

COOPERATION AGREEMENT

MADE _____, 2024

BETWEEN

The *CITY OF ALLENTOWN*, a Home Rule Municipality and City of the Third Class of the Commonwealth of Pennsylvania (“**City**”) with its principal place of business located at 435 Hamilton St., Allentown, PA 18101-1699,

AND

THE ALLENTOWN PARKNERSHIP, a non-profit corporation, organized and existing under the laws of the Commonwealth of Pennsylvania (“**Parknership**”), with its principal place of business located at 600 Hamilton Street, Tower 6, Suite 310, Allentown, PA 18101.

WHEREAS, the City’s Department of Parks and Recreation, through its Director and subject to the supervision of the Mayor, is responsible for the care, maintenance, management, security, and control of all lands, buildings, structures, and recreational activity in the City’s park system. The City parks included under this Cooperation Agreement (“**Agreement**”) are more specifically identified in the addendum attached hereto as “Exhibit A” and are hereinafter referred to as the “**Parks**”. This list may be expanded or reduced from time to time through City Council Resolution and a mutually agreed upon written amendment between both parties;

WHEREAS, the City’s Parks are major assets of the City requiring a high level of maintenance and management commensurate with their value and importance to the greater Allentown area, and are in need of long-range planning and funds to implement capital improvement projects, enhanced maintenance, and programming for their future stability and enhancement;

WHEREAS, the Parknership is a 501(c)(3), Pennsylvania non-profit organization whose principal purpose is the equitable enhancement of the City’s park system in cooperation with and for the City and community, and to raise money to finance capital improvement projects, enhanced maintenance, provide programs and special events, coordinate volunteer activity and foster greater appreciation for the Parks;

WHEREAS, to achieve the parties’ shared goal of improving and enhancing the beauty and utility of the City’s Parks, the Parknership 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, improve, and enhance the attractiveness of the Parks;

WHEREAS, the City Council of the City has duly and validly authorized the execution and delivery of this Agreement by the City pursuant to Resolution _____ of _____, effective _____, attached hereto as “Exhibit B”.

NOW, THEREFORE, incorporating the forgoing recitals as a material part hereof, and in consideration of the mutual covenants and agreements hereinafter set forth and for other good and

valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

I. PARKNERSHIP'S AND CITY'S DUTIES AND RESPONSIBILITIES:

For the purposes of this Agreement, City approval or notice to the City shall be accomplished by written approval of, or notice to, the Mayor and the Directors of the Department of Parks and Recreation.

1. PROJECT FUNDING, APPROVAL & MANAGEMENT

- a. The Parknership shall serve as the City's unique and primary private non-profit collaborator working to improve the City's park system, including its physical condition, increased use, and enhanced programming, by, *inter alia*, (i) developing and prioritizing Park-related projects and associated budget(s), in collaboration with the City, to enhance the entirety of the City's park system to provide benefits to all of the City's communities; (ii) undertaking capital improvement projects, enhanced maintenance, programming and special events in the City's Parks; (iii) regularly communicating its activities with the Mayor's office and senior staff of the City's Department of Parks and Recreation; (iv) subject to the terms and conditions hereof, using the City's logo and other branded marks when promoting meetings, projects, events and other similar activities with respect to the City's Parks; (v) providing professional advice to the City concerning the preservation, maintenance, improvement, protection and restoration of the Parks and programming activities with respect to the Parks; and (vi) at Council's or the Mayor's request, appearing before Council during the annual operating and capital budget proceedings to comment on the City's proposed operating and capital budgets as they relate to the Parks.
- b. The Parknership shall obtain and apply certain revenues to fund capital improvements, enhanced maintenance, and programming managed by the Parknership and approved by the City for the Parks (the "**Projects**"), and shall apply other revenues to fund, *inter alia*, its internal operations. The Parknership shall solicit funds from private donors and government donors and shall expend those funds for the principal purpose of preserving, restoring, and improving the Parks, and educational and cultural activities related thereto. Each party shall coordinate and collaborate with, and provide reasonable assistance to, the other party with respect to all private and public sector grant applications submitted by the City or the Parknership involving the preservation, restoration, or improvement of the City's park system ("**Park Grant Applications**"), and the City hereby agrees to allow City employees' time to be used by the Parknership as a match for Park Grant Applications, when applicable. Without limiting the

generality of the foregoing, each party agrees that, before submitting any Park Grant Application, it shall inform the other party, and the parties shall mutually agree upon the appropriate party(ies) to serve as applicant of record and a proposed course of action that increases the opportunity for grant funding. For the avoidance of doubt, the City shall serve as applicant of record if such action would increase the opportunity for grant funding. For all Projects, the City agrees to execute, acknowledge, and deliver any and all such further documents and instruments as may reasonably be requested by the Parknership to finance and effectuate a Project, and to obtain governmental approvals for such Project, including, without limitation, official letters of support for the Project and proof of the City's title to and control of the applicable Project site, and the Parknership's right to build or construct capital improvements on said Project site. The Parknership further agrees to inform the City on a regular basis of its planned and actual expenditures and disbursements on any Projects.

- c. The Parknership's solicitation of funds is independent from the Harry C. Trexler Trust, and distinct from the City's operating and capital budgets. The Parknership shall not take any action to reduce in any way the annual funds provided by the Harry C. Trexler Trust to the City of Allentown for the "improvements, extension and maintenance of all its Parks" per Harry C. Trexler, deceased.
- d. The City intends that this Agreement shall serve to enhance the City's existing efforts to maintain and improve all City Parks. To that end, the City shall not include Parknership fundraising information nor information pertaining to Parknership Projects, programs or services in the City's annual operating or capital budgets for its park system or rely on actual or anticipated Parknership fundraising, Projects, programs or services when preparing the annual operating and capital budgets for its park system.
- e. For each Project involving construction of capital improvements to the City's Parks, the Parknership shall enter into a written agreement, lease, license, commitment, undertaking and/or other legally binding arrangement with the City complying with the terms herein (a "**Project Agreement**"). Projects involving programming activities and/or events in the City's Parks shall comply with the then-applicable guidance of the City. For the avoidance of doubt, formal written agreements between the City and the Parknership shall not be required to implement Parknership-sponsored programming activities and/or events unless specifically mandated by City rules, regulations and/or guidance generally applicable to third parties sponsoring programming activities or events in the City's Parks. Any Project involving construction of capital improvements to the City's Parks that is outside the scope of a Plan (as defined below) approved by City

Council shall adhere to the protocols identified in “EXHIBIT C – GENERAL PROJECT PROTOCOL” unless otherwise agreed to by the parties. All Projects require the approval of the City. With the exception of Projects involving capital improvements to the City’s Parks that fall outside the scope of a Plan (as defined below) approved by City Council, no Project shall require an additional authorizing resolution of City Council; this Agreement shall serve as the approving resolution for such Projects. For the avoidance of doubt, an additional authorizing resolution of City Council is only required to approve Projects involving capital improvements to the City’s Parks that fall outside the scope of a Plan (as defined below) approved by City Council.

- f. Regarding all Projects, the Parknership shall have final authority over the actual disbursement of its own funds; however, such authority does not supersede the City’s right of final approval over all Projects prior to execution of a Project Agreement.
- g. Within twelve (12) months after the later of (i) the date on which the Parknership’s Executive Director is appointed, or (ii) the date of the first official meeting of the duly appointed Board of Directors of the Parknership succeeding the initial Board, the parties shall jointly prepare and present to City Council a proposed five (5) year comprehensive plan (“**Plan**”) encompassing planned capital improvements, operational improvements, and programming for the City’s park system for Council’s review and approval. To this end, the City hereby agrees to ensure that the City’s Department of Parks and Recreation staff and other members of the City government, including but not limited to the Mayor’s office, economic development, public works, public safety and planning, are available to consult and collaborate with Parknership staff on the Plan and pending and future Projects. Additionally, the City and the Parknership hereby agree to schedule and attend monthly and as-needed meetings consisting of Parknership staff, the Mayor or his/her designee, the Director of the Department of Parks and Recreation, the City Grants Manager (if any), and any other relevant City Department representatives to provide for an ongoing forum during which the parties shall update and collaborate with each other on the progress of the Plan, current Projects, proposed and potential grants, and concepts for future Projects.
- h. The Parknership may establish and manage projects that benefit the Parks, such as rehabilitation of land and facilities, enhanced maintenance, sightseeing tours, nature excursions, design of recreational sites, and educational and cultural activities.
- i. Programming decisions for activities in the Parks shall be made in consultation with the City. All Projects involving programming activities

managed by the Parknership must comply with the then-applicable City requirements for activities held in the Parks.

- j. Permits. The Parknership may utilize expedited City procedures when obtaining any permits that are necessary for Projects and special events conducted by the Parknership, and the Parknership will be accorded preferential prices and treatment by the City, in each case, to the extent permissible under applicable law. Otherwise, the Parknership will utilize normal City processes for obtaining such permits.
- k. The Parknership shall make its best efforts to communicate, via social media and internet advertising, to community-based organizations and community stakeholders about any current or imminent Parknership Projects. Additionally, prior to the Parknership's commencement of any Project involving capital improvements, the Mayor's Office shall be consulted and involved in the planning process in regard to public meetings, existing community groups and engagement. The Parknership and the Mayor's Office, or the Mayor's Office designee, shall agree on a standard process for such consultation and involvement.

2. OWNERSHIP BY CITY

- a. Any structures, buildings, improvements (other than temporary or portable fixtures, equipment, and other assets), landscaping and plantings (collectively, "**Improvements**") erected on, or permanently affixed to, the City's Parks in connection with any Project shall become the property of the City upon completion of the applicable Project in conformity in all material respects with the relevant Project Agreement (hereinafter, "**Project Completion**"). The City shall maintain in good repair and secure the protection of any such Improvements on and following the date of Project Completion. Neither the Parknership's construction of Improvements, nor provision of services in connection with this Agreement, shall obviate or affect the obligation of the City to maintain and secure its park system, including any Improvements, in a condition and manner similar to the standards maintained and recognized in comparable quality urban park systems, so as to contribute to the beauty and quality of life in the City of Allentown, and the City hereby agrees to maintain and secure its park system in accordance with such standards. Mutually agreeable maintenance agreements, if applicable, shall be included in the relevant Project Agreement; *provided, however*, that under no circumstance shall the Parknership be required to perform, contribute any financing toward, or otherwise assume responsibility for, the following maintenance or security obligations during the term of this Agreement or any Project Agreement: (i) Lawn Care - mowing, aeration, reseeding, top dressing, weed control; (i) Fertilization - fertilization of lawns, trees, shrubs, or floral plantings; (ii)

Irrigation - automated or manual watering of lawns, trees, shrubs, and floral plantings; (iii) Disease and Insect Control - prevention, correction, and management of disease and/or insects in lawns, trees, shrubs, floral plantings; includes pest control in and around Park buildings; (iv) Hardscape Surfaces - snow removal, sweeping, blowing, and power washing of walkways, parking lots, tennis courts, dugouts, and any other hardscape surfaces in Parks and Park facilities; (v) Repair - maintenance required to Park facilities or amenities; (vi) Inspection - visual and physical examination of a Park facility, equipment, or amenity to ensure compliance, safety, and proper operation; (vii) Floral Planting - mulching/strawing, watering, fertilizing, disease control, dead-heading, cultivating, weeding, planting, or removal of ornamental flowering bedding plants; (viii) Cleaning - sweeping, litter removal, sanitizing and stocking of supplies in restrooms, vandalism and graffiti removal; (ix) Special Features - maintenance of ball fields and equipment or facilities such as drinking fountains, flag poles, soccer goals, tennis, volleyball, and basketball netting, picnic tables, signs, litter receptacles; (x) Playgrounds – high frequency inspection and maintenance of play equipment; (xi) Security – frequent patrolling and monitoring of the City’s park system to reduce crime and enforce applicable laws; and (xii) Miscellaneous – other complementary tasks or services for maintaining the park system.

- b. Nothing contained in this Agreement shall have the effect of relinquishing to the Parknership the ultimate control and authority of the City over the Parks; nor shall this Agreement have the effect of transferring to the Parknership any right, title, or interest of the City in and to the Parks.
- c. Unless specified in an individual Project Agreement, nothing contained in this Agreement shall have the effect of relinquishing to the Parknership any authority for maintenance and security responsibilities in the Parks; such responsibilities shall be borne by the City throughout the term hereof.
- d. For every completed Improvement, the City agrees to indemnify, defend, save and hold the Parknership harmless from any and all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims and demands, including reasonable attorneys fees, arising out of the breach, negligence, or willful misconduct of the City, any of its officers, agents and employees in the required, post-completion maintenance of the Improvement. The indemnification must be identified in the relevant Project Agreement for each Improvement. If the indemnification is not included in the relevant Project Agreement, the City shall not provide indemnification for the Improvement. The City may require additional information or required tests, for example, relevant safety ratings and/or certifications for the Improvement, in the Project Agreement. All additional

requirements must be met in all material respects by the Parknership to qualify for indemnification. The City shall not indemnify the Parknership for any claims based on the negligence of the Parknership, any of its officers, agents or employees. Any payment made by the City to the Parknership under this Section shall be net of any insurance proceeds realized by, and paid to, the Parknership in respect of the indemnification claim.

3. EFFECT ON BARGAINING UNIT WORK & OTHER PROJECTS

- a. The services, Projects, and professional advice which the Parknership 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 the City in violation of any collective bargaining agreement. In the event that the City determines that any work of the Parknership does or is reasonably likely to replace or offset an existing City function in violation of a collective bargaining agreement, the City may request that the Parknership immediately cease said work.
- b. If the Parknership has undertaken a Parks Project pursuant to this Agreement, which partially or wholly overlaps an already existing Parks project of another organization or person rendering a service to the City, in violation of any collective bargaining agreement, the City will work with both the Parknership and such organization to accomplish a solution of mutual benefit to the City, the Parknership, and the organization. However, at the City's request and upon sixty (60) days advance written notice from the City, the Parknership shall cease such Project, or part thereof, that conflicts with or duplicates the already existing project of such other organization or person, in violation of any collective bargaining agreement.
- c. The City and the Parknership 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 the City employees, the City will give notice to the bargaining unit representative. The City will either request that the Parknership 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 Parknership 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. RIGHT-TO-KNOW

- a. The Parknership understands that this Agreement and records related to or arising out of this Agreement are subject to requests made pursuant to the Commonwealth of Pennsylvania's Right to Know Law ("**RTKL**").
- b. If the City needs the Parknership's assistance in any matter arising out of the RTKL related to this Agreement, the City shall notify the Parknership using the legal contact information provided in this Agreement. The Parknership, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the City.
- c. Upon written notification from the City that it requires the Parknership's assistance in responding to a request under the RTKL for information related to this Agreement that may be in the Parknership's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("**Requested Information**"), the Parknership shall:
 - i. Provide the City, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Parknership's possession arising out of this Agreement that the City reasonably believes is Requested Information and may be a public record under the RTKL; and
 - ii. Provide such other assistance as the City may reasonably request, in order to comply with the RTKL with respect to this Cooperation Agreement.
- d. If the Parknership considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Parknership considers exempt from production under the RTKL, the Parknership must notify the City and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of Parknership explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The City will rely upon the written statement from the Parknership in denying a RTKL request for the Requested Information unless the City determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the City determine that the Requested Information is clearly not exempt from disclosure, Parknership shall provide the Requested Information within five (5) business days of receipt of written notification of the City's determination. Notwithstanding

anything herein to the contrary in this Article I, Section 5, the Parknership retains the absolute right to seek extensions and file objections as may be permitted or as may be available under applicable law.

- f. Subject to subsections (g) and (h) of this Article I, Section 5, if the Parknership fails to provide the Requested Information within the time period required by these provisions, the Parknership shall indemnify and hold the City harmless for any damages, penalties, costs, detriment or harm, including attorney's fees, that the City incurs as a result of the Parknership's failure, including any statutory damages assessed against the City.
- g. The City will reimburse the Parknership for costs associated with complying with the provisions of this Article I, Section 5 only to the extent allowed under the fee schedule established by the Office of Open Records.
- h. The Parknership may file a legal challenge to any City decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts; however, the Parknership shall indemnify the City for any attorney's fees and costs incurred by the City as a result of such a challenge and shall hold the City harmless for any damages, penalties, costs, detriment or harm that the City incurs as a result of the Parknership's actions, including any statutory damages assessed against the City regardless of the outcome of such legal challenge. As between the parties, Parknership agrees to waive all rights or remedies that may be available to it as a result of the City's disclosure of Requested Information pursuant to the RTKL.
- i. The Parknership agrees to comply with any final decision of either the Office of Open Records or the Pennsylvania Unified Judicial System concerning RTKL related matters.
- j. The Parknership's duties relating to the RTKL are continuing duties that survive the expiration of this Agreement and shall continue as long as Parknership has Requested Information in its possession.

6. CITY AND PARKNERSHIP EVENTS

- a. The City’s Department of Parks and Recreation currently facilitates monthly meetings concerning upcoming events at the City’s Parks (“**Monthly Events Meetings**”). During the term of this Agreement, the City shall continue to facilitate, and invite Parknership staff to attend, such Monthly Events Meetings, and the Parknership shall ensure that its staff attends such meetings. The Monthly Events Meetings shall serve as an on-going forum during which the parties collaborate with each other with respect to the scheduling and planning of events sponsored by the City, the Parknership and/or third parties at the City’s Parks. Nothing in this Agreement shall limit the City’s ability to conduct events at the Parks, but the City shall give the Parknership as much notice as reasonably possible in advance of any such City-sponsored event. The City shall consider, but shall not be obligated to implement, any suggestions the Parknership may make regarding pending City-run events.
- b. On or prior to January 15th of each year of the term of this Agreement, the Parknership shall submit to the City a schedule of proposed Parknership-sponsored events at the Parks for the upcoming year, together with a general description of each proposed event (“**Parknership Event Schedule**”). The Parknership shall obtain the City’s prior written consent to conduct each event set forth in the Parknership Event Schedule (such consent not to be unreasonably withheld, conditioned or delayed). To the extent permissible under applicable law, the City shall accord all events proposed by the Parknership preferred status, except in the event of prior conflicting events or venue unavailability.

II. TERM OF AGREEMENT:

The term of this Agreement shall be for the longer of ten (10) 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 for additional ten (10) year terms upon mutual written agreement of the parties.

III. COST OF ACTIVITIES:

The Parknership’s work and activities, as well as those of any of its agents, shall be performed at no cost or fee to the City unless otherwise noted in a separate Project Agreement. The City shall have no obligation to compensate the Parknership for the performance of any services hereunder unless otherwise noted in a separate Project Agreement.

IV. MONITORING AND EVALUATION:

All implemented and completed Projects involving capital improvements (“**Ongoing Capital Projects**”) under this Agreement shall be subject to monitoring and evaluation by the City or its authorized representatives. The Parknership shall supply the City with written reports on Ongoing

Capital Project activity, in a form approved by the City, as the City may, from time to time, reasonably require. The Parknership shall provide the City with such additional information and data regarding Ongoing Capital Projects as may be periodically required by Federal or State authorities, or by the City itself. Authorized representatives of the City shall have access to the books and records maintained by the Parknership with respect to any Ongoing Capital Projects provided to the 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 regarding Ongoing Capital Projects, but expressly excluding any donor, gift, in-kind contributions, personnel, salary and other proprietary information of the Parknership. All such books and records shall be preserved by the Parknership for a period of three (3) years after the completion of the relevant Ongoing Capital Project.

V. RIGHTS IN DATA; COPYRIGHTS; DISCLOSURE; INTELLECTUAL PROPERTY:

1. Definition. The term “**Data**” as used in this Agreement includes and is limited to written reports, studies, drawings, or other graphic, electronic, chemical, or mechanical representations regarding an Ongoing Capital Project. The term “**Data**” expressly excludes any Confidential Information (defined below) of the Parknership.
2. Rights in Data. All Data developed by either of the parties pursuant to this Agreement shall belong solely and exclusively to the 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 the Parknership. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any such Data.
3. Copyrights. No Data, as defined above, shall be subject to copyright by the Parknership in the United States of America or in any other country. The Parknership hereby relinquishes, or shall cause to be relinquished all copyrights and/or privileges to such Data without any additional payment to the Parknership therefore. The Parknership agrees at the request of the City to include copyright notice indicating the date of publication and identifying the City as the owner in any such Data.
4. No Transfer of Rights. Neither party shall acquire any right, title or interest in any tangible or intangible property, patent, copyright, trademark or other Intellectual Property of the other party, except as otherwise expressly provided in this Agreement. For purposes hereof, “**Intellectual Property**” means any patent, copyright, registered design, unregistered design right, trade mark, trade secret or other industrial or intellectual property owned or used by either party, together with any current or future applications for any registerable items of the foregoing.
5. Use of City Intellectual Property. Notwithstanding anything herein to the contrary, subject to the terms and conditions of this Article V, Section 5, the City hereby

grants to the Parknership during the term of this Agreement, a non-exclusive, royalty-free, non-transferable, non-sublicensable license to use the City's logo and other Intellectual Property in connection with: (i) Parknership Projects, events, meetings and other similar Parknership-sponsored activities with respect to the City's Parks; (ii) the promotion of the Parknership and identification of the Parknership as the unique, primary non-profit collaborator of the City with respect to the Parks; and (iii) the solicitation of funds by the Parknership for the City's park system (collectively, the "**Permitted Uses**"). The Parknership shall only use the City Intellectual Property in connection with the Permitted Uses; shall comply with any guidelines and specifications communicated by the City to the Parknership regarding the style, appearance, and usage of the City's logo and other Intellectual Property; and shall ensure that all uses of such City Intellectual Property comply with all applicable laws. For the purpose of monitoring the Parknership's compliance with the requirements set forth in this Article V, Section 5, at the City's reasonable request, the Parknership shall submit to the Mayor's office a representative sample of any use of the City Intellectual Property by the Parknership for the City's review and approval, whereupon the City shall have five (5) business days to approve or deny the Parknership's representative sample (and the failure of the City to respond to the Parknership within such five (5) business day period shall be deemed an approval of the Parknership's representative sample). Approval (or deemed approval) of any use by the Parknership of the City Intellectual Property, once given by the City, will continue in effect, without need for future approval, so long as the Parknership's use of the City Intellectual Property continues to be substantially consistent with such previously approved use. The Parknership's license to use the City Intellectual Property shall remain in force for the duration of this Agreement. Upon the expiration or early termination of this Agreement, the Parknership shall discontinue all use of the City Intellectual Property.

VI. CONFIDENTIALITY

1. Confidentiality Obligations. Each party (the "**Receiving Party**") acknowledges that in connection with this Agreement it will gain access to Confidential Information of the other party (the "**Disclosing Party**"). As a condition to being provided with Confidential Information, the Receiving Party shall: (a) not use the Disclosing Party's Confidential Information other than as necessary to exercise its rights and perform its obligations under this Agreement; and (b) maintain the Disclosing Party's Confidential Information in confidence and, subject to Article I, Section 5 and this Article VI, Section 2, not disclose the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, provided, however, the Receiving Party may disclose the Confidential Information to its employees, agents and contractors who (i) have a need to know the Confidential Information for purposes of the Receiving Party's performance, or exercise of its rights concerning the Confidential Information, under this

Agreement; and (ii) have been apprised of this restriction. The Receiving Party shall use reasonable care, at least as protective as the efforts it uses for its own confidential information, to safeguard the Disclosing Party's Confidential Information from use or disclosure other than as permitted hereby.

2. Exceptions. If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall: (a) provide prompt written notice to the Disclosing Party so that the Disclosing Party may seek a protective order or other appropriate remedy or waive its rights under Article VI, Section 1; and (b) disclose only the portion of Confidential Information that it is legally required to furnish.
3. For purposes of this Agreement, "**Confidential Information**" means all non-public, proprietary, or confidential information of the Disclosing Party, in oral, visual, written, electronic, or other tangible or intangible form, whether or not marked or designated as "confidential," and all notes, analyses, summaries, and other materials prepared by the Receiving Party that contain, are based on, or otherwise reflect, to any degree, any of the foregoing, including, without limitation, (i) information regarding the solicitation of funds by the Parknership and other information with respect to the Parknership's donors, (ii) information regarding gifts and in-kind contributions to the Parknership, and (iii) personnel information, organizational and financial information pertaining to corporate actions, directors, administration and management of either party; provided, however, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of the Receiving Party's act or omission; (b) is obtained by the Receiving Party on a non-confidential basis from a third party that was not legally or contractually restricted from disclosing such information; (c) was in the Receiving Party's possession, as established by documentary evidence, before the Disclosing Party's disclosure hereunder; or (d) was or is independently developed by the Receiving Party, as established by documentary evidence, without using any Confidential information.

VII. WORKERS COMPENSATION

For each Project Agreement, the Parknership 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 performed by the Parknership and 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 Parknership shall not conduct any on-site activity within the Parks. Nothing in this Article VII shall limit, replace, modify, or supplement the City's existing, statutory or legal duties or coverage requirements for its own employees.

VIII. COMPLIANCE WITH LAWS

The Parknership shall fully obey and comply with all laws, ordinances, resolutions, and administrative regulations which are or should be applicable to any work performed by the Parknership under this Agreement. The City shall advise the Parknership of all applicable terms and conditions of any wills, deeds, or other instruments governing the Parks with respect to any Project performed by the Parknership.

IX. ANTI-DISCRIMINATION

In each Project Agreement, the Parknership shall agree not to discriminate in its employment on the basis of perceived 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, the Parknership shall also comply with the applicable provisions of Chapter 27, Discrimination and Human Relations Commission, of the City of Allentown Administrative Code and any amendments thereto. For each Project Agreement, the Parknership shall further comply with the applicable provisions of Title I and Title II of the Americans with Disabilities Act, and any amendments thereto and any regulations issued thereunder. For each Project Agreement, the Parknership 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:

The Parknership shall not assign this Agreement without the written consent of the City. Notwithstanding the foregoing, the Parknership may use subcontractors to perform its obligations under this Agreement, provided that the Parknership will remain responsible for their performance.

XI. INTERPRETATION:

In the event of any dispute as to the interpretation of the terms of this Agreement which cannot be resolved by the parties among themselves, such dispute shall be submitted to the exclusive jurisdiction of the State Courts of the Commonwealth of Pennsylvania in Allentown, Pennsylvania.

XII. INSURANCE:

Prior to the commencement by the Parknership of any Project pursuant to the terms and conditions of an executed Project Agreement, the Parknership shall obtain and maintain insurance as specified in EXHIBIT D and shall keep the City as an additional insured on such policy throughout the term of the relevant Project Agreement. Upon receipt of such insurance, the Parknership 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 the 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 the City.

XIII. GOVERNING LAW:

This Agreement shall, in all respects, be governed by the laws of the Commonwealth of Pennsylvania

XIV. INDEMNITY:

For every Project Agreement entered into between the City and the Parknership pursuant to this Agreement, the Parknership hereby agrees to indemnify, save and hold harmless, and defend the City, its officers, agents, and employees (collectively, the “**City Indemnitees**”) 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 (collectively, “**Losses**”) arising by reason of: the performance by the Parknership of any services under the applicable Project Agreement; any act, error or omission of the Parknership or of an agent, employee, licensee, contractor or subcontractor of the Parknership relating to the Parknership’s obligations under the applicable Project Agreement; and any breach by the Parknership of any of the terms, conditions, or provisions of the applicable Project Agreement; except, in each case, to the extent such Losses result from the breach of this Agreement or the relevant Project Agreement by the City Indemnitees, or the negligence or misconduct of the City Indemnitees. Any payment made by the Parknership to the City under this Section shall be net of any insurance proceeds realized by, and paid to, the City in respect of the indemnification claim.

XV. 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.

XVI. 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.

XII. TERMINATION

The City or the Parknership may terminate this Agreement at any time, without cause or liability, by giving the other party three-hundred and sixty (360) 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 shall not automatically terminate, unless specifically stipulated in said agreements.

XIII. HOME RULE CHARTER

This Agreement and any Project Agreement entered into pursuant hereto is subject to the provisions of the City of Allentown Home Rule Charter.

XIX. AUTHORIZING RESOLUTION

This Agreement is entered into by the City of Allentown pursuant to Resolution No. _____ of _____.

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

ATTEST

CITY OF ALLENTOWN

By: _____
Mayor

By: _____
Director, Parks and Recreation

ATTEST

THE ALLENTOWN PARKNERSHIP

By: _____

TITLE: _____

EXHIBIT A: CITY PARKS

City Parks:

1. 2nd & Hamilton (aka Fellowship East Park) – Size: .5 acres
2. 10th Street Cemetery – Size: 4.12 acres
3. 5th Street Playground (aka Old Fairgrounds Playground) – Size: 1.06 acres
4. Jackson Street Park – Size: 2.0 acres
5. Alton Park – Size: 1.0 acres
6. Arts Park – Size: .75 acres
7. Benton Street Park – Size: .5 acres
8. Bicentennial Park – Size: 4.82 acres
9. Bucky Boyle Park – Size: 17.0 acres
10. Canal Park – Size: 36.0 acres
11. Cedar Creek Parkway – Size: 109.62 acres
12. Daddona/Union Terrace – Size: 30.35 acres
13. Dixon Street Dog Park – Size: 4.0 acres
14. East Side Reservoir – Size: 18.0 acres
15. East Side Trail
16. Fountain Park - Size: 41.62
17. Franklin Park – Size: 1.89 acres
18. Irving (Andre Reed) Park – Size: 10.0 acres
19. Ithaca Park – Size: 7.0 acres
20. Jordan Meadows – Size 16.0 acres
21. Jordan Park – Size: 60.0 acres
22. Keck Park – Size: 36.82 acres
23. Keck Triangle (aka Keck/Juniata Playlot) – Size: 1.0 acre
24. Kimmet’s Lock – Size: 14.0 acres
25. Lehigh Parkway – Size: 542.0 acres
26. Percy Ruhe Park – Size: 29.0 acres
27. Roosevelt Park – Size: 7.0 acres
28. South Mountain Reservoir – Size: 163.43 acres
29. South Street Park – Size 1.2 acres
30. Stevens Park – Size: 1.0 acres
31. Trexler Park – Size: 135.0 acres
32. Trout Creek Parkway – Size: 93 acres
33. Valania Park – Size: 1.5 acres
34. Walden Terrace Park – Size: 1.2 acres
35. West Park – 7.5 acres
36. Walking Purchase Park – Size: 609.0 acres

EXHIBIT B: RESOLUTION _____ OF _____,
EFFECTIVE _____

EXHIBIT C: GENERAL PROJECT PROTOCOL

For each project involving construction of capital improvements to the City's Parks being proposed by the Parknership or a third party outside of the scope of a Plan approved by City Council, the Parknership or the third party, as applicable, will adhere to the following protocol:

1. Present all project ideas in a preliminary project proposal to the Mayor's office and the City Directors of Parks and Recreation, or successor departments, for approval. Include the Planning Department Director and the Director of Public Works or the successor departments thereto in development stages of any project that may require City compliance or coordination with regulatory bodies or third parties.
2. Enter into Letter of Intent with the City to pursue applicable project, specifically identifying the parties' respective obligations to complete the project. The Letter of Intent shall include a break-down of any proposed project budget or maintenance functions that will be borne by the City in addition to any required compliance or cooperation with regulatory bodies or other third parties.
3. Engage, affected community groups by seeking input related to the project plans in concert with City planners and other City staff as needed.
4. If applicable, present project conceptual and subsequent final designs and plans of projects to the pertinent City Commissions (e.g. members of Art Commission, Board of Recreation,) having purview over the proposed project/location.
5. Coordinate with affected City department(s) that will be drafting/presenting a resolution to City Council authorizing the relevant project agreement.
6. Work with affected City Departments to draft and execute a project agreement, subject to approval of applicable Directors and the City Solicitor.
7. Upon completion of the project, provide as-built documents and transfer warranties to the City Directors of Public Works, Planning, and Parks or successor departments, as well as any pertinent Commissions that may require that documentation and confirm projections with respect to maintenance commitments, including anticipated costs to be borne by the City.

EXHIBIT D: PROJECT AGREEMENT INSURANCE REQUIREMENTS

1. Prior to the commencement by the Parknership of any Project pursuant to the terms and conditions of an executed Project Agreement, the Parknership shall obtain and maintain insurance in the amount specified in this Exhibit and shall keep the City as an additional insured on such policy for each Project throughout the term of the relevant Project Agreement. Upon receipt of such insurance, the Parknership 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 the 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 the City:

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. The policy shall include broad form contractual liability coverage.

Automobile Liability: ISO Form Number CA 0001 covering any auto (Code 1), or if Parknership has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

Workers’ Compensation insurance as required by the State of Pennsylvania, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

2. The Parknership should check with Parknership’s insurance advisors to verify compliance and determine if additional coverage or limits may be needed to adequately insure the relevant Project Agreement. These are the minimum required and do not in any way represent or imply that such coverage is sufficient to adequately cover the Parknership’s liability under the relevant Project Agreement. These insurance requirements shall not in any way relieve the Parknership of liability in excess of such coverage, nor shall it preclude City from taking such other actions as are available to it under any other provisions of this agreement or law. These insurance requirements shall not in any way act to reduce coverage that is broader or includes higher limits than those required. If the Parknership maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Parknership. Any available insurance proceeds in excess of the specified minimum limits of

insurance and coverage required, which are applicable to any given loss, shall be available to City.

3. The insurance to be provided by Parknership under this agreement shall not include any endorsement limiting coverage available to City that is otherwise required herein; and any policy or endorsement language that (i) negates coverage to City for City's own negligence; (ii) limits the duty to defend City under the policy; (iii) provides coverage to City only if the Parknership is negligent, or (iv) permits the recovery of defense costs from any additional insured. The insurance provided under this agreement shall not contain any restrictions or limitations which are inconsistent with City's rights under this agreement.
4. **Other Insurance Provisions** - The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status - The City of Allentown, its City Council, its officers, officials, employees, and agents are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Parknership for the relevant Project Agreement including materials, parts, or equipment furnished in connection with such work or operations. General liability additional insured coverage shall be provided in the form of an endorsement to Parknership's insurance at least as broad as ISO Form CG 20 10 (ongoing operations) and CG 20 37 (completed operations).

Severability of Interests (Cross-Liability) - A severability of interest provision must apply for all the additional insureds, ensuring that the Parknership's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the insurer's limits of liability.

Primary Coverage - For any claims related to a Project Agreement, the Parknership's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects City, its City Council, its officers, officials, employees, and agents. Any insurance or self-insurance maintained by City, its City Council, its officers, officials, employees, agents, or volunteers shall be excess of Parknership's insurance and shall not contribute with it.

Notice of Cancellation/Change in Coverage - Each insurance policy required above shall state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, non-renewed, or materially changed except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium. Prior written notice shall be sent to City of Allentown Risk Manager 435 Hamilton Street, Suite 106 Allentown, PA 18101 riskmanagement@allentownpa.gov

Waiver of Subrogation - The Parknership hereby grants to City a waiver of any right to subrogation which any insurer of the Parknership may acquire against City, its City Council, its officers, officials, employees, and agents from Parknership by virtue of the payment of any loss under such insurance. Parknership agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not City has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions - Self-insured retentions must be declared to and approved by City. City may require the Parknership to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers - Insurance is to be placed with insurers authorized to conduct business in the state of Pennsylvania with a current A.M. Best's rating of no less than A:VII. The current A.M. Best rating for each insurer shall be noted on the Certificate(s) of Insurance.

Certificate Holder - Certificate Holder on each insurance certificate shall be addressed to the City of Allentown Risk Manager 435 Hamilton Street, Suite 106 Allentown, PA 18101.

Verification of Coverage - The Parknership shall furnish City with original certificates, and all required amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. A statement on an insurance certificate will not be accepted in lieu of the actual endorsements required herein. Each insurance certificate shall specifically identify this agreement. All certificates and endorsements are to be received and approved by City before work commences under the relevant Project Agreement. However, failure to obtain the required documents prior to the work beginning shall not waive the Parknership's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Failure to Maintain Insurance Coverage - If the Parknership, for any reason, fails to maintain insurance coverage which is required pursuant to the relevant Project Agreement, the same shall be deemed a material breach of the Project Agreement. City, at its sole option, may terminate the Project Agreement at any time and obtain damages from the Parknership resulting from said breach.

Special Risks or Circumstances - City reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.