC obtains the prior written approval of the Director of the Department of Public Works.

9. CONFIDENTIALITY: WPC agrees not to divulge or release any information or data developed or obtained in conjunction with any aspect of its performance under this

Agreement, except to authorized CITY personnel or upon prior written approval of the City Solicitor.

10. WORKER'S COMPENSATION: WPC 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.

11. COMPLIANCE WITH LAWS: WPC shall comply with all laws, ordinances, resolutions, and administrative regulations that are applicable to any work performed under this Agreement. WPC shall promptly notify the City's Department of Public Works of any known vandalism or other illegal activities at the Project Site that come to its attention.

12. ANTI-DISCRIMINATION: WPC 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. WPC shall comply with the applicable provisions of the Pittsburgh Code, Title Six Conduct, Article V Discrimination, and any amendments thereto. WPC 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. WPC 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.

13. ASSIGNMENT: WPC shall not assign this Agreement or sub-contract any Work hereunder without the written consent of the City.

14. INTERPRETATION: In the event of any dispute as to the interpretation of this Agreement, the decision of the City's Director of the Department of Mobility and Infrastructure shall be final

15. INSURANCE: WPC shall maintain insurance in the amount specified in this Section and shall keep the City as an additional insured on all such policies 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 and auto 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	\$ 500,000	\$1,000,000
Worker's Compensation	Statutory Limits	

All premiums shall be at the expense of WPC and, if applicable, any 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, WPC 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 Mobility and Infrastructure.

16. DEBARMENT: WPC 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. A certification of compliance with this Section is attached hereto as **Exhibit D** and is incorporated into and made a part of this Agreement.

17. GOVERNING LAW: This Agreement shall, in all respects, be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

18. INDEMNITY: WPC 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 WPC of any services under this Agreement; any act, error or omission of WPC or of any agent, employee, licensee, invitee, contractor, subcontractor, or volunteer of WPC; and any breach by WPC of any of the terms conditions or provisions of this Agreement

20. AMENDMENT AND TERMINATION: A. 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.

B. Either party may terminate this Agreement without penalty or cause upon ninety (90) days prior written notice to the other party. Upon notice of termination by the City, WPC must remove any personal assets from Sites within thirty days including but not limited to signs, planters, erosion control or watering devices, and other gardening equipment. If such assets have not been removed within the timeframe given, City may remove such items at WPC's expense. WPC's obligation hereunder shall survive termination of this Agreement.

21. HOME RULE CHARTER This agreement is subject to the provisions of the Pittsburgh Home Rule Charter and the liability of the City hereunder is limited to zero dollars.

22. AUTHORIZING RESOLUTION. This Agreement is entered into by CITY pursuant to Resolution No. ____ of 2021, effective _____, 2021.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

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

CONSERVANCY
(Western Pennsylvania Conservancy)

By: _____
Title: Director

CITY OF PITTSBURGH

By: _____
Mayor

By: _____
Director, Department of Public Works

EXAMINED BY: _____
Assistant City Solicitor

APPROVED AS TO FORM: _____
City Solicitor

COUNTERSIGNED: _____
City Controller

Exhibit A **Project Work**

A general timeline for seasonal maintenance in the Western Pennsylvania Conservancy “Community Flower Garden” program, which would include DOMI related projects, is as follows:

- March – April: Perennial Preparation (WPC staff) includes pruning, weeding, litter removal, etc.
- May – September: Planting and Summer Maintenance includes weeding, litter removal, mulching, etc. Frequency depends on need (community garden stewards)
- October: Fall Clean-up includes WPC working with volunteers

Types of right-of-way infrastructure and landscaping elements regulated by DOMI:

COMMUNITY GARDENS: The Western Pennsylvania Conservancy Gardens and Greenspace Department follows a yearly schedule of annual flower garden installation and maintenance for approximately 130 community gardens in order to fulfill its mission of ensuring healthier and greener environments throughout 20 counties in Western Pennsylvania. WPC staff will prepare and install these community gardens for the May-June planting season. This includes annual and perennial bed preparation, material delivery, and additional maintenance whenever necessary such as irrigation, mulching, weeding, and other tasks. Much of this work is performed with the assistance of volunteers from the community that WPC coordinates.

NEIGHBORHOOD TRAFFIC CIRCLES: Neighborhood traffic circles plants must be maintained such that mature height does not exceed 24" or go beyond the extents of the circles. Similarly, any landscaping in the center of the roadway (traffic circles, pedestrian refuge islands, etc.) should not exceed 24" or extend into driving lanes or pedestrian crosswalks. Landscaping provided along the sides of the roadways, such as planters in bump-outs, are not restricted by height limits, but similarly should not extend into driving lanes or pedestrian crosswalks.

STREET PLANTERS: The Western Pennsylvania Conservancy is the project manager for the “City of Flowers” street planter project, and oversees the design, planting, installation and ongoing maintenance for all street planters.

**EXHIBIT A-1 WAIVER:
PARTICIPANT RELEASE TO HOLD CITY HARMLESS**



Location of Work: _____ **Date of Work:** _____

For and in consideration of the City providing an opportunity for you to contribute to the public good through a maintenance of plantings in the public right-of-way ("Project") organized by the **Western Pennsylvania Conservancy**, I hereby agree to the following terms and conditions regarding my participation:

I hereby **RELEASE** the City of Pittsburgh, its officers, agents, or employees (hereinafter referred to as the "Releasees") and hold the Releasees harmless from any and all liability, claims, demands, actions and causes of action whatsoever arising out of my participation in Project activities. **This RELEASE clause is intended to remain valid in perpetuity and shall include all possible claims of negligence that could be asserted against the Releasees by me.**

I understand that the City may take photographs or videotape at any point during the clean-up. I hereby grant the City the right to use my image, name, clean-up participation, face likeness, voice and appearance at the clean-up in advertising, press releases, stories, text, articles, for other promotions, and/or for use on the City's website without reservation or limitation. I waive any right to inspect or approve any such use by City containing my image and understand that I will receive no monetary compensation for the use of such photographs or images.

I hereby further agree that this Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania and that if any portion of this Agreement is deemed invalid, the balance shall remain in full force and effect.

I/we have read and fully understand this Release and intend to be bound by it. Before witness, and intending to

be legally bound, I/we set my hand and seal this _____ day of _____, 2020.

Name of Participant: _____ *(Please print)*

Email _____ Phone _____

Street Address _____ City _____ Zip Code _____

EXHIBIT B Project Sites

Garden Name (All within Allegheny County, City of Pittsburgh)	Status	Year Started	Neighborhood	Lot Number	Landownership
Birmingham Bridge & East Carson Street	Active	1989	Southside Flats	12-G-220	City of Pittsburgh RoW
Grant Street at First Avenue	Active	1991	Central Business District	near 2-J-201	City of Pittsburgh RoW
Faith's Garden - Penn Avenue & Liberty Avenue at Gateway Station	Active	2000	Central Business District	near 1-D-12	City of Pittsburgh RoW
Frankstown Avenue & Bennett Street	Active	1993	Homewood West	125-H-300	City of Pittsburgh
General Robinson Street & Anderson Street	Active	2000	North Shore	8-H-p2	City of Pittsburgh RoW
11th Street & East Carson Street	Active	1999	Southside Flats	3-G-00142	City of Pittsburgh RoW
40th Street Bridge at Foster Street	Active	1998	Central Lawrenceville	49-A-350	City of Pittsburgh RoW
Allegheny River Boulevard & Washington Boulevard	Active	1995	Highland Park	near 122-K-4	City of Pittsburgh RoW
Beechwood Boulevard & Reynolds Street	Active	1992	Point Breeze	126-A-12	City of Pittsburgh
Boulevard of the Allies at Parkview Avenue	Active	1989	Central Oakland	28-S-140 and 28-S-1	City of Pittsburgh RoW
East Carson Street & Sarah Street	Active	1993	Southside Flats	29-N-140	URA, City of Pittsburgh RoW
2000 Centre Avenue – Pittsburgh Police Department Zone 2	Active	1988	Crawford-Roberts	10-N-357	City of Pittsburgh
Centre Avenue & Herron Avenue	Active	1993	Terrace Village	27-J-501	City of Pittsburgh
Forbes Avenue & South Dallas Avenue	Active	2000	Squirrel Hill South	near 127-B-1	City of Pittsburgh RoW
Greeley Street & Josephine Street	Active	1999	Southside Slopes	13-F-216-0-2	City of Pittsburgh RoW
Homer Street & Walz Street	Active	2000	Spring Hill-City View	47-K-1	City of Pittsburgh
Brighton Road & North Avenue	Active	1988	Allegheny West	near 8-B-150	City of Pittsburgh RoW
Noblestown Road & Durbin Street	Active	1996	Oakwood	68-s-35	City of Pittsburgh RoW
McKees Rocks Bridge at Route 65	Active	1988	Brighton Heights	near 75-F-140	City of Pittsburgh RoW
North Linden Avenue & Thomas Boulevard	Active	1983	Point Breeze North	near 125-P-87	City of Pittsburgh RoW
North Linden Avenue & McPherson Boulevard	Active	1983	Point Breeze North	near 125-P-20	City of Pittsburgh RoW
Lincoln Avenue & Frankstown Avenue	Active	1995	Larimer	125-A-98, 125-A-92,	City of Pittsburgh (125-A-98), School
Penn Avenue & Friendship Avenue	Active	1994	Bloomfield	near 49-M-154	City of Pittsburgh RoW
30th Street & Brereton Street	Active	1992	Polish Hill	25-R-106 and 25-M-	City of Pittsburgh
South Dallas Avenue & Wilkins Avenue	Active	1991	Squirrel Hill North	127-B-1	City of Pittsburgh RoW
Forbes Avenue at Carnegie Museum	Active	1982	North Oakland	27-S-150-0-3	City of Pittsburgh RoW
South 18th Street - Riverfront Park Circle	Active	1999	Southside Flats	12-B-110	City of Pittsburgh
Merrimac Street & Grandview Avenue	Active	1993	Mount Washington	1-N-219	City of Pittsburgh
Highland Park Bridge at Butler Street	Active	1989	Highland Park	near 121-H-200-9	City of Pittsburgh RoW
One Heinz Street - Sarah Heinz House	Active	1999	Troy Hill	24-P-120	City of Pittsburgh RoW
Butler Street near Sawyer Street	Active	1998	Upper Lawrenceville	120-J-300	City of Pittsburgh RoW
Columbus Avenue & Fulton Street	Active	1992	Manchester	near 22-F-170	City of Pittsburgh RoW
Chestnut Street & East Ohio Street	Active	1991	East Allegheny	24-P-4	City of Pittsburgh RoW
Liberty Avenue & Commonwealth Place – The Point	Active	1989	Central Business District	1-G-162	Commonwealth of PA, City RoW
Greenfield Avenue & Irvine Street	Active	1991	Hazelwood	29-S-202	City of Pittsburgh RoW, ALCOSAN
Hazelwood Avenue, Beechwood Boulevard & Saline Street	Active	1996	Squirrel Hill South	88-F-116	City of Pittsburgh
Cedar Avenue & North Canal Street	Active	1997	Allegheny Center	8-B-150	City of Pittsburgh
Fifth Avenue & Kirkpatrick Street	Active	1997	West Oakland	11-L-49 to 11-L-54	City of Pittsburgh
Morrowfield Avenue, Tilbury Street, & Beechwood Boulevard	Active	1995	Squirrel Hill South	near 87-M-196	City of Pittsburgh RoW
Spring Garden Avenue & Vinial Street	Active	1996	Spring Garden	near 24-F-87	City of Pittsburgh RoW
Reynolds Neighborway - Reynolds & Gettysburg bump outs/planters (no traffic circle)		2021	Point Breeze		City of Pittsburgh RoW
Boomfield Friendship Neighborway: Coral & Stratford		2021	Bloomfield Friendship		City of Pittsburgh RoW
Boomfield Friendship Neighborway: Coral & Fairmount		2021	Bloomfield Friendship		City of Pittsburgh RoW
Boomfield Friendship Neighborway: Coral & Atlantic		2021	Bloomfield Friendship		City of Pittsburgh RoW
Boomfield Friendship Neighborway: Coral * Pacific		2021	Bloomfield Friendship		City of Pittsburgh RoW
N Euclid Neighborway: Euclid & Callowhill		2021	Highland Park		City of Pittsburgh RoW
N Euclid Neighborway: Euclid & Elgin		2021	Highland Park		City of Pittsburgh RoW
N Euclid Neighborway: Euclid & Hampton		2021	Highland Park		City of Pittsburgh RoW
N Euclid Neighborway: Euclid & Rippey		2021	Highland Park		City of Pittsburgh RoW

Exhibit C: Insurance Certificates

EXHIBIT D

CERTIFICATION OF DEBARMENT

I, _____, the undersigned and duly authorized representative, hereby certify that to the best of my actual knowledge, information or belief, neither _____ nor any affiliated individual is prohibited from entering a bid or participating in a City of Pittsburgh contract by reason of disqualification as set forth in Pittsburgh Code §161.22(b).

Signature

Title

Date