

**PROFESSIONAL SERVICES AGREEMENT**

for

**CAMPUS MARTIUS PARK**

**THIS PROFESSIONAL SERVICES AGREEMENT** for Campus Martius Park ("Agreement") is entered into by and between the City of Detroit, a Michigan municipal corporation acting by and through its Recreation Department (the "City"), and Detroit 300 Conservancy, a Michigan non-profit corporation (the "Conservancy").

**RECITALS:**

**WHEREAS**, Campus Martius Park (the "Park" as more specifically defined in Article 1) is a public space owned by the City; and

**WHEREAS**, the Conservancy was incorporated as a non-profit corporation for the purpose of preserving and maintaining public spaces and monuments for the benefit of the public; and

**WHEREAS**, the Conservancy has provided funding for the new design of the Park and has raised funds for construction of the newly designed Park; and

**WHEREAS**, the Conservancy has established an endowment, the purpose of which is to, among other things, maintain Park improvements funded by the Conservancy (the "Endowment"); and

**WHEREAS**, the City and the Conservancy desire to implement the uniform management, maintenance, and operation of the Park; and

**WHEREAS**, the City desires to encourage the participation of non-profit corporations in maintaining and preserving the Park for the benefit of the public.

**NOW, THEREFORE**, the City and the Conservancy agree as follows:

## 1. DEFINITIONS

The following words and expressions shall be construed as specified:

- 1.01 “Additional Services” means any services to be performed by the Conservancy in addition to the Services.
- 1.02 “Additional Term” as such term is defined in Section 4.01.
- 1.03 “Agreement” means each of the various provisions and parts of this document, including all attached exhibits and all Amendments, as executed and approved by the appropriate City departments and by the Detroit City Council.
- 1.04 “Amendment” shall mean modifications or changes to this Agreement that have been mutually agreed upon by the City and the Conservancy in accordance with Article 19.
- 1.05 “Annual Budget” as such term is defined in Section 9.01.
- 1.06 “Associates” shall mean the employees, agents and Subcontractors of the Conservancy.
- 1.07 “Basic Park Services” as that term is defined in Exhibit A.III.1.
- 1.08 “City” shall mean the City of Detroit, a municipal corporation, acting through the department named in the Agreement as contracting for the services on behalf of the City.
- 1.09 “City Approved Contracts” as the term is defined in Exhibit A.II.
- 1.10 “City Council” means the legislative body of the City of Detroit.
- 1.11 “Concession Revenues” as such term is defined in Exhibit A.I.9.
- 1.12 “Conservancy” shall mean the Detroit 300 Conservancy, the party that contracts with the City by way of this Agreement, including its successors and assigns.
- 1.13 “Construction Agreement” shall mean that certain Professional Services Agreement between the City and the Conservancy C.P.O. #2613491 which agreement provides for the construction of the Park.
- 1.14 “Contractor” as such term is defined in Exhibit A.I.2.
- 1.15 “Contribution” as such term is defined in Section 9.02.
- 1.16 “Endowment” as such term is defined in the fourth Recital.
- 1.17 “Fees” as such term is defined in Exhibit A.I.8.
- 1.18 “Initial Investment” as such term is defined in Section 4.02.
- 1.19 “Initial Term” as such term is defined in Section 4.01.

- 1.20 "Master Calendar" as such term is defined in Exhibit A.I.4.a.
- 1.21 "Notices" as such term is defined in Section 21.01
- 1.22 "Notice of Termination for Cause" as such term is defined in Subsection 13.02(b).
- 1.23 "Park" shall mean the public space owned by the City within the area designated as Campus Martius, as more particularly described in Exhibit C.
- 1.24. "Preliminary Master Calendar" as defined in Exhibit A.I.4.b.
- 1.25 "Records" shall mean all books, ledgers, journals, accounts, documents, and other collected data regarding the performance of the Agreement, which Records shall be kept in accordance with U.S. GAAP (Generally Accepted Accounting Principles).
- 1.26 "Services" shall mean all services that are expressly set forth in this Agreement to be performed by the Conservancy.
- 1.27 "Subcontractor" shall mean any person, firm, entity or corporation, other than employees, officers, or directors of the Conservancy, that contracts with the Conservancy, directly or indirectly to perform in whole or in part the Conservancy's obligations under this Agreement.
- 1.28 "Term" as such term is defined in Section 4.01.
- 1.29 "Unauthorized Acts" shall mean any acts, statements, or representations by a City employee, agent, or representative that are not set forth in this Agreement and have not been approved by City Council as part of this Agreement.
- 1.30 "Work Product" shall mean the originals, or copies when originals are unavailable, of all materials prepared by the Conservancy, its Contractors or its Subcontractors, under this Agreement or in anticipation of this Agreement, including, but not limited to, technology, data, studies, drawings, maps, models, photographs, files, records, computer printouts, estimates, memoranda, computations, papers, supplies, notes, recordings, and videotapes, whether such materials are reduced to writing, magnetically or optically stored, or kept in some other form, except as such Work Product is subject to the Construction Agreement.

## **2. ENGAGEMENT OF CONSERVANCY**

- 2.01 By this Agreement, the City engages the Conservancy and the Conservancy hereby agrees to faithfully and diligently perform the Services set forth in this Agreement in accordance with the terms and conditions contained in this Agreement.
- 2.02 The Conservancy shall confer as necessary and cooperate with the City in order that the Services may proceed in an efficient and satisfactory manner. The Services are deemed

to include all conferences, consultations and public hearings or appearances necessary to ensure that the Conservancy will be able to properly and fully perform the Services.

- 2.03 Neither the City's review nor approval of any of the Services shall be construed to operate as a waiver of any rights under this Agreement, and the Conservancy shall be and will remain liable in accordance with applicable law for all damages to the City caused by the Conservancy's negligent performance or nonperformance of any of the Services to be furnished under this Agreement.
- 2.04 The Services shall be performed as set forth in Exhibit A.
- 2.05 The City and the Conservancy expressly acknowledge their mutual understanding and agreement that there are no third party beneficiaries to this Agreement and that this Agreement shall not be construed to benefit any persons other than the City and the Conservancy.

### **3. CONSERVANCY'S REPRESENTATIONS AND WARRANTIES**

- 3.01 To induce the City to enter into this Agreement, the Conservancy represents and warrants that it is authorized to do business under the laws of the State of Michigan and is duly qualified to perform the Services as set forth in this Agreement, and that the execution of this Agreement is within the Conservancy's authorized powers and is not in contravention of federal, state or local law.
- 3.02 The Conservancy represents and warrants that it is a non-profit corporation and covenants to maintain and preserve its non-profit status.
- 3.03 The Conservancy represents and warrants that it is not a party to any agreement or understanding which would prevent, limit or hinder in any manner its performance of any obligations under this Agreement. Notwithstanding the foregoing, the Conservancy may now or hereafter be a party to agreements for monetary gifts to the Conservancy and/or the Endowment which agreements may preclude use of a gift or donation for the benefit of the Park and limit the ability of such gift or donation to be used for the Contribution.

### **4. TERM OF AGREEMENT**

- 4.01 The initial term of this Agreement shall be for a period of ten (10) years ("Initial Term"). This Agreement may be renewed for two (2), five (5)-year additional terms (each an "Additional Term" and together with the Initial Term, collectively the "Term") upon Conservancy's written notice to the City of its desire to extend the Initial Term and a resolution of the Detroit City Council approving each Additional Term. Such written notice of intent to extend shall be delivered not more than six (6) months nor less than three (3) months prior to the end of the Initial Term or the first Additional Term, as applicable. The Term shall commence upon substantial completion of construction of the

Park, which shall be evidenced by the architect's (Rundell Ernstberger Construction Agreement) issuance of a Certificate of Substantial Completion, or when the Park is opened to the general public, whichever is earlier. The parties acknowledge that certain services relating to establishing the Master Calendar (as such term is defined in Exhibit A) and securing services of third parties and programming for the first year of operation of the Park must occur prior to commencement of the Term and that such services shall be deemed authorized upon City Council approval of this Agreement. For the purposes of this Agreement, execution of this Agreement and approval by City Council shall be deemed a written notice to proceed.

- 4.02 In the event the City elects to cease using the Park for park purposes during the Initial Term, the City may shorten the Initial Term by providing six (6) month written notice thereof to the Conservancy. In such event, the City shall: (a) reimburse the Conservancy all expenses associated with such action including but not limited to all termination fees, penalties, damages, and other amounts incurred or payable by the Conservancy in terminating contracts with any Contractors executed in connection with its performances of the Services; and (b) reimburse the Conservancy for all costs incurred by the Conservancy in connection with designing, constructing and equipping the Park under the Construction Agreement ("Initial Investment"). Such Initial Investment is anticipated to be between fifteen and twenty million dollars, but shall, for the purposes of this Section 4.02, be determined by auditing the records of the Conservancy.
- 4.03 Upon the end of the seventh year of the Initial Term the City may terminate this Agreement upon written notice to the Conservancy, which notice shall be delivered not more than six (6) months nor less than three (3) months prior to the end of such seventh year.

## **5. EFFECTIVE DATE AND TIME OF PERFORMANCE**

- 5.01 This Agreement shall not become effective until:
- (a) The Agreement has been signed by the required City departments;
  - (b) The Agreement has been authorized by resolution of the City Council; and
  - (c) The Agreement has been signed by the City's Purchasing Director.
- 5.02 Prior to the approvals set forth in Section 5.01 and the notice to proceed in Section 4.01, the Conservancy shall have no authority to begin work under this Agreement.

## **6. DATA TO BE FURNISHED CONSERVANCY**

- 6.01 Copies of all information, reports, records, and data as are existing, available, and necessary for the performance of the Services shall be furnished by the City to the

Conservancy upon the Conservancy's request. With the prior approval of the City, which approval shall not be unreasonably withheld, the Conservancy will be permitted access to City offices during regular business hours to obtain any necessary data. In addition, the City will schedule appropriate conferences at convenient times with administrative personnel of the City for the purpose of gathering such data.

## **7. PERSONNEL & CONTRACT ADMINISTRATION**

- 7.01 The Conservancy represents that, at its own expense, it has obtained or will obtain all personnel and equipment required to perform the Services. It warrants that all such personnel are qualified and possess the requisite licenses or other such legal qualifications to perform the services assigned. If requested, the Conservancy shall supply a resume of the managerial staff, Associates or consultants it proposes to assign to perform services under this Agreement.

## **8. RELATIONSHIP BETWEEN THE PARTIES**

- 8.01 The relationship of the Conservancy to the City is and shall continue to be that of an independent contractor and no liability or benefits, such as workers compensation, pension rights or liabilities insurance rights or liabilities or other rights or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to either party or either party's agent, Subcontractor or employee as a result of the performance of this Agreement. No relationship other than that of independent contractor shall be implied between the parties or between either party's agents, employees or Subcontractors.

## **9. ANNUAL BUDGET AND FUNDING**

- 9.01 Annual Budget. Prior to February 1 of each year, the Conservancy shall prepare an annual budget (the "Annual Budget") for the following fiscal year, which fiscal year shall be April 1 to March 31, including: (a) the estimated income of the Park for that fiscal year; (b) the expected capital improvements, replacements, repair and maintenance for the Park for that fiscal year and estimated expenditures therefor; (c) the Preliminary Master Calendar; and, (d) proposed programming for the Park for that fiscal year and estimated expenditures therefor. The Annual Budget shall be broken down by month and will provide a detailed rationale for each line item and related monetary estimate. The Annual Budget and Preliminary Master Calendar shall be submitted to the City for, and subject to, the City's approval.
- 9.02 Conservancy's Financial Contribution. The Conservancy shall, subject to the last two sentences of this Section 9.02, provide an amount up to, but not to exceed One Million Dollars (\$1,000,000.00) each year (the "Contribution") for maintenance and operation of

the Park. Notwithstanding the foregoing, the Contribution for any year shall be at least equal to the income generated during such year by the principal in the portion of the Endowment dedicated to the Park; for the fiscal year 2003-04, such income is estimated to be One-Hundred Seventy-Five Thousand and No/100 Dollars (\$175,000.00). The Contribution shall be supplementary to the Fees and Concession Revenues collected pursuant to this Agreement, and shall be provided as necessary to meet the Annual Budget. In no event shall the Conservancy be obligated to pay or incur any cost or expense in connection with the performance of the Services or obligations under this Agreement to the extent funds are not available to the Conservancy. Such unavailability of funds shall include any funds obtained by the Conservancy which are restricted as to use and therefore not available for Park purposes.

- 9.03 City's Park Funding. The Conservancy recognizes and acknowledges that any Park funding contributions by the City beyond those services being provided by the City under Exhibit A and approved by the City Council as part of this Agreement are subject to the City's normal budgetary processes.
- 9.04 Failure to Meet Budget. In the event the Conservancy is unable to meet an Annual Budget in a given year, the Conservancy shall use reasonable efforts to raise the additional funds needed to make up the shortfall, provided however, there is no obligation for the Conservancy to exceed its Contribution. If after such efforts, the Conservancy is still unable to meet the budget, the Conservancy may with the input of the City, scale back the services to be provided by Contractors during that fiscal year as necessary to balance such Annual Budget. Such scaling back of Contractor services shall not be deemed a default for purposes of this Agreement. However, if the scaling back of such services would be so severe as to materially diminish the operation of the Park as contemplated by this Agreement, the parties may terminate the Agreement by mutual consent, which consent shall not be unreasonably withheld.

## 10. RECORDS AND ACCOUNTS

- 10.01 The Conservancy shall maintain full and complete Records reflecting all of its operations related to this Agreement for a minimum of three (3) years after termination of the Agreement.
- 10.02 The City and any government-grantor agency providing funding for this Agreement shall have the right at any time with notice to examine the Records and other supporting data of the Conservancy as they relate to the performance of Services to be provided under this Agreement as the City or agency deems necessary.
- (a) The Conservancy shall make the Records available for examination during normal business hours at its Detroit offices, if any, or alternatively at its facility nearest Detroit. The City and any government-grantor agency providing funds for this Agreement shall have this right of inspection. The Conservancy shall provide

copies of the Records to the City or to any such government-grantor agency upon request.

- (b) If in the course of such inspection, in the event a representative of the City or of another government-grantor agency should note any deficiencies in the Conservancy's agreed upon performance or record-keeping practices, such deficiencies will be reported to the Conservancy in writing and upon City's reasonable request, the Conservancy shall provide additional documentation to explain or clarify.
- (c) Each party shall pay its own audit costs.
- (d) Nothing contained in this Agreement shall be construed or permitted to operate as any restriction upon the powers granted to the Auditor General by the City Charter, including but not limited to the powers to audit all accounts chargeable against the City and to settle disputed claims.

10.03 The Conservancy agrees to include the covenants contained in Sections 10.01 and 10.02 in any contract it has with any Contractor or Subcontractor, whose services will be charged directly or indirectly to the City for services performed pursuant to this Agreement.

## **11. INDEMNITY**

11.01 The Conservancy agrees, unless otherwise waived in writing by the City, to contractually require each of its Contractors and Subcontractors to indemnify and hold the City harmless against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges, losses and expenses (including, without limitation, fees and expenses for attorneys, expert witnesses and other consultants) that may be imposed upon, incurred by, or asserted against the City or its departments, officers, employees, or agents by reason of any of the following occurring during the term of this Agreement:

- (a) Any negligent or tortious act, error, or omission attributable in whole or in part to such Contractor or Subcontractor or any of their associates.
- (b) Any failure by the Contractor or Subcontractor or any of their associates to perform their obligations, either express or implied, under their agreement with the Conservancy.

## **12. INSURANCE**

12.01 The Conservancy shall maintain, at a minimum and at its expense, and shall require its Subcontractors and Contractors performing services under this Agreement to maintain, at

a minimum and at their expense, during the term of this Agreement the following insurance coverages:

<u>TYPE</u>	<u>AMOUNT NOT LESS THAN</u>
(a) Workers' Compensation	Michigan Statutory minimum
(b) Employers' Liability	\$500,000.00 minimum each disease \$500,000.00 minimum each person \$500,000.00 minimum each accident
(c) Commercial General Liability Insurance (Broad Form Comprehensive)	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
(d) Automobile Liability Insurance (covering all owned, hired and non-owned vehicles with personal and property protection insurance, including residual liability insurance under Michigan no fault insurance law)	\$1,000,000.00 combined single limit for bodily injury and property damage

- 12.02 (a) The commercial general liability insurance policy shall name the "City of Detroit" as an additional insured and shall state that such insurance is primary and not excess over any insurance already carried by the City of Detroit. The commercial general liability insurance shall provide blanket contractual liability insurance for all written contracts or, in the alternative, shall contain a specific endorsement worded substantially as follows:

"During the effective period of the policies mentioned herein, it is agreed that this insurance specifically covers liability assumed by the insured under the provision of Contract No. \_\_\_\_\_, dated \_\_\_\_\_ and entered into by the insured and the City of Detroit."

- (b) If the commercial general liability policy does not contain the standard ISO (Insurance Services Office) wording of "definition of insured," which reads essentially as follows: "The insurance afforded applies separately to each insured... except with respect to limits..." then, in the alternative, the public liability insurance policy shall contain the following cross liability endorsement:

"It is agreed that the inclusion of more than one (1) insured under this policy shall not affect the rights of any insured as respects any claim, suit or judgment made or brought by or for any other insured or by or for any employee of any other insured. This

policy shall protect each insured in the same manner as though a separate policy had been issued to each, except nothing herein shall operate to increase the insurer's liability beyond the amount or amounts for which the insurer would have been liable had only one (1) been named."

- 12.03 All such insurance shall be effected at the expense of the person responsible for providing the same (i.e., Conservancy, Contractor or Subcontractor), under valid and enforceable policies, issued by insurers of recognized responsibility that are well-rated by national rating organizations and are otherwise acceptable to the City.
- 12.04 All insurance policies shall name the person responsible for providing same as the insured and shall provide a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) days prior written notice to the City. Certificates of insurance evidencing such coverage shall be in a form acceptable to the City. Certificates of insurance required to be maintained by the Conservancy shall be submitted to the City's Finance Department, Accounts Payable Section, Coleman A. Young Municipal Center, prior to the commencement of performance under this Agreement and at least fifteen (15) days prior to the expiration dates of expiring policies.
- 12.05 If any Services are sublet in connection with this Agreement, the Conservancy shall require each Subcontractor to effect and maintain the types and limits of insurance set forth in Section 12.01 and shall require documentation of same, copies of which documentation shall be promptly furnished the City. All such insurance shall name the City as an additional insured to the same extent as if provided by the Conservancy.
- 12.06 The Conservancy shall be responsible for payment of all deductibles contained in any insurance required of the Conservancy under this Agreement. The provisions requiring the Conservancy to carry the insurance required under this Section shall not be construed in any manner as waiving or restricting the liability of the Conservancy under this Agreement.

### 13. DEFAULT AND TERMINATION

- 13.01 This Agreement shall remain in full force and effect until the end of the Term unless otherwise terminated for cause according to the provisions of this Article 13 or as otherwise terminated under Sections 4.03, 9.04 or 16.03.
- 13.02 Subject to Subsection 13.02(b) hereof, the City reserves the right to terminate for cause. Cause is an event of default.
- (a) An event of default shall occur if there is a material breach of this Agreement by the Conservancy, and shall include the following:
- (1) The Conservancy begins work prior to the authorization required under Section 4.01 hereof; or

- (2) The Conservancy is unnecessarily, unreasonably, or willfully delaying the performance and completion of the Services; or
  - (3) The Conservancy ceases to perform under the Agreement; or
  - (4) The Conservancy, without just cause, reduces its work force on this Agreement to a number that would be insufficient to complete the Services within a reasonable time, and the Conservancy fails to sufficiently increase such work force when directed to do so by the City; or
  - (5) The Conservancy assigns, transfers, conveys or otherwise disposes of this Agreement in whole or in part without prior approval of the City; or
  - (6) Any City officer or employee acquires an interest in this Agreement so as to create a conflict of interest; or
  - (7) The Conservancy materially violates any of the provisions of this Agreement, or any applicable laws, ordinances, permits, licenses, instructions or orders of the City; or
  - (8) The Conservancy materially fails in any of its covenants set forth in this Agreement; or
  - (9) The Conservancy ceases to conduct business in the normal course; or
  - (10) The Conservancy admits its inability to pay its debts generally as they become due.
- (b) If an event of default has occurred, the City may issue a notice of termination for cause (“Notice of Termination for Cause”) setting forth the grounds for terminating this Agreement. Upon receiving a Notice of Termination for Cause, the Conservancy shall have ten (10) calendar days within which to cure such default; provided however, if such default is not reasonably susceptible of being cured within such 10-day period, the Conservancy shall have such additional period of time as is reasonably necessary to cure such default so long as the Conservancy diligently pursues such cure to completion. If the default is cured within such cure period, the right of termination for such default shall cease. If the default is not cured within such cure period, this Agreement shall terminate on the thirtieth calendar day after the Conservancy’s receipt of the Notice of Termination for Cause, unless the City, in writing, gives the Conservancy additional time to cure the default. If the default is not cured within the additional time allowed for cure, this Agreement shall terminate for cause at the end of the extended cure period.
- (c) If a Notice of Termination is given when no event of default then exists, such Notice of Termination shall be of no force and effect and this Agreement shall remain in full force and effect.

- (d) The Conservancy shall be liable to the City for any damages the City sustains by virtue of the Conservancy's breach of this Agreement or any reasonable costs the City might incur in enforcing this Agreement. Such costs shall include reasonable fees and expenses for attorneys, expert witnesses and other consultants. However, if the Conservancy makes a written offer prior to the initiation of litigation or arbitration, then the City shall not be entitled to such attorney fees unless the City declines the offer and obtains a verdict or judgment for an amount more than ten percent (10%) above the amount of the Conservancy's last written offer prior to the initiation of litigation or arbitration. The City may withhold any payment(s) to the Conservancy, in an amount not to exceed the amount claimed in good faith by the City to represent its damages, for the purpose of setoff until such time as the exact amount of damages due to the City from the Conservancy is determined. It is expressly understood that the Conservancy shall remain liable for any damages the City sustains in excess of any setoff. In no event shall the Conservancy be liable for consequential, special or incidental damages.
- (e) In the event of any termination of this Agreement, the Conservancy shall assign and the City shall assume all of the Conservancy rights, duties and obligations under all City Approved Contracts. Upon assumption of such City Approved Contracts, the Conservancy shall have no further rights, duties or obligations with respect to such City Approved Contracts.
- (f) In the event a Contractor fails to perform any provision of its contract relating to the provision of services thereunder, and the Conservancy fails to adequately enforce such provision, the City, after the expiration of the notice and any applicable cure period(s), may require the Conservancy to assign to the City those claims Conservancy may have under the pertinent contract arising out of such failure to perform. Provided, however, in no event shall the Conservancy be required to assign any claim it may have under any contract to recover sums paid by Conservancy under such contract.
- (g) The City's remedies outlined in this Section shall be in addition to any and all other legal or equitable remedies permissible.

13.03 After receiving a properly given Notice of Termination for Cause and expiration of applicable cure period(s), the Conservancy shall:

- (a) Stop work under the Agreement on the date and to the extent specified in the Notice of Termination;
- (b) Obligate no additional funds for costs beyond such date as the City shall specify, and place no further orders on subcontracts for material, services, or facilities, except as may be necessary for completion of such portion of the Services under this Agreement as is not terminated;
- (c) Terminate all orders, subcontracts with Subcontractors and contracts with Contractors to the extent that they relate to the portion of the Services terminated

pursuant to the Notice of Termination and are not assumed, or required to be assumed under this Agreement, by the City;

- (d) Preserve all Records and submit to the City such Records and reports as the City shall specify, and furnish to the City an inventory of all furnishings, equipment, and other property purchased under this Agreement, if any, and carry out such reasonable directives as the City may reasonably issue concerning the safeguarding or disposition of files and property; and
- (e) Submit within thirty (30) days a final report of receipts and expenditures of funds relating to this Agreement, and a list of all creditors, Subcontractors, Contractors, lessors and other parties, if any, to whom the Conservancy has become financially obligated pursuant to this Agreement.

13.04 After termination of the Agreement, each party shall have the duty to assist the other party in the orderly termination of this Agreement and the transfer of all rights and duties arising under the Agreement, as may be necessary for the orderly, uninterrupted continuation of the business of each party.

#### **14. ASSIGNMENT**

14.01 Neither party shall assign, transfer, convey or otherwise dispose of any interest whatsoever in this Agreement without the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld. The City may change the Department responsible for administering this Agreement (currently the Recreation Department) upon notice to the Conservancy.

#### **15. SUBCONTRACTING**

15.01 None of the Services covered by this Agreement shall be subcontracted without the prior written approval of the City and, if required, any grantor agency. The City reserves the right to withhold approval of subcontracting such portions of the Services where the City determines that such subcontracting is not in the City's best interests.

15.02 Each subcontract entered into shall provide that the provisions of this Agreement shall apply to the Subcontractor and its associates in all respects. The Conservancy agrees to bind each Subcontractor and each Subcontractor shall agree to be bound by the terms of this Agreement insofar as applicable to the work or services performed by that Subcontractor.

15.03 The Conservancy and the Subcontractor jointly and severally agree that no approval by the City of any proposed Subcontractor, nor any subcontract, nor anything in the Agreement, shall create or be deemed to create any rights in favor of a Subcontractor and against the City, nor shall it be deemed or construed to impose upon the City any

obligation, liability or duty to a Subcontractor, or to create any contractual relation whatsoever between a Subcontractor and the City.

- 15.04 The provisions contained in this Section shall apply to subcontracting by a Subcontractor of any portion of the work or services included in an approved subcontract.
- 15.05 The Conservancy agrees to indemnify, defend, and hold the City harmless against any claims initiated against the City pursuant to any subcontracts the Conservancy enters into in performance of this Agreement. The City's approval of any Subcontractor shall not relieve the Conservancy of any, of its responsibilities, duties and liabilities under this Agreement. The Conservancy shall be solely responsible to the City for the acts or defaults of its Subcontractors and of each Subcontractor's associates, each of whom shall for this purpose be deemed to be the agent or employee of the Conservancy.

## **16. CONFLICT OF INTEREST; AND BROKERS**

- 16.01 The Conservancy covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the Services under this Agreement. The Conservancy further covenants that in the performance of this Agreement no person having any such interest shall be employed by it.
- 16.02 The Conservancy further covenants that no officer, agent, or employee of the City and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or performance of this Agreement has any personal or financial interest, direct or indirect, in this Agreement or in its proceeds, whether such interest arises by way of a corporate entity, partnership, or otherwise.
- 16.03 The Conservancy warrants (a) that it has not employed and will not employ any person to solicit or secure this Agreement upon any arrangement for payment of a commission, percentage, brokerage fee, or contingent fee, other than bona fide employees working solely for the Conservancy either directly or indirectly, and (b) that if this warranty is breached, the City may, at its option, terminate this Agreement without penalty, liability or obligation.
- 16.04 The Conservancy covenants not to employ an employee of the City for a period of one (1) year after the date of termination of this Agreement without written City approval.

## **17. CONFIDENTIAL INFORMATION**

- 17.01 In order that the Conservancy may effectively fulfill its covenants and obligations under this Agreement, it may be necessary or desirable for the City to disclose confidential and proprietary information to the Conservancy or its Associates pertaining to the City's past, present and future activities. Since it is difficult to separate confidential and proprietary

information from that which is not, the Conservancy shall regard all information gained as confidential and such information shall be marked Confidential and shall not be disclosed to any organization or individual without the prior consent of the City. The above obligation shall not apply to information already in the public domain or information required to be disclosed by a court order.

- 17.02 The Conservancy agrees to take appropriate action with respect to its Associates and Subcontractors to ensure that the foregoing obligations of non-use and non-disclosure of confidential information shall be fully satisfied.

## **18. COMPLIANCE WITH LAWS**

- 18.01 The Conservancy shall not perform the Services in any unlawful manner or for any unlawful purpose.
- 18.02 The Conservancy shall comply with and shall require its Associates to comply with all applicable federal, state and local laws pertaining to the performance of the Services.
- 18.03 The Conservancy shall hold the City harmless with respect to any damages arising from any violation of law by it pertaining to the performance of the Services encompassed by this Agreement. The Conservancy shall require as part of any subcontract that the Subcontractor comply with all applicable laws and regulations pertaining to the performance of the Services.

## **19. AMENDMENTS**

- 19.01 The City may consider it in its best interest to change, modify, delete, or extend a covenant, term or condition of this Agreement, or require the Conservancy to perform Additional Services that are not contained within the Scope of Services as set forth in Exhibit A. If the City and the Conservancy mutually agree to any changes or modification of this Agreement, the modification shall be incorporated into this Agreement by written Amendment.
- 19.02 No Amendment to this Agreement shall be effective and binding upon the parties unless it expressly makes reference to this Agreement, is in writing, is signed and acknowledged by duly authorized representatives of both parties, is approved by the appropriate City Departments and the City Council, and is executed by the Purchasing Director.
- 19.03 The City shall not be bound by Unauthorized Acts with regard to any dealings with the Conservancy.

## 20. FAIR EMPLOYMENT PRACTICES

- 20.01 The Conservancy shall comply with, and shall require any Subcontractor to comply with, all federal, state and local laws governing fair employment practices and equal employment opportunities.
- 20.02 The Conservancy agrees that it shall, at the point in time it solicits any contract or subcontract, notify the potential Subcontractor of their joint obligations relative to non-discrimination under this Agreement, and shall include the provisions of this Article in any subcontract, as well as provide the City a copy of any subcontract upon request.
- 20.03 Breach of the terms and conditions of this Article shall constitute a material breach of this Agreement and may be governed by the provisions of Article 13, "Default and Termination."

## 21. NOTICES

- 21.01 All notices, consents, approvals, requests and other communications ("Notices") required or permitted under this Agreement shall be given in writing, mailed by postage prepaid, certified or registered first-class mail, return receipt requested, and addressed as follows:

If to the Recreation Department (on behalf of the City):

City of Detroit  
Department of Recreation  
65 Cadillac Square, Suite 4000  
Detroit, Michigan 48226  
Attention: Director of Recreation

Copy to:  
City of Detroit Law Department  
1650 First National Building  
Detroit, Michigan 48226  
Attention: Corporation Counsel

and

City of Detroit Mayor's Office  
1126 Woodward Avenue  
Detroit, MI 48226  
Attn: Deputy Chief Operating Officer

If to the Conservancy:  
Detroit 300 Conservancy  
719 Griswold, Suite 900  
Detroit, Michigan 48226  
Attention: Mr. Robert Gregory

Copy to:  
Clark Hill, PLC  
500 Woodward, Suite 3500  
Detroit, Michigan 48226  
Attention: Duane Tarnacki

- 21.02 All Notices shall be deemed given on the second day after mailing. Either party to this Agreement may change its address for the receipt of Notices at any time by giving notice

of the address change to the other party. Any Notice given by a party to this Agreement must be signed by an authorized representative of such party.

## **22. PROPRIETARY RIGHTS AND PATENT INDEMNITY**

- 22.01 The Work Product shall not be disclosed, published or copyrighted in whole or in part by the Conservancy. The right to copyright such materials shall rest exclusively in the City. Further, the City shall have unrestricted and exclusive authority to publish, disclose, distribute and otherwise use, in whole or in part, any of the Work Product. If Work Product is prepared for publication, it shall carry the following notation on the front cover or title page: "This document was prepared for, and is the exclusive property of, the City of Detroit, Michigan, a municipal corporation".
- 22.02 The Conservancy warrants that the performance of this Agreement shall not infringe upon or violate any patent, copyright, trademark, trade secret or proprietary right of any third party. In the event of any legal action related to the above obligations of the Conservancy filed by a third party against the City, the Conservancy shall, at its sole expense, indemnify, defend and hold the City harmless against any loss, cost, expense or liability arising out of such claim, whether or not such claim is successful.
- 22.03 Title to, and the right to take possession of, all Work Product produced by the Conservancy under this Agreement shall vest in the City, and the City shall have the right to use said Work Product for public purposes without further compensation to the Conservancy or to any other person.
- 22.04 Upon the completion or other termination of this Agreement, all finished or unfinished Work Product prepared by the Conservancy shall, at the option of the City, become the City's sole and exclusive property whether or not in the Conservancy's possession. Such Work Product shall be free from any claim or retention of rights on the part of the Conservancy and shall promptly be delivered to the City upon the City's request. The City shall return all of the Conservancy's property to it. The Conservancy acknowledges that any intentional failure or unreasonable delay on its part to deliver the Work Product to the City will cause irreparable harm to the City not adequately compensable in damages and for which the City has no adequate remedy at law. The Conservancy accordingly agrees that the City may in such event seek and obtain injunctive relief in a court of competent jurisdiction to compel delivery of the Work Product, to which injunctive relief the Conservancy consents, as well as seek and obtain all applicable damages and costs. The City shall have full and unrestricted use of the Work Product for the purpose of completing the Services.

## **23. WAIVER**

- 23.01 Neither party shall be deemed to have waived any of its rights under this Agreement unless such waiver is in writing and signed by the such party.

- 23.02 No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one ( 1) occasion shall not be construed as a waiver of any right on any future occasion.
- 23.03 No failure by either party to insist upon the strict performance of any covenant, term or condition of this Agreement or to exercise any right, term or remedy consequent upon its breach shall constitute a waiver of such covenant, term, condition, or breach.

## 24. MISCELLANEOUS

- 24.01 If any provision of this Agreement or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.
- 24.02 This document contains the entire agreement between the parties with respect to the Services and all prior negotiations and agreements are merged into this Agreement. Neither party has made any representations except those expressly set forth in this Agreement. The Conservancy waives any defense it may have to the validity of the execution of this Agreement.
- 24.03 Unless the context otherwise expressly requires, the words "herein," "hereof," and "hereunder," and other words of similar import, refer to this Agreement as a whole and not to any particular section or subdivision.
- 24.04 The headings of the Articles or Sections of this Agreement are for convenience only and shall not be used to construe or interpret the scope or intent of this Agreement or in any way affect the same.
- 24.05 The rights and remedies set forth in this Agreement are not exclusive and are in addition to any of the rights or remedies provided by law or equity. This Agreement and all actions arising under it shall be governed by, subject to, and construed according to the law of the State of Michigan. The Conservancy agrees, consents and submits to the exclusive personal jurisdiction of any state or federal court of competent jurisdiction in Wayne County, Michigan, for any action arising out of this Agreement. The Conservancy agrees that service of process at the address and in the manner specified in Article 21 shall be sufficient to put the Conservancy on notice of such action and waives any and all claims relative to such notice. The Conservancy also agrees that it shall not commence any action against the City because of any matter whatsoever arising out of or relating to the validity, construction, interpretation and enforcement of this Agreement in any state or federal court of competent jurisdiction other than one in Wayne County, Michigan, the Michigan Court of Claims or the Michigan Supreme Court.
- 24.06 If any Associate of the Conservancy shall take any action that, if done by the Conservancy, would constitute a breach of this Agreement, the same shall be deemed a breach by the Conservancy.

- 24.07 Neither party shall be liable to the other in the event a force majeure event causes a delay in the performance of this Agreement by a party. Force majeure events shall include labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the reasonable control of the parties.
- 24.08 For purpose of the hold harmless and indemnity provisions contained in this Agreement; the term "City" shall be deemed to include the City of Detroit and all other associated, affiliated, allied or subsidiary entities or commissions, now existing or subsequently created, and their officers, agents, representatives, and employees.
- 24.09 The Conservancy covenants that it is not, and shall not become, in arrears to the City upon any contract, debt, or other obligation to the City, including real property, personal property, and income taxes.
- 24.10 This Agreement may be executed in any number of counterpart originals, anyone of which shall be deemed an accurate representation of this Agreement. Promptly after the execution of this Agreement, the City shall provide a counterpart original to the Conservancy.
- 24.11 As used in this Agreement, the singular shall include the plural, the plural shall include the singular, and a reference to either gender shall be applicable to both.
- 24.12 The rights and benefits under this Agreement shall inure to the parties hereto and their respective successors, and assigns.
- 24.13 The City shall have the right to recover by setoff from any payment owed to the Conservancy delinquent withholding, income, corporate and property taxes owed by the Conservancy to the City.

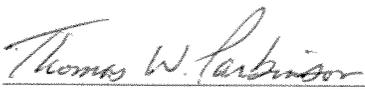
**IN WITNESS WHEREOF**, the City and the Conservancy have executed this Agreement as of the dates of their respective signatures:

WITNESSES:

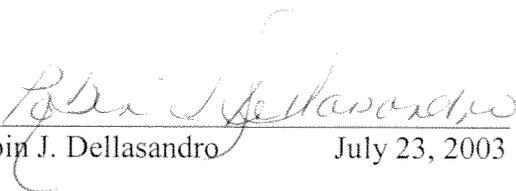
CONSERVANCY:

DETROIT 300 CONSERVANCY

  
\_\_\_\_\_  
Amanda L. Allen July 23, 2003

By:   
\_\_\_\_\_  
Thomas W. Parkinson July 23, 2003

Its: Chief Financial Officer

  
\_\_\_\_\_  
Robin J. Dellasandro July 23, 2003

STATE OF MICHIGAN     )  
                                  )ss.  
COUNTY OF WAYNE     )

The foregoing contract was acknowledged before me the 23<sup>rd</sup> day of July, 2003, by Thomas W. Parkinson, the Chief Financial Officer of Detroit 300 Conservancy, a Michigan non-profit corporation, on behalf of the corporation.

  
\_\_\_\_\_  
Notary Public, County of Macomb  
State of Michigan  
My commission expires: 09/07/05

ROBIN J. DELLASANDRO  
NOTARY PUBLIC MACOMB CO., MI  
MY COMMISSION EXPIRES Sep 7, 2005  
ACTING IN WAYNE COUNTY, MI

WITNESSES:

CITY:

CITY OF DETROIT

[Signature] 7/25/03  
Name Date

By: Lee A. Stephenson 7/25/03  
Lee Stephenson Date

Its: Deputy Director of its Recreation  
Department

D. Scott Brinkmann 7.25.03  
Name Date

STATE OF MICHIGAN )  
)ss.  
COUNTY OF WAYNE )

The foregoing contract was acknowledged before me the 25<sup>th</sup> day of JULY, 2003, by Lee Stephenson, the Deputy Director of its Recreation Department of City of Detroit, a Michigan municipal corporation, on behalf of the corporation.

D. Scott Brinkmann  
Notary Public, Oakland County, MI  
My Commission Expires Dec 1, 2004  
ACTING IN WAYNE COUNTY  
Notary Public, County of \_\_\_\_\_  
State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

APPROVED BY THE LAW  
DEPARTMENT PURSUANT TO § 6-406  
OF THE CHARTER OF THE CITY OF  
DETROIT

T. Beckett 7-30-03  
SA Corporation Counsel Date

Carolyn Alney for  
Purchasing Director

THIS AGREEMENT WAS APPROVED BY  
THE CITY COUNCIL ON

\_\_\_\_\_  
Purchasing Director    Date

\_\_\_\_\_  
Date

**THIS AGREEMENT IS NOT VALID OR AUTHORIZED UNTIL APPROVED BY  
RESOLUTION OF THE CITY COUNCIL AND SIGNED BY THE PURCHASING  
DIRECTOR**

**EXHIBIT A**  
**SCOPE OF SERVICES**

**I. Services to be Performed by the Conservancy**

1. The Conservancy shall fund each year during the Term, but only to the extent of the Contribution, as limited in Section 9.2: (1) those services of third parties required to meet the Maintenance Standards set forth in Exhibit B hereto; (2) the capital improvements, replacements and repairs included in the approved Annual Budget; and, (3) the programming approved in the Annual Budget.
2. The Conservancy shall enter into and administer contracts for those activities outlined below. Each service provider or other third party that the Conservancy enters into a contract with respect to any activities outlined below, whether for maintenance, repair, replacement, capital improvement, concessions, events or otherwise, shall be deemed a "Contractor" for the purposes of this Agreement. It is expressly agreed between the parties that a Contractor is not a Subcontractor or an Associate as such terms are defined in Article 1 of this Agreement.
  - a. Capital Improvements and Replacements in the Park. The Conservancy shall enter into contracts with Contractors to implement capital improvements and replacements in the Park to the extent provided for and approved by the City in the Annual Budget. Such efforts, if undertaken, shall comport with the following:
    - 1) Any proposal by the Conservancy for the development of Park facilities will include proposed methods for financing the facilities. The Conservancy agrees to seek funding from State, Federal, and private sources, if available.
    - 2) Any proposal by the Conservancy for the development of Park facilities will be formulated in cooperation with such individuals or departments as the City shall designate.
    - 3) Any proposal by the Conservancy for the development of Park facilities shall be subject to obtaining the City's consent and approval.
  - b. Maintenance and Repair Services. The Conservancy shall enter into contracts with Contractors who shall provide the following services as required based on the features and elements installed in the Park in accordance with the applicable provisions of Exhibit B:
    - 1) grounds maintenance and ordinary repairs, including but not limited to, landscaping, lawn care, mowing, pruning, fertilizing, sweeping, cleaning, snow and ice removal from walks, water features, light, sound stage, ice rink, park furniture and equipment and such other maintenance as is necessary to maintain reasonable safety and aesthetic standards;
    - 2) graffiti removal;

- 3) regular and event trash collection, including the provision of trash disposal and recycling receptacles and periodic litter collection;
- 4) portable sanitation services as necessary;
- 5) ordinary maintenance and repairs to walks and other Park related capital facilities;
- 6) equipment and materials necessary to provide the services, and equipment maintenance.

In no event shall maintenance and repair be construed so as to require the Conservancy to enter into contracts to replace any improvement or feature in the Park.

Notwithstanding anything herein to the contrary, the Conservancy shall not be liable for the failure of its Contractors to perform any of their obligations under their respective contracts with the Conservancy nor shall the Conservancy be liable for any defects in the work performed by such Contractors.

3. Oversight and Promotional Responsibilities

- a. The Conservancy shall oversee the promotion, organization and implementation of proposed daily activities, events, and performances such as individual and team games, sports, concerts, ice-skating, festivals, and other types of programming.
- b. The Conservancy shall oversee the promotion, organization and implementation of concessions and attractions, such as food vendors, cafe building tenants, and events.
- c. The Conservancy shall oversee the promotion, organization and implementation of marketing, promotion and fundraising, such as solicitation of events, sponsorships, friends of the Park, grant seeking, major gifts, capital campaigns, advertising and promotion of the Park as a tourist destination and business opportunity.

4. Master Calendar/Event Coordination. The Conservancy shall coordinate all scheduling, booking, and location of activities and events that may take place in the Park, including those sponsored by the City.

- a. The Conservancy shall maintain an annual (based on a fiscal year) master calendar of events and activities (the "Master Calendar"), and will develop procedures for periodic updates and for informing the City of changes to such Master Calendar.
- b. The City shall notify the Conservancy and the Conservancy shall notify the City by January 1 of each year of all proposed events and activities in the Park for the following fiscal year, and all other anticipated events and activities. The Conservancy shall compile a preliminary Master Calendar (the "Preliminary

Master Calendar”) for submission to the City along with the Annual Budget. Any proposed changes to the events and activities shall be submitted by the parties as far in advance as practicable. The purpose of such notice is to include such events and activities in the Master Calendar and in the work plan and budget of the provider of maintenance services for the events and activities. The Conservancy shall notify the City as soon as possible if it becomes aware that there is a scheduling conflict for any proposed event or activity. The City reserves the right to undertake events and activities in the Park, so long as such events and activities fit within the Master Calendar maintained by the Conservancy. Other than scheduling and coordinating maintenance services, the Conservancy will not oversee or otherwise have any responsibility with respect to City sponsored events. The City shall be responsible for all costs associated with City sponsored events.

- c. The City shall direct all inquiries for use of the Park to the Conservancy for scheduling.
5. Permits. The City shall retain the authority to grant any permits required for activities or special events located within or adjacent to the Park, whether sponsored by the City, Conservancy or other entity.
- a. Prior to the opening of the Park, the Conservancy and the City shall develop a streamlined permit process that will provide for expedited reviews.
  - b. To the extent permitted by law, the City shall waive all permit charges for activities and special events sponsored by the Conservancy.
  - c. The City shall retain any permit charges for activities and special events sponsored by any person or entity.
  - d. Prior to granting a permit which may impact the operations of the Park, whether within or adjacent to the Park, the City shall advise the Conservancy of such permit request solely for the purposes of coordinating the activity authorized by such permit with events and activities within the Park.
6. Access. The City hereby grants and agrees to take such action as may be appropriate to ensure that the Conservancy, its Contractors and Subcontractors have sufficient access to the Park to enable the Conservancy, its Contractors and Subcontractors to carry out the provisions of this Agreement and to promote the use of the Park by the general public. Such access shall include access to the Kennedy Garage twenty-four hours a day, seven days a week to conduct Park maintenance and operations.
7. Rules and Regulations. The City and the Conservancy shall develop and mutually agreed upon a system of rules and regulations for the operation and use of the Park.
8. Fees. The Conservancy may levy, collect and retain fees as provided below. Such fees shall be a source of revenue for the Park, and for the Conservancy to defray in part the costs of events and activities and any of the services provided under this Agreement and

contracts entered into by the Conservancy pursuant to this Agreement. The fees and charges, collectively, shall be referred to herein as (the "Fees"). In the event that Fees collected by the Conservancy are greater than the expenses in any given fiscal year, the excess Fees shall be transferred to the Endowment and added to that portion of the principal balance dedicated to the Park.

- a. Fees, except for Conservancy sponsored fund-raising events, shall be reasonably based on covering the cost of the event or activity, and the desire for fees to be within the affordable reach of residents.
  - b. Prior to opening of the Park, the City and the Conservancy shall develop a fee schedule for events and activities in the Park.
9. Except for events and activities sponsored exclusively by the City, the Conservancy will have the right to grant concessions to vendors, promoters, or operators and to collect and retain charges for concessions, as one of the Park's revenue sources ("Concession Revenue"). For purposes of the foregoing, Concession Revenue shall include all revenues (including rent) from the café building whether occupied as a concession or under a lease. All such concessionaires, vendors, promoters and operators shall be subject to the City's Executive Orders No. 22 and No. 4, income tax certification, property tax certification, and the Living Wage Ordinance, as required by law. Conservancy shall, in securing a tenant for the café building, submit the proposed use to the City for approval, which approval shall not be unreasonably withheld, and use its best efforts to secure a tenant for such approved use through a competitive bid process.

## **II. City Approved Contracts**

In connection with its performance of the Services, any contract entered into by the Conservancy with a Contractor which cannot be performed within one fiscal year or which exceeds fifty-thousand dollars (\$50,000) shall be subject to the approval of the City. Such contracts shall be deemed "City Approved Contracts."

## **III. Services to be performed by the City**

1. It is hereby agreed that the City shall provide, at its sole cost and expense, to the Park those services provided to other similar park venues such as Hart Plaza ("Basic Park Services") but in any event shall include at least the following:
  - a) Police. The City shall provide police presence in and around the Park. The number of police officers and the manner of patrol will be determined solely by the Detroit Police Department. It is expressly acknowledged by the parties that the Conservancy shall have no responsibility for security within the Park. In no event shall the Conservancy be liable to the City for personal injury, death, or property damage occurring in or about the Park.
  - b) Kennedy Garage. To the extent practicable, the City shall coordinate all work to be performed on the Kennedy Garage to ensure that such work is scheduled in

such a manner so as to avoid any interruption of scheduled Park events or activities. To the extent that any physical damage or disruption to the Park is incurred as a result of such work, the City shall return the Park, as soon as reasonably possible, to the condition it was in at the time the work on Kennedy Garage was commenced.

- c) Water. The City shall provide water service to the Park at a central meter distribution point for Park requirements and uses. The City shall maintain Park water mains or other water related facilities in good working order. To the extent practicable, any maintenance or repairs to such water mains and other water related facilities shall be coordinated so as to avoid disruption of scheduled Park events. To the extent that any physical damage or disruption to the Park is incurred as a result of such work, the City shall return the Park, as soon as reasonably possible, to the condition it was in at the time the work was commenced. Notwithstanding the foregoing, in no event shall the City incur the expense of water provided to the café building tenant.
- d) Sewer. The City shall provide sewer (storm and sanitary) service to the Park. The City shall maintain Park sewer mains, lines or other sewer related facilities in good working order. To the extent practicable, any maintenance or repairs to such sewer mains, lines and other sewer related facilities shall be coordinated so as to avoid disruption of scheduled Park events. To the extent that any physical damage or disruption to the Park is incurred as a result of such work, the City shall return the Park, as soon as reasonably possible, to the condition it was in at the time the work was commenced.
- e) Public Lighting Department Facilities. The City, through its Public Lighting Department ("PLD"), shall provide electrical power into the PLD room in the Kennedy Garage to service Park electrical requirements. In order to maintain a safe environment, the City shall service those PLD light poles in and those PLD traffic signals adjacent to the Park (and not those light poles or traffic signals controlled by the Michigan Department of Transportation) to ensure they are in proper working order. The City shall replace burned out fixtures and shall repair outages within a reasonable period. Notwithstanding the foregoing in no event shall the City incur the expense of providing electrical service or power to the café building tenant.
- f) Kennedy Garage Storage Space. To the extent owned or controlled by the City, the City shall arrange for the exclusive use during the Term, by the Conservancy, of the following space within the Kennedy Garage: a separate storage room, on level P3; a transformer room on level P3; a storage/electrical room behind the stairs on level P3; a storage and electrical room behind the stairs on level P2; a PLD room on level P2; a storage room behind the stairs on level P1; and, a PLD room on level P1. The space requirements for each location are shown on the attached drawing. Additionally, access to the fountain's mechanical room must be made available to the Conservancy. Access to storage space and mechanical

rooms identified in this paragraph shall be available to the Conservancy 24 hours a day, seven days a week.

- g) Trash Removal. The City will accept trash from the Park on a daily basis at a downtown site. The trash will be delivered to the prescribed site by the Conservancy's maintenance Subcontractor.
  - h) Road Maintenance. The City shall perform normal cleaning and maintenance of City controlled roads adjacent to the Park, including snow removal.
  - i) Monument Maintenance. The City through its Historical Museum Department shall maintain in good condition and repair all monuments; including bronze restoration, cleaning, repainting and stone work.
2. The Conservancy shall make a good faith effort to estimate, with the City's input, and to include as a cost of a major event sponsored by a for-profit promoter, the cost of services being provided by the City under this Exhibit A.III.1.
  3. In the event the City, due to policy considerations, diminishes the level of Basic Park Services provided to all similar park venues, the City may, upon one-hundred eighty (180) day written notice to the Conservancy, diminish its level of service to the Park under this Agreement to the modified level of Basic Park Services without such reduction in service being deemed a breach hereunder. Notwithstanding the foregoing, in the event the City's reduction in services causes the cancellation of prior approved programming, the City shall be responsible for all expenses and damages associated with such cancellations.

**EXHIBIT B**  
**MAINTENANCE STANDARDS**

**General Standards:** The Conservancy shall enter into maintenance contracts with Contractors which shall provide for the Park to be maintained in accordance with the standards set forth herein, which standards shall be implemented in a good and workmanlike manner.

1. Cleaning
  - a) Dirt, litter and obstructions shall be removed as needed, and trash and leaves collected and removed as needed, so as to maintain Campus Martius Park in clean, neat and good condition.
  - b) All walkways, sidewalks and other improvements and facilities in Campus Martius Park shall be routinely cleaned and maintained so as to keep such improvements and facilities in clean, neat and good condition.
  - c) Graffiti shall be regularly removed, as appropriate to the nature of the surface.
  - d) Drains, catch basins and water features shall be cleaned regularly to prevent clogging.
  - e) Branches and trees damaged or felled by excessive winds, ice, vandalism, or by any other reason whatsoever, shall be promptly removed.
2. Snow Removal. Snow and ice shall be removed from all walkways and paved surfaces in Campus Martius Park within a reasonable period of time after each snowfall or accumulation office, so as to not interfere with safe passage. Appropriate ice melt shall be spread as needed.
3. Landscape Maintenance. The following landscape maintenance work shall be performed:
  - a) Prune and trim trees and shrubs that are overextended, dead or are otherwise unsafe or unsightly, to maintain their natural form.
  - b) Remove or destroy any weeds from paving blocks, pavement, cobbled and concrete areas.
  - c) Apply fertilizer to trees, shrubs, plants and other lawn areas, as appropriate.
  - d) Where appropriate, replace any plants or trees that are dead, diseased and/or otherwise unhealthy with healthy specimens of substantially equal type and reasonable size.
  - e) Reseed and/or resod grass covered areas as needed.
  - f) Rake and collect leaves.

- g) Water all trees, shrubs, plantings and grass-covered areas as necessary to maintain such vegetation in a healthy condition.
  - h) Mow and edge grass covered areas as needed.
4. Water Fountains/Features. All water facilities and equipment, including the Soldiers and Sailors' Monument, central fountain, garden water walls and any other water facilities and equipment that are located in Campus Martius Park shall be maintained in good condition and good working order at all times.
5. Facilities. All facilities and equipment, including the cafe building, lighting, sound and stage equipment and any other facilities and equipment that are located in Campus Martius Park shall be maintained in good condition and good working order at all times.
6. Marker and Artwork Maintenance. All markers and artwork shall be maintained in good condition and repair; including bronze restoration, cleaning, repainting and stone work.
7. Maintenance/Repairs. Subject to the availability of funds repairs shall include, but not be limited to, the following:
- a) Benches and other seating: Any broken or missing bench slats shall be replaced, as needed.
  - b) Walls, barriers and/or fencing: Any broken or materially cracked walls, barriers and/or fencing shall be repaired or removed and replaced. To the extent feasible, replacement materials and designs shall match the materials and designs of existing walls, barriers and/or fencing.
  - c) Pavements: All paved surfaces in Campus Martius Park shall be maintained in good condition. To the extent feasible, replacement materials shall match existing materials.
  - d) Signs: All graphics and signs shall be maintained in a first class condition, and all vandalized or damaged signs shall be promptly cleaned or replaced with new signs that match other installed signs.
  - e) Painting: All items with painted surfaces shall be painted as needed. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the existing color.

\*\*\*\*\*

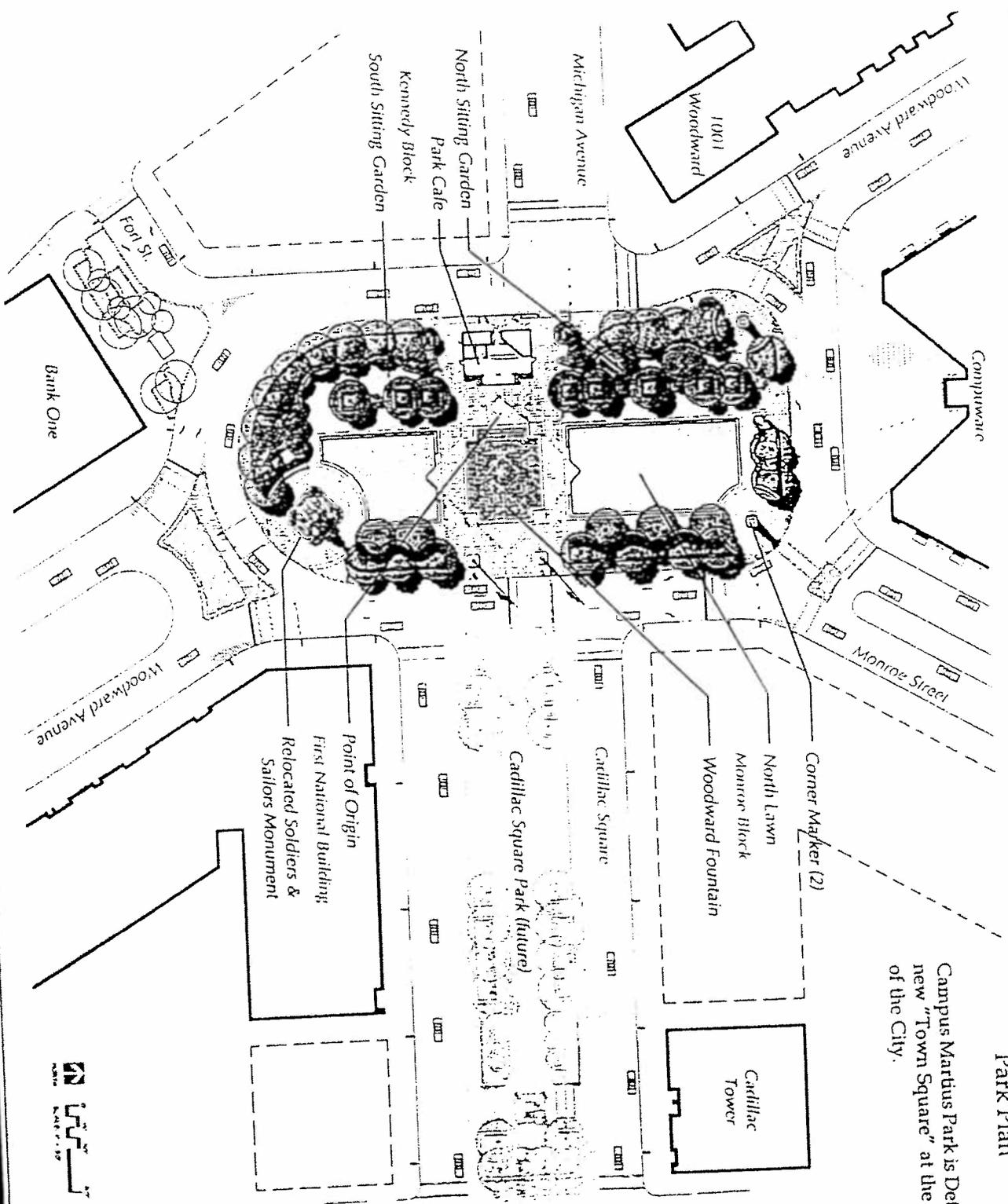
**EXHIBIT C**  
**THE PARK**

Campus Martius Park, at the heart of downtown, is bounded by realigned Woodward Avenue generally by the south-bound lanes on the west and the north-bound lanes on the east. More specifically, it is within the intersection of Woodward Avenue, Fort Street, Michigan Avenue and Monroe Street.

CAMPUS MARTIUS PARK  
THOMAS, AMERICAN

Park Plan

Campus Martius Park is Detroit's new "Town Square" at the heart of the City.



RESOLUTION OF CORPORATE AUTHORITY

I, Maud Margaret Lyon, Corporate President-Secretary of Detroit 300 Conservancy, a Michigan non-profit corporation (the "Company"), Do HEREBY CERTIFY that the following is a true and correct excerpt from the minutes of the meeting of the Board of Directors duly called and held on August 1, 2002, and that the same is now in full force and effect:

"RESOLVED, that the Chairman, President-Secretary, Treasurer, and Chief Financial Officer and each of them, is authorized to execute and deliver, in the name and on behalf of the Company and under its corporate seal or otherwise, any agreement or other instrument or document in connection with any matter or transaction that shall have been duly approved; and the execution and delivery of any agreement, document, or other instrument by any of the aforementioned officers shall be conclusive evidence of such approval."

FURTHER, I CERTIFY that Edsel B. Ford II is Chairman of the Board; Maud Margaret Lyon is President-Secretary; Paul Hillemonds is Treasurer; and Tom Parkinson is Chief Financial Officer.

IN WITNESS THEREOF, I have set my hand this 1<sup>st</sup> day of August, 2002.

  
Maud Margaret Lyon  
Corporate President-Secretary

DETROIT 300 CONSERVANCY  
BOARD MEETING MINUTES

March 18, 2003

CALL TO ORDER

A special meeting of the Detroit 300 Conservancy Board was held via conference call on Tuesday, March 18, 2003. President Maud Margaret Lyon presiding called the meeting to order at 2:00pm.

BOARD MEMBERS PRESENT:

Maud Margaret Lyon  
Peter Cummings  
David Egnor  
Larry Fees, representing Peter Karmanos

John Marshall  
Heath Meriwether  
Carolyn Williams Meza  
Rev. Edgar Vann, Jr.

STAFF PRESENT: Heather Badrak, Business Manager  
Robert Gregory, Project Director  
Tom Parkinson, CFO

I. **Opening Remarks**

President Maud Margaret Lyon began by indicating that the purpose of this board meeting was to select a Construction Manager for Campus Martius Park. The proposals were submitted to the Conservancy March 7<sup>th</sup>. A schedule was prepared summarizing the proposals.

II. **Construction Manager Selection**

The Executive Committee previously reviewed the documentation and concurred with the recommendation to select the Barton Malow/Xcel JV as the Construction Manager for Campus Martius Park. Upon motion made, seconded and carried, the recommendation to select the Barton Malow/Xcel JV as the Construction Manager for Campus Martius Park was unanimously approved.

III. **Administrative Matters**

Tom Parkinson reviewed the following resolutions:

**RESOLUTION 1:** Resolved that the Executive Committee is authorized to negotiate and execute Construction Management Services Agreements with the Barton Malow/Xcel JV.

**RESOLUTION 2:** Resolved that the Executive Committee is authorized to negotiate and execute the Campus Martius Park construction agreement with the City of Detroit.

**RESOLUTION 3:** Resolved that the Executive Committee is authorized to negotiate and execute the Campus Martius Park operating agreement with the City of Detroit.

All resolutions were approved upon motion made, seconded and unanimously carried.

IV. **Adjournment**

Upon motion made, seconded and carried the meeting was adjourned at 2:20 pm.



Maud Margaret Lyon  
Secretary