


FROM	NAME & TITLE	Gregory Bayor, Director	CITY of BALTIMORE MEMO PH: 410-396-7012	
	AGENCY NAME & ADDRESS	Department of Recreation and Parks 3001 East Drive - Room #106		
	SUBJECT	RESTORATION AND SERVICES AGREEMENT: MOUNT VERNON PLACE CONSERVANCY		

TO

DATE: April 2, 2012

Honorable President and Members
of the Board of Estimates

Dear Mr. President and Members:

DEPT OF FINANCE
CAPITAL ACCOUNTING

APR 03 2012

mm

APPROVED FOR FUNDS
AND ACCOUNTS

ACTION REQUESTED OF BOARD OF ESTIMATES:

The Board is requested to approve and authorize the execution of a Restoration and Services Agreement between the Mayor and City Council and the Mount Vernon Place Conservancy. The term of the agreement is five years, beginning upon the date of approval by the Board of Estimates, with continuous five year renewals at the mutual acceptance of the City and the MVPC.

AMOUNT OF MONEY AND SOURCE OF FUNDS:

Thirty-five thousand dollars (\$35,000) per year through FY'16. Funds are available in account #~~9950-504210-9528~~. *9950-915201-9527 mm*

BACKGROUND AND EXPLANATION:

The Mt. Vernon Place Conservancy, a non-profit corporation, was formed in October 2008 to collaborate with public and private stakeholders to raise funds and restore the Washington Monument, the four surrounding park squares, and take responsibility for the continued maintenance and programming for the park area, known as Mt. Vernon Place. The capital costs of the restoration are estimated to be approximately \$12 million.

Gregory Bayor

 GREGORY BAYOR, DIRECTOR
 DEPARTMENT OF RECREATION AND PARKS

GB:FS:fs
Attachments

C: Office of Mayor
Law Department

APPROVED BY THE BOARD OF ESTIMATES

Shirley H. Taylor

CLERK

APR 11 2012

DATE

MOUNT VERNON PLACE RESTORATION AND SERVICES AGREEMENT

THIS MOUNT VERNON PLACE RESTORATION AND SERVICES AGREEMENT (this "*Agreement*") is dated as of the day of APR 11 2012 2012 between the **MAYOR AND CITY COUNCIL OF BALTIMORE**, a body politic and corporate of the State of Maryland (the "*City*"), and **MOUNT VERNON PLACE CONSERVANCY, INC.**, a Maryland non-stock corporation (the "*Conservancy*").

Introduction

The Conservancy is a non-profit corporation established on October 10, 2008. The mission of the Conservancy is to collaborate with public and private entities and with persons to provide restoration and general management, landscaping, and day-to-day functioning of Mount Vernon Place, for the benefit and enjoyment of those who visit, work, and live in or near Mount Vernon Place.

The City and the Conservancy recognize the need for a single management entity to oversee the restoration and daily management of Mount Vernon Place in order for Mount Vernon Place to become a destination center place of Baltimore.

The Conservancy desires to provide Supplemental Services (defined in Section 1.1) within Mount Vernon Place.

The City can provide public funding, and the Conservancy can provide private funding, each to maintain and improve services to Mount Vernon Place.

On February 8, 2011, the Baltimore City Commission for Historical and Architectural Preservation ("*CHAP*") approved the Mount Vernon Place Restoration Plan dated July 16, 2010 prepared by Olin Partnership, Ltd. (as amended from time to time, to the extent approved by the City, the "*Restoration Plan*"), currently subject to returning to CHAP with "an alternative approach for the East and West Squares [in Mount Vernon Place], being one that does not call for the wholesale removal of the trees." The Master Plan Summary, as revised for the December 14, 2010 CHAP hearing, states as follows in the section entitled "Master Plan Next Steps":

The restoration and revitalization master plan for Mount Vernon Place is not a construction document; rather, it establishes principles and presents a vision illustrating how those principles can be realized to improve the long-term viability of Mount Vernon Place. Each recommendation and proposal will undergo detailed analysis as the project progresses through additional phases of design. . . [E]ach plan component will continue to receive input from city departments and will be reviewed at key phases in public hearings before Baltimore City's Commission for Historical and Architectural Preservation (CHAP).

The conservancy and city are committed to a transparent public process to restore and revitalize Baltimore historic urban design

masterpiece.

The parties also desire to implement the Restoration Plan which will require raising substantial Capital Funds (defined in Section 2.7) for the restoration process for Mount Vernon Place. The restoration and associated work for Mount Vernon Place described in the Restoration Plan, including restoration work supplemental or accessory to the Restoration Plan, is called the "*Restoration Work*".

THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the parties agree as follows:

ARTICLE I DEFINITIONS AND EXHIBITS

1.1. Definitions. The definitions of the parties appear in the initial paragraph of this Agreement. Additional definitions are as follows:

"*Baltimore*" means the area within the geographic boundaries of the City of Baltimore.

"*Basic Services*" means those services described in Exhibit 1 which the City provides within Mount Vernon Place.

"*Capital Funds*" has the meaning set forth in Section 2.7.

"*CHAP*" has the meaning set forth in the Introduction.

"*City Funding*" has the meaning set forth in Section 6.1.

"*City Indemnities*" has the meaning set forth in Article VIII.

"*Commencement Date*" has the meaning set forth in Section 3.1.

"*Concession*" means a right to undertake and profit by a specified activity.

"*Conservancy Indemnities*" has the meaning set forth in Article VIII.

"*Costs*" has the meaning set forth in Section 6.2.

"*District*" means the Midtown Community Benefits District, and its successors and assigns, established as a special taxing district pursuant to Maryland State and local law that has the authority to impose a tax or similar charge on properties within its geographic jurisdiction.

"*Fiscal Year*" means the period beginning on July 1 of a calendar year and ending on June 30 of the subsequent calendar year.

"*Friends*" has the meaning set forth in Section 2.9.

"*Initial Term*" has the meaning set forth in Section 3.1.

"*Mount Vernon Place*" means that area described by perimeter description in the Special Conditions attached as Exhibit 2 and shown on the map as attached as Plat A to that Exhibit 2, with such modifications, additions or deletions as the parties subsequently may establish by mutual agreement.

“Net Concession Receipts” has the meaning set forth in Section 6.2.

“Parks Department” means the City Department of Recreation and Parks.

“Phase” has the meaning set forth in Section 2.7.

“Private Funding” has the meaning set forth in Section 5.1.

“Property Owners” means those individuals and entities, other than the City, which own or control property in Mount Vernon Place either by fee ownership or long-term leasehold estate, including each person or entity which owns a sidewalk or owns an alleyway, or part of either such construction, or is located adjacent to any such construction, included within Mount Vernon Place .

“Professional Fees” has the meaning set forth in Section 9.1(a).

“Restoration Plan” has the meaning set forth in the Introduction.

“Restoration Work” has the meaning set forth in the Introduction.

“Services” means Basic Services and Supplemental Services.

“Special Conditions” has the meaning set forth in Section 2.6.

“Supplemental Services” means those services described in Exhibit 1 which the Conservancy expects to provide within Mount Vernon Place.

“Term” has the meaning set forth in Section 3.2.

1.2. Exhibits.

The Exhibits to the Agreement are as follows:

Exhibit 1	Basic Services and Supplemental Services
Exhibit 2	Special Conditions for Use of Mount Vernon Place
Exhibit 3	Letter dated March 7, 2011 to Mr. Lance Humphries from Kathleen Kotarba, Executive Director of CHAP
Exhibit 4	Letter dated October 10, 2011 to Henry Hopkins from Peter Merles setting forth the allocation of \$80,000 of services by the Midtown Community Benefits District
Exhibit 5	Commitment to Comply
Exhibit 6	Excerpts from the Restoration Plan filed with CHAP relating to the background of the Special Conditions

ARTICLE II SERVICES AND MANAGEMENT

2.1. Basic Services. Basic Services of the City. The Basic Services now provided by the City in and around Mount Vernon Place are identified on Exhibit 1. The City will continue to provide the Basic Services in accordance with City policy in effect from time to time and to the extent funds are available under the applicable City budgets.

The City is solely responsible for costs incurred by its provision of Basic Services.

2.2. Supplemental Services of the Conservancy.

(a) Authorization of Conservancy. The City hereby authorizes the Conservancy to provide Supplemental Services to the public parks, walkways, streets, roads, sidewalks, alleys, the Washington Monument and its cast iron fence, ornamental marble balustrades, walls, fountains, free standing statues, lighting and other fixtures, and all other hardscape and landscape features within Mount Vernon Place, as permitted by the applicable governmental requirements binding upon the City. During the Term, the Conservancy shall be the sole provider of the Supplemental Services, with such agents and independent contractors as the Conservancy may contract with, including the District.

(b) Services of Conservancy. Except in the extenuating circumstances described in Section 2.3, or in the circumstance of modification described in Section 2.5, the Conservancy shall provide the Supplemental Services within Mount Vernon Place of the kind and in the quantities described in Exhibit 1. The Conservancy is solely responsible for the costs incurred by the provision of the Supplemental Services.

2.3. Extenuating Circumstances.

(a) Unusual Events. The parties recognize that the Services provided on any particular day or period may vary based on special events, such as festivals, sports events, parades or conventions, or weather conditions such as snow storms or electrical storms, or unanticipated short-term demands outside Mount Vernon Place. The parties expect, however, that on substantially all of the days in any year applicable to normal provision of the relevant services, the parties will perform the Services.

(b) Changed Circumstances. Following consultation with each other, the City and the Conservancy may adjust the services to use new methodologies and policies of the parties, in order to correspond to changed circumstances, provided that the applicable party maintains the basic intent of this Agreement for provision of services in any adjustment. "Consultation" shall mean sufficient advance notice of the proposed adjustment to give the other party a reasonable opportunity to evaluate the proposed adjustment, meaningful discussion by the parties of the proposed adjustment, reasonable consideration by the proposing party of any comments from the other party about the proposed adjustment, and alteration of the proposed adjustment to the extent reasonable taking into account the then existing needs and practical circumstances of each party.

(c) Emergency. If either the Mayor of the City or the Governor of the State of Maryland declares an emergency, the affected party temporarily may discontinue or reduce Services in all or part of Mount Vernon Place, regardless of the continuation of such services elsewhere in Baltimore.

(d) Suspension for Force Majeure. If a circumstance described in Section 16.4 **Force Majeure** occurs, the affected party temporarily may discontinue or reduce affected Services in all or part of Mount Vernon Place, regardless of the

continuation of such services elsewhere in Baltimore.

2.4. Monitoring of Services. At the request of the Parks Department, the City agencies responsible for aspects of the Basic Services will meet from time to time to review the way in which the Basic Services and the Supplemental Services have been provided, and will make comments and suggestions to their respective agencies and to the Conservancy regarding such Services as they consider appropriate. At the reasonable request of the Conservancy, the Parks Department will initiate such review procedure.

2.5. Modifications of Services. If either the City or the Conservancy is unable to continue to provide all or any part of the Services within Mount Vernon Place, except for extenuating circumstances specified in Section 2.3, that party, following consultation with the other, will provide a notice to the other parties that will

- (a) identify which part of the Services the party is unable to provide;
- (b) provide a detailed explanation of why such party is withdrawing or reducing such identified Services; and
- (c) state the date upon which such party will cease to provide the identified Services and provide a proposal for substitute services.

2.6. Management of Mount Vernon Place. Attached as Exhibit 2 are Special Conditions for Use of Mount Vernon Place acceptable to the parties (as amended from time to time, the "*Special Conditions*"). Before issuing any permit for use of any part of Mount Vernon Place, the City will require, as a condition of issuance of any permit, execution of the Special Conditions by the applicant for the permit. If the City itself holds any event for which a permit is unnecessary, the City will abide by the Special Conditions with respect to such event, subject to the waiver and amendment rights of the City set forth in this Section.

Subject to giving the Conservancy prior notice and a reasonable period of time to submit comments, the Director of the Parks Department shall have the right to waive any provision of the Special Conditions for any event or applicant. A reasonable period of time shall be not fewer than forty-eight (48) hours, excluding holidays and weekends, except such period may be such lesser time as necessary under extraordinary circumstances, such as a visit by the President of the United States or other dignitary and an event related to that visit is to occur in Mount Vernon Place.

Subject to giving the Conservancy thirty (30)-day prior notice of any proposed amendment to the Special Conditions and an opportunity to comment within such period, the Director of the Department of Recreation and Parks shall have the right to amend the Special Conditions.

For the convenience of the parties, set forth on Exhibit 6 taken from the complete copy of the Restoration Plan filed in paper form with CHAP but not posted on the CHAP website are excerpts relating to the background of the Special Conditions.

2.7. Restoration Plan. To the extent the Conservancy obtains funds to implement the Restoration Plan, the Conservancy will implement the Restoration Plan after having received a Notice to Proceed from CHAP and effect the Restoration Work in as timely a manner as available funds permit. The Conservancy will engage in a good faith effort to raise capital funds sufficient to effect such portions of the Restoration Plan as the Conservancy believes it is capable of undertaking (the "*Capital Funds*"). The initial goal of the Conservancy is to raise Capital Funds in the initial amount of twelve million and 00/100 Dollars (\$12,000,000.00) to complete the portions of the Restoration Plan CHAP approved at its meeting held February 8, 2011 as described in CHAP's letter dated March 7, 2011 for the balusters, monuments, hardscape, and the other approved aspects of the Restoration Plan, subject to providing an alternative to tree replacement in the East-West Parks as described in the March 7, 2011 letter, a copy of which is attached for reference to this Agreement as Exhibit 3.

Any part of the Restoration Plan the Conservancy performs shall be pursuant to a Developer's Agreement between the Conservancy and the City. The parties will undertake to agree on specific provisions for a Developer's Agreement for each portion of the Restoration Work (each such portion a "*Phase*")

During the Term, the Conservancy shall be the sole party authorized to undertake the Restoration Work. This authorization does not limit the rights of the City, in any way, with respect to Mount Vernon Place. The Conservancy will present to the City for the City's approval a schedule for proceeding with different portions of the Restoration Plan, which will cover the order in which portions of the Restoration Work will occur, the approximate time for the beginning of such portion, and the anticipated duration of such portion of the work.

The City will enter into a Developer's Agreement for any portion of the Restoration Work only if such work is in accordance with the City-approved schedule, as such schedule may be amended from time to time. The Conservancy shall not commence any such work except in accordance with a Developer's Agreement signed by the City.

2.8. Community Discussion Procedure. At least once each Fiscal Year, a representative of the Parks Department will meet in a public forum to discuss the use and operation of Mount Vernon Place.

2.9. Representatives on Conservancy Board. Policies of the Board of Directors of the Conservancy are (a) to have as a member of the Board of Directors a City official appointed by the Mayor of the City with the currently City-designated member being the Director of the Department of Recreation and Parks, or the Director's designee, (b) to have as a member of the Board of Directors a director appointed from the Mount Vernon community with such currently community-designated member being the President of the Mount Vernon-Belvedere Association, Inc., or such officer's designee, (c) so long as the Friends of Mount Vernon Place, Inc., a Maryland corporation (the "*Friends*") exists as an entity separate from the Conservancy, to have as a member of the Board of Directors a director appointed from the membership of the Friends with such currently designated member being the President of the Friends, or such officer's designee,

and (d) to offer on a continuous basis a Councilperson representing the area covered by the District to be a member of the Board of Directors. These four policies of the Board of Directors of the Conservancy shall remain in effect during the Term of this Agreement.

At least once each calendar quarter, a representative of the Conservancy shall report on the activities of the Conservancy to the Mount Vernon-Belvedere Association, Inc.

ARTICLE III TERM

3.1. Initial Term. This Agreement will be for an initial term (the "*Initial Term*") commencing on the date the Board of Estimates of Baltimore City approves this Agreement (the "*Commencement Date*") and continuing until the end of the Fiscal Year in which the fifth (5th) anniversary of such approval occurs.

3.2. Renewal Terms. At the completion of the Initial Term, this Agreement automatically will extend thereafter for additional periods of five (5) years each unless at least twelve (12) months before the end of the then current five (5) year period, either the City or the Conservancy notifies the other that the notifying party is terminating this Agreement. Each additional term of five (5) years shall be on the same terms and conditions as are set forth in this Agreement immediately before the renewal (the Initial Term, as extended or renewed, is called the "*Term*").

ARTICLE IV EFFECT OF A CONTRIBUTING ARRANGEMENT WITH THE DISTRICT

4.1. Effect of the Establishment of a Contributing Arrangement with the Midtown Community Benefits District. The City recognizes the Conservancy may establish a financial contributing arrangement with the District for Mount Vernon Place. The Conservancy shall coordinate with the District as to services the Conservancy provides and services the District provides. Attached as Exhibit 4 is a copy of a letter dated October 10, 2011 to Henry Hopkins from Peter Merles setting forth the allocation of \$80,000 of services by the Midtown Community Benefits District to the Mount Vernon Place Conservancy, Inc.

4.2. Voluntary Contributions. The Conservancy shall have the right to enter into agreements for voluntary contributions from Property Owners and from any other person or entity to make voluntary contributions to the Conservancy and to collect those contributions directly from the donor for use for the benefit of Mount Vernon Place.

The Conservancy, however, will not seek or accept funding from (1) the State's Program Open Space, or (2) any other State or Federal program or agency if the City has received funding from that program or agency in the past or if such funding to the Conservancy could reduce the amount that might otherwise be paid to the City by such program or agency, in each instance of (1) or (2) without the prior written consent of the City.

ARTICLE V
PRIVATE FUNDING FOR THE CONSERVANCY

5.1. Initial Funding. The Conservancy will implement a system by which Property Owners or other persons or entities contribute to the cost of Supplemental Services for each Fiscal Year of the Term (the "*Private Funding*").

5.2. Account for Private Funding. For each Fiscal Year, the Conservancy shall inform the City of the amount of Private Funding.

5.3. Budget. Thirty (30) days before the start of each Fiscal Year, the Conservancy will provide the Director of Finance of the City, with a copy to the Director of the Department of Recreation and Parks, with the Conservancy's budget for Supplemental Services, including all projected sources and uses of funds. In the absence of disapproval with the specified reasons for any disapproval given within thirty (30) days following receipt of the Conservancy's budget, the City shall have been deemed to approve the budget.

5.4. Fiscal Year End Reports. Ninety (90) days after the end of each Fiscal Year, the Conservancy shall give the Director of Finance of the City, with a copy to the Director of the Department of Recreation and Parks, a report showing in detail the Supplemental Services, including actual sources and uses of funds, which occurred during that Fiscal Year. Also at that time, the Conservancy shall provide financial reports (sources and uses of funds and a balance sheet) to the Director of Finance of the City, with a copy to the Director of the Department of Recreation and Parks, summarizing its financial activities during the Fiscal Year. At such times and in such forms as the City may require of the Conservancy within normal business practices, the Conservancy shall provide to the City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement.

The Conservancy shall include with such provided report of Supplemental Services a report on the progress and implementation of the Restoration Plan.

5.5. Financial Records. The Conservancy (a) shall maintain proper books and records adequate to enable independent certified public accountants to certify the use of all funds from all sources, (b) shall retain such books and records and copies of the reports and statements for a period of three (3) years following termination of this Agreement, and (c) shall make such books and records available for inspection by the City and its auditors, agents, and representatives at all reasonable times.

5.6. Audit Available. The Conservancy shall make available each year on a publically accessible web site the audited financial report and federal tax report Form 990 of the Conservancy, and, thirty (30) days before submission to the Director of Finance of the City pursuant to Section 5.3, a draft of the budget required by Section 5.3.

**ARTICLE VI
CITY FUNDING FOR THE CONSERVANCY**

6.1. City Funding.

(a) In addition to the provision of the Basic Services which the City is providing at the cost of the City, the City shall continue, in accordance with the existing arrangement between the City and the Conservancy, to provide funding to the Conservancy in the amount of Thirty-Five Thousand Dollars (\$35,000.00) (the "**City Funding**"), beginning in Fiscal Year 2012 and for each Fiscal Year thereafter until and including Fiscal Year 2016, subject to annual appropriation by the Board of Estimates for Baltimore City, for the performance of Supplemental Services by the Conservancy.

(b) The City shall make any payments due under this Section to the Conservancy within thirty (30) days following the start of a Fiscal Year, except for Fiscal Year 2012 which the City shall pay to the Conservancy within thirty (30) days following the Commencement Date.

The City Funding will terminate at the end of Fiscal Year 2016, whether or not the Term is extended.

6.2 Conservancy Concessions and Division of Receipts. The City hereby authorizes the Conservancy to arrange Concessions, and Conservancy events, in Mount Vernon Place and charge a fee for such arrangements, all subject to the Conservancy applying for the required Parks Department Special Event Permits, and Vending Permits, and other City permits and other governmental requirements. Upon receipt by the Parks Department of a vending application, the City can issue an annual permit to the Conservancy, at no charge, under which the City would permit the Conservancy to offer Concessions to the public at certain locations in Mount Vernon Place. The Conservancy may enter into a contract with one or more vendors of merchandise or food to operate such Concessions other than during events taking place in Mount Vernon Place. The Conservancy will pay only the Parks Department application fee for Special Event Permits from Parks Department. The Conservancy will submit to the Mount Vernon-Belvedere Association, Inc. in advance in a timely manner for comment each proposal by the Conservancy for a Concession.

The City and the Conservancy shall divide all net receipts collected by the Conservancy in connection with such Concessions and contracts (as defined below, "**Net Concession Receipts**") as follows: For each calendar year that this Agreement is in effect, including 2012 and the calendar year in which this Agreement expires or is terminated, the Conservancy shall retain Twenty-Five Thousand Dollars (\$25,000) of the Net Concession Receipts for that year and pay to the City an amount equal to Fifty Percent (50%) of any Net Concession Receipts for the year that exceed such amount; provided, however, that in the first full calendar year after the Conservancy has satisfied the fund raising target described in the next sentence, and in each year thereafter, including the calendar year in which this Agreement expires or is terminated, the Conservancy shall retain Fifty Thousand Dollars (\$50,000) of the Net Concession Receipts for that year and pay to the

City an amount equal to Fifty Percent (50%) of any Net Concession Receipts for such year that exceed Fifty Thousand Dollars (\$50,000). The "fund raising target" is the receipt by the Conservancy after the date of this Agreement of actual contributions (not pledges) of money to the Conservancy of Four Million Dollars (\$4,000,000); however, the fund raising target will not be met unless and until the Conservancy has received, after the date of this Agreement, actual contributions (not pledges) of money from non-governmental sources of at least Five Hundred Thousand Dollars (\$500,000).

"*Net Concession Receipts*" shall mean (i) the fees and other amounts collected by the Conservancy from a vendor that is permitted by the Conservancy to operate a Concession in Mount Vernon Place, who pays such fees and other amounts to the Conservancy in consideration of such permission, and no amount shall be deducted from such fees and other amounts for costs of the Conservancy and (ii) gross receipts collected by or on behalf of the Conservancy in connection with a Concession or event the Conservancy operates in Mount Vernon Place, less the costs of such operation, all as determined and allocable in accordance with generally accepted accounting principles. "*Costs*" means for such purposes the Conservancy's out of pocket costs and expenses, in each case reasonable in amount, for the following:

- a. direct supervision of operation and maintenance of the Concession, including security service, if any;
- b. salaries, employee benefits and applicable payroll, withholding, and F.I.C.A. taxes of employees directly engaged in the operation and maintenance of the Concession;
- c. premiums on insurance, public liability insurance, and other insurance, if any, allocable to the Concession;
- e. repairs, replacements, and renovation necessary to maintain the Concession in a good operating condition;
- f. utility costs for the Concession;
- g. equipment and supplies relating to maintenance, repair, replacement, and operation of the Concession;
- h. payments to government agencies for the Concession;
- i. installation of improvements for the Concession, such as lighting or landscaping, if not originally provided; and
- j. all other costs and expenses allocated in accordance with generally accepted accounting principles to the operation of the Concession, but excluding any staff time, accounting services, amortization of office equipment, and any other cost of the Conservancy customarily characterized as overhead of an organization.

The Conservancy shall apply all Net Concession Receipts the Conservancy receives to costs of maintenance, restoration, or other application directly beneficial to the physical aspect of Mount Vernon Place.

The Conservancy shall deliver a statement to the City by February 1, 2013, and each February 1 thereafter, stating in reasonable detail for the prior calendar year (1) the receipts collected by the Conservancy in connection with such Concessions and contracts, and the costs related to such Concessions and contracts; (2) the amounts received by the Conservancy that contribute to the fund raising target for the prior year; and (3) a calculation of the amount of the Net Concession Receipts and the payment owed to the City under this Section, if any. If the Conservancy owes a payment to the City, then the Conservancy shall make the payment to the City by such date. An officer of the Conservancy shall sign the statement.

The Conservancy shall maintain complete business records respecting the Net Concession Receipts in Baltimore. The City, at any time (but not more frequently than twice per calendar year) and on reasonable advance notice, may inspect, copy, and audit such records at the City's expense. If, however, the City's audit discloses the Conservancy owes Net Concession Receipts for any one year of more than five percent (5%) of the amount paid, then the Conservancy shall pay (y) the reasonable cost of such audit and (z) interest at the annual rate of ten percent (10%) upon such unpaid Net Concession Receipts from the applicable payment date until the date paid.

6.3. Recognition Rights. In fund raising activities of the Conservancy, the City is willing to consider placement of plaques and other appropriate recognition of donors to the Conservancy, all as the City may approve.

6.4. City Bond Funds. The City has approved as part of the 2010 Loan Authorization for the Department of Recreation and Parks funding for the Mount Vernon Conservancy restoration project for Mount Vernon Place an amount of \$500,000 for the City's fiscal year 2012 and an amount of \$500,000 for the City's fiscal year 2013 for a total amount of \$1,000,000.

ARTICLE VII TERMINATION

7.1 Termination for Cause. If either party fails to fulfill in a timely and proper manner its obligations pursuant to this Agreement, or if either party shall violate any provision of this Agreement, the non-breaching party shall thereupon have the right to terminate this Agreement, provided the breaching party has failed to cure such violation within sixty (60) days after receiving notice from the non-breaching party.

7.2. Termination Due to Lack of Funds. If Private Funding or City Funding, in whole or in part, is not available to begin or to continue the level of services specified in this Agreement, either party may terminate this Agreement by giving the other party sixty (60)-day advance notice to be effective not later than the end of any Fiscal Year of the City ending after the expiration of such sixty (60)-day notice.

ARTICLE VIII INDEMNIFICATION

The Conservancy shall indemnify, defend, and hold harmless the City, its elected and appointed officials, employees, agents, and volunteers (collectively the "**City Indemnitees**") from any and all claims, demands, suits, and actions, including attorney's fees and court costs connected therewith, brought against the City or any City Indemnitees, arising out of any willful or negligent act or omission of the Conservancy, its employees, agents, volunteers, or contractors pursuant to this Agreement with respect to the Supplemental Services.

To the extent allowable under Sections 5-301 and following, as amended, of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland entitled "Local Government Tort Claims Act," the City shall indemnify, defend, and hold harmless the Conservancy, its directors, officers, employees, agents, and volunteers (collectively the "**Conservancy Indemnitees**") from any and all claims, demands, suits, and actions, including attorney's fees and court costs connected therewith, brought against the Conservancy with respect to Mount Vernon Place , or any Conservancy Indemnitees, arising out of any willful or negligent, act or omission of the City, its employees, agents, volunteers, or contractors pursuant to this Agreement. This indemnity shall not extend to the matters for which the Conservancy is responsible pursuant to the preceding paragraph.

ARTICLE IX INSURANCE

9.1. Required Insurance. The Conservancy shall not commence work under this Agreement until it has obtained all the insurance required under this section. Further, such insurance shall remain in force during the Term. The Conservancy shall name the City as additional insured on all liability policies. The Conservancy, except as to the Professional Liability, Errors and Omissions Insurance specified in Item a below which the Conservancy will use best efforts to require any person or entity to obtain who provides Professional Services (defined in Item a below) with respect to Mount Vernon Place , shall procure and maintain during the Term the following required insurance coverage:

(a) Professional Liability, Errors and Omissions Insurance, at a limit of not less than One Million Dollars (\$1,000,000), if services delivered pursuant to this Agreement, either directly or indirectly involve or require professional services. "**Professional Services**" for the purpose of this Agreement shall mean any services provided by a licensed professional.

(b) Commercial General Liability Insurance at limits of not less than One Million Dollars (\$1,000,000) per occurrence for claims arising out of bodily injuries or death, and property damages. With those policies with aggregate limits, a minimum limit of Three Million Dollars (\$3,000,000) is required. Such insurance shall include contractual liability insurance.

(c) Business Automobile Liability at limits of not less than One Million

Dollars (\$1,000,000) per occurrence for all claims arising out of bodily injuries or death and property damages. The insurance shall apply to any owned, non-owned, leased, or hired automobiles the Conservancy itself uses in the performance this Agreement.

(d) Worker's Compensation coverage as required by the State of Maryland, and any similar coverage required by applicable Federal or "Other States" State Law for employees of the Conservancy.

(e) Fidelity Insurance at a limit of not less than One Million Dollars (\$1,000,000) for the Conservancy.

9.2. Separately to Insureds. The Conservancy's insurance shall apply separately to each insured against whom claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

9.3. Primary Insurance. To the extent of the Conservancy's negligence, the Conservancy's insurance coverage shall be primary insurance with respect to the City, its elected and appointed officials, employees, agencies, and agents. Any insurance and self-insurance maintained by the City, its elected and appointed officials, employees, agencies or agents shall not contribute with the Conservancy's insurance or benefit the Conservancy in any way.

9.4. Time Limit. Coverage shall not be suspended, voided, canceled, reduced, in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after the giving of forty-five (45) days prior written notice to the City, to the extent obtainable from the applicable insurance company, except the notice for non-payment of premium, may be at least ten (10) days advance notice of cancellation.

9.5. Rating. Insurance shall be with insurers having a Best's rating of not less than A:VII, or, if not rated with Best's, with minimum surpluses the equivalent of Best's surplus size VII. The issuing insurer must be licensed or approved to do business in the State of Maryland.

9.6. Certificate. The Conservancy shall furnish the City with a "Certificate of Insurance" and a copy of the additional insured endorsement as verification that coverage is in force. The City reserves the right to require complete copies of insurance policies at any time.

9.7. Coverage of City. The insurance shall cover the City, its elected and appointed officials, employees, agencies, and agents by endorsement, as additional insured as respects to liability arising out of activities performed by or on behalf of the Conservancy in connection with this Agreement. Failure to obtain insurance coverage as required or failure to furnish the applicable Certificate of Insurance as required following notice shall be a default under this Agreement at the sole discretion of the City, except that no act or omission of the City shall in any way limit, modify, or affect the obligations of the Conservancy under any provision of this Agreement.

ARTICLE X ASSIGNMENT

The Conservancy shall not assign its rights under this Agreement, except with the prior written approval of the parties and the Board of Estimates of Baltimore City, which approval shall be subject to such conditions and provisions as the City may deem necessary. This Agreement shall be incorporated by reference into any assignment, and any assignee shall comply with all of the provisions of this Agreement.

ARTICLE XI COMPLIANCE WITH LAWS

The Conservancy shall comply with all governmental requirements and codes of ethics pertaining to or regulating the provision of the services, including those now in effect and hereafter adopted.

ARTICLE XII NON-DISCRIMINATION

12.1. No Discrimination. The Conservancy will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, handicap, or national origin. The Conservancy will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, handicap, or national origin. Such action shall include the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. The Conservancy shall post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

12.2. Publication. The Conservancy, in all solicitations or advertisements for employees placed by or on behalf of the Conservancy, will state that all qualified applicants will receive consideration of employment without regard to race, color, religion, sex, sexual orientation, handicap, or national origin.

12.3. No Discharge. No person employed by the Conservancy on the work covered by this Agreement may be discharged or in any way discriminated against because such person has filed any complaint or instituted or caused to be instituted any proceeding under or relating to the labor standards applicable hereunder

ARTICLE XIII MINORITY AND WOMEN'S BUSINESS OPPORTUNITY REQUIREMENTS

The requirements of the Baltimore City Code 2000, Article 5, Subtitle 28 (pertaining to Minority and Women's Business Enterprise), as amended, are incorporated into this Agreement by reference. The Conservancy shall execute a Commitment to Comply with the Minority and Women's Business Enterprise Program of the City of

Baltimore as set forth in Exhibit 5 and such Commitment shall apply to each Phase of the Restoration Work subject to such Article 5, Subtitle 28.

ARTICLE XIV AUDITS

At any time during regular business hours, but upon reasonable advance notice, and as often as the City may deem necessary, the Conservancy shall make available to the City for examination the Conservancy's records with respect to matters covered by this Agreement. The Conservancy shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, records of personnel, conditions of employment, and other data relating to matters covered by this Agreement.

The Conservancy shall be responsible for repayment of any and all applicable audit exceptions which City, state, or federal auditors or their designated representatives may identify and are material and adverse in nature to the City as to create an audit disallowance. The City will bill the Conservancy for the amount of such audit disallowance, and the Conservancy promptly shall repay such audit disallowance. If the City determines such an audit disallowance, the City may offset the City Funding to the Conservancy for the current Fiscal Year or subsequent Fiscal Year by the amount of such audit disallowance.

ARTICLE XV CONFLICTS OF INTEREST

No member, official, representative, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, representative, or employee participate in any decision relating to this Agreement which affects such person's personal interests or the interest of any corporation, partnership or association in which such person, directly or indirectly, has an interest.

No member, official, representative, or employee of the Conservancy shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, representative, or employee participate in any decision relating to this Agreement which affects such person's personal interests or the interest of any corporation, partnership or association in which such person, directly or indirectly, has an interest.

The parties acknowledge, however, that the participation of directors of the Conservancy, appointed, selected, or designated by the City, in any decisions relating hereto, will not constitute a conflict of interest.

ARTICLE XVI MISCELLANEOUS PROVISIONS

16.1. Invalidity of Particular Provisions. If any provision of this Agreement or the application thereof to any person or circumstance to any extent shall be invalid or

unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16.2. Third Party Beneficiary. Nothing set forth in this Agreement shall be construed to confer upon any other party the rights of a third party beneficiary, except as specifically may be otherwise provided herein.

16.3. Multiple Copies. The parties may execute this Agreement in any number of copies and each such copy shall be deemed an original.

16.4. Force Majeure. If by reason of acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; orders of any kind of the United States of America or of the State of Maryland, or any department, agency, political subdivision or official thereof, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery; partial or entire failure of utilities; or any cause or event not reasonably within the control of a party, that party is unable in whole or in part to carry out its agreements referred to in this Agreement, the affected party shall not be deemed in default during the continuance of such inability.

The affected party shall use reasonable efforts to remedy with all reasonable dispatch the cause preventing it from carrying out its agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the affected party, and the affected party shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the affected party, unfavorable to the affected party.

16.5. Disclaimer of Partnership Status. Nothing in the provisions of this Agreement shall be deemed in any way to create between the Conservancy and the City any relationship of partnership, joint venture, or association and the parties hereby disclaim the existence of any such relationship.

16.6. Notice. Except as otherwise provided herein, each notice or other communication required to be given or authorized to be given pursuant to this Agreement shall be in writing and shall be delivered or sent by registered or certified mail, postage prepaid, or by commercial messenger to,

in the case of the City,

Mayor and City Council of Baltimore
100 North Holliday Street, 4th Floor Baltimore, Maryland 21202
Attention: Director of Finance

with a copy to

City Solicitor
City Hall, Room 101
100 North Holliday Street
Baltimore, Maryland 21202

and in the case of the Conservancy

Mount Vernon Place Conservancy, Inc.
P.O. Box 26285
Baltimore, Maryland 21210

with a copy to

Henry H. Hopkins
P.O. Box 168
Gibson Island, Maryland 21056

16.7. Amendment of Agreement. Any and all modifications to the terms of this Agreement must be by a written Amendment, signed by the parties and approved by the Board of Estimates of Baltimore City.

16.8. Governance. This Agreement shall be construed by and governed under the laws of the State of Maryland and subject to the jurisdiction of its courts. Any litigation between the parties relating to this Agreement shall be filed in a court of competent jurisdiction in Baltimore City.

16.9. Grammar. Words of each gender used in this Agreement shall include each other gender. Words in the singular shall include the plural, and vice versa. "Include" or any grammatical derivative thereof shall mean "including, but not limited to."

16.10. Headings. Any heading of the paragraphs in this Agreement is for convenience and reference only, and shall be disregarded in construing this Agreement.

16.11. Recitals and Exhibits. The recitals and all Exhibits to this Agreement are hereby incorporated as part of this Agreement.

16.12. No Waiver. The waiver of any term of this Agreement, or the failure of the City to insist on strict compliance or prompt performance of any terms of this Agreement, followed by the acceptance of such performance thereafter, shall not constitute or be construed as a waiver or relinquishment of any right by the City to enforce all terms if a continuous or subsequent default occurs.

16.13. Entire Agreement. This Agreement constitutes the entire understanding between the parties, and neither party shall be bound by any representations, statements, promises, or agreements not expressly set forth herein.

16.14. MOED. The Conservancy shall work with and cooperate with the Baltimore City Office of Employment Development as a resource for hiring employees

who reside in Baltimore City.


16.15. Employee Status. Without consent of the City, the Conservancy shall not engage, on a full or part-time basis during the term of this Agreement, any professional or technical personnel who are or who have been at any time during the period of this Agreement in the employ of the City, except regularly retired employees.

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


ATTEST:


Custodian of the City Seal


**MAYOR AND CITY COUNCIL OF
BALTIMORE**

By:  (SEAL)
Stephanie Rawlings-Blake, Mayor

ATTEST:


Secretary

**MOUNT VERNON PLACE
CONSERVANCY, INC**

By:  (SEAL)
Henry H. Hopkins, President

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**


Special Chief Solicitor

**APPROVED BY THE BOARD
OF ESTIMATES**

By:  (SEAL)
Clerk

APR 11 2012

EXHIBITS

EXHIBIT 1

Basic Services and Supplemental Services

EXHIBIT 2

Special Conditions for Use of Mount Vernon Place

EXHIBIT 3

**Letter dated March 7, 2011 to Mr. Lance Humphries from Kathleen Kotarba,
Executive Director of CHAP**

EXHIBIT 4

**Letter dated October 10, 2011 to Henry Hopkins from Peter Merles setting forth the
allocation of \$80,000 of services by the Midtown Community Benefits District**

EXHIBIT 5

Commitment to Comply

EXHIBIT 6

**Excerpts from the Restoration Plan filed with CHAP relating to
the background of the Special Conditions**

EXHIBIT 1

Services Responsibilities

Maintenance Activity	Short Term (Pre-Construction)	Long Term (Post-Construction) ¹
Gardening and landscaping	MVPC or District ²	MVPC or District
Pruning Shrubbery	MVPC or District	MVPC or District
Planting Annual and Perennial Flowers	MVPC or District	MVPC or District
Weeding planting beds	MVPC or District	MVPC or District
Mulching	MVPC or District	MVPC or District
Lawn Maintenance	MVPC or District	MVPC or District
Grass Seeding	MVPC or District	MVPC or District
Watering Grass Summer	MVPC or District	MVPC or District
Grass Mowing	City	MVPC or District
Tree Pruning and Removal	City	City and MVPC ³
Removal Leaf Fall	MVPC or District	MVPC or District
Snow Removal - Streets	City	City
Snow Removal - Parks	City ⁴	MVPC or District
Snow Removal - Building side Sidewalks	Property owner ⁵	Property owner
Fountain Mechanical Maintenance	City	MVPC or District
Fountain cleaning	MVPC or District	MVPC or District
Maintain hose bibs	City	MVPC or District
Maintain electrical fixtures at the monument	City	MVPC or District
Graffiti removal services	City	City
Trash and litter removal from park areas sidewalks, beds, etc.	MVPC or District	MVPC or District
Street cleaning	MVPC or District	MVPC or District
Bench Repair and Replacement	City	MVPC or District
Street Lights and Traffic Signals	City	City
Park Lights and specialty lighting	City	City and MVPC
Street surface repairs	City	City
Bronze Sculptures - maintenance	City	City and MVPC
Parking Meter Maintenance	City	City

¹ These projected services responsibilities are based on the assumptions of the area being restored as contemplated in the Restoration Plan, and become effective upon realization of the Restoration Plan, or before, if the parties mutually agree.

² MVPC or District used here indicates that either the Mount Vernon Place Conservancy, Inc. (“MVPC”) or the Midtown Community Benefits District (“District”) currently performs or will perform this service. The inclusion of the District here does not obligate the District to perform the maintenance activity. MVPC is the responsible party with the District included for the benefit of expertise and economies of scale.

³ The City shall be responsible for existing trees. MVPC shall be responsible for trees MVPC installs.

⁴ The District only addresses snow in Parks after building side sidewalks have been cleared. Currently this is a city responsibility.

⁵ The District notes that they currently attempt to make one snow blower pass on building side sidewalks, but not complete snow removal.

EXHIBIT 2
Addendum to Department of Recreation and Parks Special Events
Application
Special Conditions for Use of Mount Vernon Place

For the event sponsored by the undersigned organization or person (the "*Sponsor*") at Mount Vernon Place, the City has agreed with the Mount Vernon Place Conservancy, Inc., a Maryland corporation (the "*Conservancy*") to add these Special Conditions to the application. The parties recognize special conditions apply to the use of Mount Vernon Place because of the historic nature and public, central, and neighborhood aspect of Mount Vernon Place.

Definitions

Mount Vernon Place. Mount Vernon Place is the area lying between

(a) the north building line of the buildings located on the south side of Monument Street

(b) the south building line of the buildings located on the north side of Monument Street

all between the east building line of the buildings located on the west side of Cathedral Street and the west building line of the buildings located on the east side of Saint Paul Street with the gap in those two building lines because of Monument Street filled in by a straight line connecting those two Cathedral Street building lines and a straight line connecting the two Saint Paul Street building lines,

(c) the east building line of the buildings located on the west side of Charles Street, and

(d) the west building line of the buildings located on the east side of Charles Street

all between the north building line of the buildings located on the south side of Center Street and the south building line of the buildings located on the north side of Madison Street with the gap in those two building lines because of Charles Street filled in by a straight line connecting those two Center Street building lines and a straight line connecting the two Madison Street building lines.

The attached Plat A generally shows such perimeter description.

North Park, South Park, West Park, and East Park. North Park, South Park, West Park, and East Park are the four interior rectangular park areas of Mount Vernon Place each bounded by the exterior perimeter curb line of each such interior park area.

Introduction

Mount Vernon Place Conservancy (the "**Conservancy**") is a non-profit corporation established on October 10, 2008 with its mission to collaborate with public and private entities and with persons to provide restoration and general management, landscaping, and day-to-day functioning of the Mount Vernon Place Management Area for the benefit and enjoyment of those who visit, work, and live in or near Mount Vernon Place. The City has agreed with the Conservancy to allow it to have an advisory role in the review of permit applications because of the Conservancy's interest in and support for the maintenance and improvement of Mount Vernon Place.

These Special Conditions set forth some of the criteria for events held in Mount Vernon Place and are subject to amendment by the City. These Special Conditions are subordinate in all respects to all governmental requirements, including those particularly of Baltimore City, and are implemented in conjunction with Baltimore City's approval of events held in Mount Vernon Place and as coordinated with the Conservancy.

Event Application Process

1. Event Application. The Sponsor applying for a Festival Permit, Special Event Permit, General Park Use Permit, or any other use requiring approval of the Department of Recreation and Parks is to submit the appropriate event application to the Department of Recreation and Parks, Permits Office. The Department will forward the application and any additional event information to the Conservancy as part of the event application review process.

2. Submission. Applications for any public event expecting attendance of (a) 2,500 or more persons, shall be submitted at least 120 days preceding the event and (b) less than 2,500 persons at least 75 days preceding the event. Private event applications shall be submitted at least thirty (30) days preceding the event. Upon request of the Sponsor, the Department of Recreation and Parks will provide the contact information for the Conservancy. The City normally will require the Sponsor for a new event or significant event to attend a review meeting at which the Department of Recreation and Parks will invite a representative of the Conservancy to attend.

3. Response Time. The Conservancy is expected to review fully completed applications within one (1) week after receipt and to provide any comments to the application to the Department within that time. The Department of Recreation and Parks may include as part of the review meeting an on-site walkthrough with the Conservancy when the Sponsor has submitted all materials and answered all questions. The original proposal may require revisions based on time and space restrictions, park rules, protection of Mount Vernon Place, logistical complications, comments from other City agencies or the Conservancy, as deemed appropriate by the Department.

Expenses and Permits

4. Liability Insurance. The Sponsor is to provide liability insurance as the Department of Recreation and Parks requires. A typical policy covers a minimum of

\$1,000,000 per occurrence, and usually must name Mount Vernon Place Conservancy, Inc. as well as the City as an additional insured.

5. Damage and Deposit. The Sponsor shall pay for all damage in Mount Vernon Place or any of the Parks or to any property therein in each instance relating to the event. The Department of Recreation and Parks customarily requires the Sponsor to provide a deposit to pay for any damage to City property in Mount Vernon Place or other violation of the permit for the event. The deposit amount relates appropriately to the size and nature of the event, the use the event is making of the various areas of Mount Vernon Place, and the investment the Conservancy has made in Mount Vernon Place. The Department of Recreation and Parks may make all or part of the Sponsor's deposit available to the Conservancy for repair or restoration of damage related to the event.

6. Security. The Department does not provide security personnel. Security is only by the Baltimore City Police Department. Based upon the nature of the event, the Baltimore City Police Department, through the application review process, will determine the need and scope of security services needed for each event. For the protection of Mount Vernon Place, however, the Conservancy may recommend the City require the Sponsor to hire security officers for appropriate times and places. Enforcement of applicable governmental requirements is by the Baltimore City Police Department, Park Rangers of the Department of Recreation and Parks, and other enforcement officers of the City or the State of Maryland, not by the Conservancy.

7. Sanitation. The City can provide sanitation services for events for a fee. Each event application requires the submission of a sanitation plan taking into account the recommendation of the Conservancy.

8. Permits. The Sponsor may need other permits associated with holding events in Baltimore City, including, Department of Parks and Recreation Special Events Permits, Amplified Sound Permits, Parking Permits, Transportation Department Permits, Department of Buildings Permits, music copyright licenses (BMI, ASCAP, or others), and any other license or permit that may be necessary. Following issuance, the Sponsor will provide the Department with copies of each permit immediately following issuance.

Additional Special Conditions

9. Alcohol. Open air alcohol consumption is prohibited in Mount Vernon Place, except on the premises of properly licensed establishments, or unless the City has granted a special permit for alcohol consumption.

10. Bathrooms. Mount Vernon Place has no public bathrooms. If the Sponsor anticipates large crowds or other need for the event, the Sponsor is to include portable toilets in the event proposal at locations the City approves taking into account the recommendation of the Conservancy. The Sponsor is responsible for any costs for such facilities.

11. Electricity. The Sponsor must inform the City of what type of distribution the Sponsor is planning to use. There is a fee for this service. If the event requires its own

generator, the Sponsor must place it at a location the City approves, taking into account the recommendation of the Conservancy.

12. Furniture. The chairs, tables, and benches in Mount Vernon Place are for public use at all times. However, if the Sponsor desires to use its own tables and chairs for the event or audience, the Sponsor may request it in the application.

13. Gardens and grounds. The Washington Monument, fence, balustrades, gardens, lawn, foliage, bluestone, and all other hardscape and landscape items must be protected from damage during load-in, load-out, and throughout the event. The City will work with the Sponsor to devise an appropriate protection plan with design, number, and location of load-in, load-out spaces subject to approval by the City taking into account the recommendation of the Conservancy.

14. Hours. Events must take place within customary park hours, dawn to dusk unless otherwise approved. Events with sound amplification scheduled past 9 p.m. require approval from the surrounding community association.

15. Lawn. The availability of any lawn areas depends on weather conditions on the day of and days before the event. If the Sponsor plans to use lawn areas for the event, it must propose an alternate plan in case the lawn areas are unavailable. All vehicles shall remain entirely on roadway areas at all times.

16. Structures. Location of any structures shall be on a roadway or sidewalk area only, unless otherwise approved by the Department. Any necessary anchoring of each stage, tent, or other structure shall be by weights or other device, not by attachment to any part of the Washington Monument, fence, balustrades, or other hardscape of Mount Vernon Place nor by anchors in a lawn or landscaped area.

17. Load-in and out. Mount Vernon Place is to remain open to the public at all times unless there is a danger to the public and a brief closure is absolutely unavoidable. No cars or trucks are allowed on any lawn area.

18. Parking. Parking in the area is limited. The City has no designated parking, although can assist with parking suggestions.

19. Park availability. Although Mount Vernon Place generally is open to the public, the Sponsor may want to ask the Department of Recreation and Parks to allow the Sponsor to request members of the public who want to use Mount Vernon Place but are not part of the event to stay in an area of the Mount Vernon Place not in use for the event.

20. Pets: All dogs shall be on a leash of suitable length so as not to interfere with other persons or pets. Persons having pets in Mount Vernon Place shall abide by all governmental requirements of cleaning up and disposal of waste from pets. No pets shall be in any fountain at Mount Vernon Place at any time, with the person responsible for any pet to effect any necessary control of the pet.

21. Signage. The City must approve all event signage or signage distribution

in Mount Vernon Place before the event, taking into account the recommendation of the Conservancy.

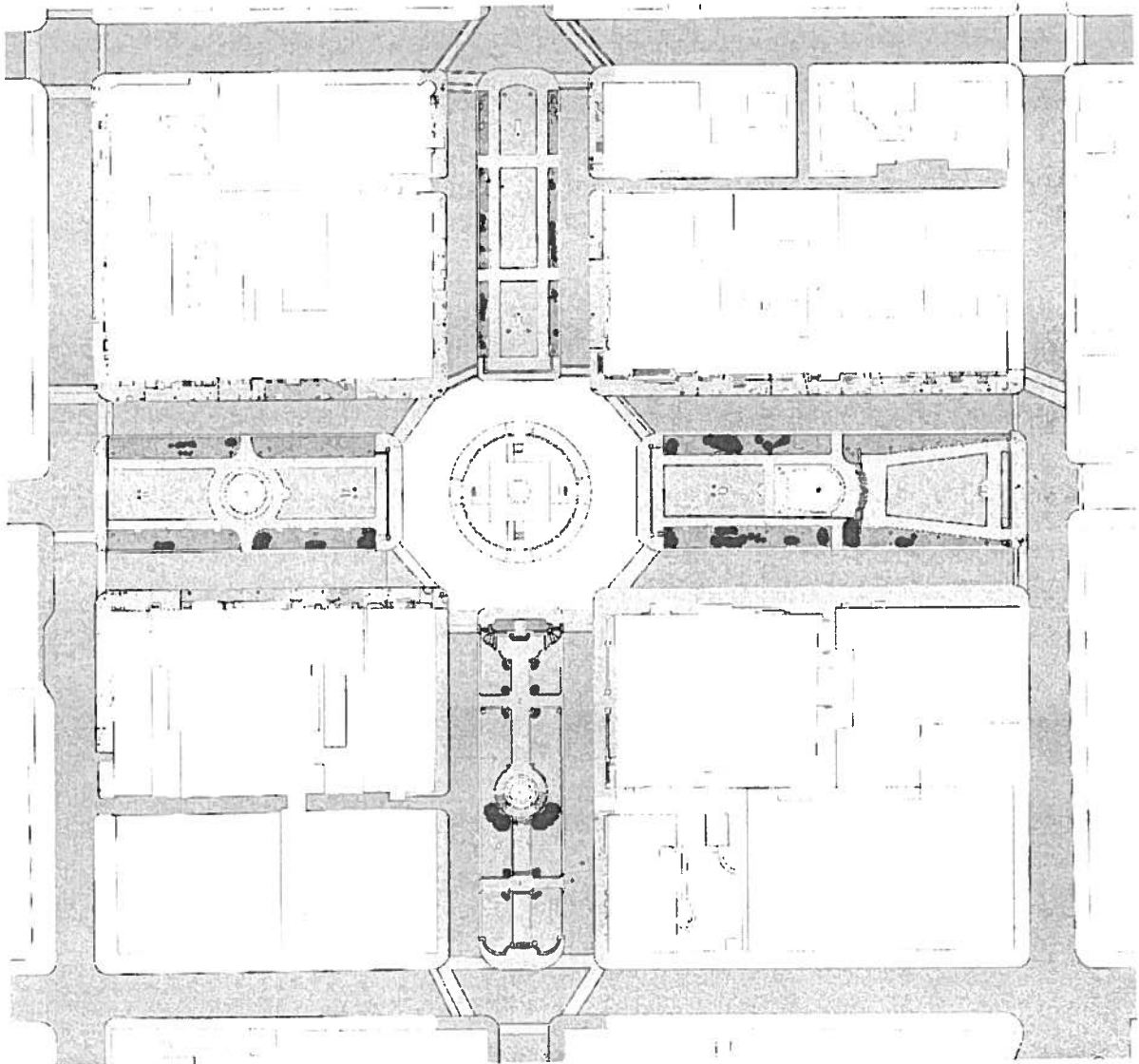
22. Sound. An 80-decibel sound limit applies in Mount Vernon Place. The City, will work with the Sponsor to ensure the most effective sound scheme for the event, taking into account the recommendation of the Conservancy. To use amplified sound in Mount Vernon Place, the Sponsor will need an Amplified Sound Permit from Baltimore City.

23. Trash removal. The Sponsor is responsible to bag and remove all trash generated from an event from the area of Mount Vernon Place at the end of the event. The Sponsor should consider hiring a private trash carting service or the City Bureau of Solid Waste for this service. Trash cannot be left next to garbage cans or on the curb. The Sponsor must remove all cardboard from the area of Mount Vernon Place after an event. Failure to properly remove trash can result in an assessment of the Sponsor for the cost of removal. For any event attended by in excess of 200 people, the Sponsor shall arrange for placement of an adequate number of receptacles for recycling as well as trash, and shall arrange for proper and timely pickup by the City or other person or company.

24. Vendors. All food vendors must use protective coverings to protect the ground against spillage, drainage, and damage to asphalt, grass, or other surface. Vendors who are frying, grilling, or using grease or oils must install rubber roofing or tar paper to cover the entire space. Vendors must place grease barrels on nonporous tar paper if located on pavement and shall not locate them on lawn areas.

25. Weather. Events are rain or shine. The City does not give rain dates.

**Plat A to Exhibit 2
Plat of Mount Vernon Place**



← North

Mt. Vernon Place
Existing Paving Layout

OLIN
August 6, 2009

EXHIBIT 3

Letter dated March 7, 2011 to Mr. Lance Humphries from Kathleen Kotarba,
Executive Director of CHAP

SJ1 PHANIE RAWLINGS-BLAKE
Mayor



THOMAS J. STOSUR
Director

March 7, 2011

Dr. Lance Humphries
Chair, Restoration Committee
Mount Vernon Place Conservancy
P.O. Box 26285
Baltimore, MD 21210

Re: Mount Vernon Place Restoration Master Plan
(Mount Vernon Place Square-National and Baltimore City
Historic Landmark and Historic Districts)

Dear Dr. Humphries:

On February 8, 2011 the Baltimore City Commission for Historical & Architectural Preservation (CHAP) considered the application of the Mount Vernon Conservancy for a concept approval of the Mount Vernon Place Restoration Master Plan to include landscaping, ADA accessibility, and to provide stewardship for future management of the park

The Conservancy will enter into an official public/private partnership with the City of Baltimore and will act as the single entity managing the restoration of Mount Vernon Place, which comprises the Washington Monument, the four squares that surround the Monument, and adjacent streets and sidewalks. This master plan sets forth a vision and overall strategy for Mount Vernon Place, generally addressing restoration, accessibility, and stewardship. The plan coordinates the preparation of detailed plans for restoration and accessibility, and provides an outline for a public/private partnership for care and maintenance of Mount Vernon Place.

The Commission convened a series of meetings and hearings to consider this significant project. On June 23, 2010, CHAP convened a public hearing at the Garrett Jacobs Mansion and a site visit. At the hearing, the Commissioners were introduced to the Master Plan. On September 13, 2010, CHAP held a public hearing and took testimony from the applicant and interested parties. On October 12, 2010, CHAP held a public hearing and took testimony from the applicant and interested parties. For this hearing staff mailed the October hearing notification to the property owners within the immediate area that matched the National Historic Landmark District Boundaries. This included approximately 368 notification letters. This notification summarized the purpose of the hearing as well as welcomed the reader to review the Draft Master Plan on-line or in our office. The Draft Master Plan has been updated on the CHAP website in accordance with new developments.

COMMISSION FOR HISTORICAL & ARCHITECTURAL PRESERVATION

Charles L. Benton, Jr. Building 417 East Fayette Street Eighth Floor Baltimore, MD 21202-3416

Plan Preserve Prosper

At the December 14, 2010 hearing, the Commissioners considered the application materials that you submitted, the presentation you gave at the hearing, the staff presentation, the staff report, correspondence and petitions submitted to the Commission, and testimony presented at the hearing. The Commission made the following two motions regarding their review of the Master Plan:

Motion #1-

Moved to approve the restoration of the Washington Monument and masonry repairs, in accordance with the plans submitted.

Note: This includes the historic masonry hardscape and balustrades with a goal of completing the Washington Monument Restoration by 2015. Staff will review and approve more detailed plans prior to restoration, as detailed plans become available. The Master Plan principles for the restoration of the stone masonry meet CHAP Guidelines 8.1 Identifying and Preserving Historic Building Fabric (all bullets), and 8.2 Masonry/Stone Masonry.

Motion #2-

Moved to postpone a vote on other aspects of the plan until the February 8, 2011 CHAP Hearing. In this time period, the Commission asks that the Conservancy and concerned community constituents meet to resolve the remaining issues. The Commission asked that the Conservancy and community form a committee to do so.

Note: The primary concerns continue to be the removal and replacement of trees, and the right-of-way issues related to the potential narrowing of the streets. As of the December 14, 2010 hearing, the Commission had received seven documents with a total of 1,775 signatures opposing the proposed removal and replacement of the trees, with 663 signatures from the surrounding community. Representatives of institutions located on Mount Vernon Place continued to voice their concerns about the potential impact of the plan on their operations. These are matters of great concern to many of the Mount Vernon Place institutions, residents and neighbors.

At the February 8, 2011 CHAP Hearing, the Commission continued the December 14, 2010 hearing and considered concept review of the remaining elements of the Master Plan, in accordance with the two motions (above) made at the December 14, 2010 Public Hearing. The Commissioners considered the application materials that you submitted, the presentation you gave at the hearing, the staff presentation, the staff report, correspondence and petitions submitted to the Commission, and testimony presented at the hearing.

The following new information was considered by the Commission at the February 8, 2011 hearing:

- The Institutions surrounding the park submitted a letter dated January 5, 2011 to CHAP
- The Mount Vernon Place Conservancy submitted a letter and meeting report (both dated January 20, 2011) and a PowerPoint that was presented to the Save the Trees Alliance during the committee meeting
- The Save the Trees Alliance submitted a one-page outline dated January 31, 2011 that is entitled *We Need Old Grown Trees and more importantly in cities.*
- The Washington Park Company submitted an email dated January 30, 2011 that supports the MVPC master plan.
- Save the Trees Alliance submitted minutes of the meeting between Mt. Vernon Conservancy and Save the Trees Alliance on January 20, 2011.
- On February 7, CHAP received 367 more petition signatures.

The Master Plan has received the ongoing support of the Mount Vernon Belvedere Association and its Architectural Review Committee. The Institutions facing the Mount Vernon Place Squares-- including Agora, The Engineers Club, the Mount Vernon Club, the Mount Vernon United Methodist Church, the Peabody Institute and the Walters Art Museum-- have expressed to the Commission their general support of the Conservancy and the Master Plan, and their desire to be closely involved as detailed plans are developed. They are eager to see the enhancement of the parks and will be ongoing partners in that effort. The Peabody Court Hotel, the Downtown Partnership and the Charles Street Development Corporation have also expressed their support for the Master Plan

On February 8, 2011, the Commission acted upon the application as follows:

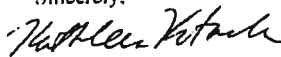
- The Commission moved to allow a greater degree of flexibility for the North and South Squares, in terms of accepting the plan as submitted. (Note: This is pertinent to the proposed concept of tree removal and replacement).
- The Commission moved that the Mount Vernon Conservancy come back with an alternative approach for the East and West Squares, being one that does not call for the wholesale removal of the trees. (Note: The plan as presented was not accepted).
- The motion included a directive that the Mount Vernon Conservancy undertakes a genuine dialogue with interested parties, including the "Save the Trees Alliance" and the public at large.
- The concept of the Master Plan was otherwise approved, including the aforementioned conditions and those stated in the staff report and recommendations.
- The staff report recommendations stated the following:

STAFF RECOMMENDATION: CHAP Guidelines Chapter 8 (Sections 8.1 and 8.2), Chapter 10 and Standards # 1-8 apply to this proposal. A combination of "Preservation" and "Rehabilitation" treatments are applicable, in accordance with the Secretary of the Interior's Standards for the "Treatments for Cultural Landscapes." Staff recommends APPROVAL subject to the following contingencies:

1. All detailed restoration plans for any work on Mount Vernon Place will be reviewed and approved by CHAP in addition to the proposed work being subject to future City permit approvals based on construction drawings, and detailed specifications.
2. The Conservancy will not submit final drawings to CHAP for the perimeter sidewalks which will result in the narrowing of the current width of the roadway WITHOUT a mutually acceptable agreement between the Conservancy and the affected institutions.
3. The Conservancy will reach out to the petition authors, community residents and public stakeholders that oppose tree removal in order to build consensus and support for the current or revised tree replacement plan.
4. CHAP and Planning staff will offer their guidance and expertise to the Conservancy in order to create a comprehensive outreach program.
5. The Conservancy will submit a plan for ongoing operations and maintenance including a tree maintenance plan for existing and recently replanted trees.
6. Prior to submittal of final drawings to CHAP for any aspect of the plan, the Conservancy will submit to CHAP an implementation and finance plan that phases the restoration plan.
7. CHAP urges the Conservancy to prioritize the restoration of the Washington Monument and the parks hardscape with the goal of completing the restoration of the Washington Monument by 2015.
8. Add a CHAP Commissioner as an ex officio member of the Conservancy.

The Commission continues to support the efforts of the Conservancy and wants it to succeed in building a strong public/private partnership. The Commission thanks you and the Conservancy for your advocacy and extraordinary commitment to Mount Vernon Place.

Sincerely,



Kathleen Kotarba
Executive Director

Cc:

Richard Newton
Karen Footner
Henry Hopkins
Jeffrey Sharkey
Gary Vikan
Sally Ridgely
J. Austin Bitner
Jean Hankey
William Green
Pat and Scott Lebowitz
Anatoni Ignatov
Hugh Ronalds
Regina Minniss
Jason Curtis
Joan and Tom Spence
Art Kucher
Patty Baker
David Wiesand
Jane McConnell
Malcolm Mason
Alexandra Ahlfield
Barbara Ahlfield
Bill Ahlfield
Steven Shen
Ellen Sherwin
Leroy Keltner
Deborah Lynch
Pat Ronalds
Peter Merles
Eric Davidson
Tabinda Riaz
Kelly Arinoff
Kim Forsyth
Kristen Speaker
Frank Davidson
Patrick Nolan
Jennifer Troy
Corey Reidy
Casey M. Neill
Larry McGrath
Linda Franklin
Dan Van Allen
Jackie Carrera
Paul and Martha Dougherty
Richard Felder

Bilqis Rock
Mary Carpenter
Kevan Harris
James Dilts
Jane Shipley
Colin Tarbert
Khalil Zaied
Valorie Lacour
Gregory Bayor
Bill Vondrasek
Thomas Stosur
Gary Cole
Alex Hoffman
CHAP Commissioners
and Staff

EXHIBIT 4

Letter dated October 10, 2011 to Henry Hopkins from Peter Merles setting forth the allocation of \$80,000 of services by the Midtown Community Benefits District



October 10, 2011

Mr. Henry H. Hopkins, Chairman
Mount Vernon Place Conservancy
c/o Karen M. Footer
335 Homeland Southway, #2B
Baltimore, Maryland 21212

Dear Mr. Hopkins:

In accordance with a resolution of the Midtown Community Benefits Board of Directors, I have calculated the value of Midtown Community Benefits District services in and around the Mount Vernon Squares as follows:

Green team time, overhead and supervision = \$60,000
Clean team time, overhead and supervision = \$20,000

The value of the in-kind contribution to the Mount Vernon Place Conservancy operations is therefore \$80,000.

We are pleased to support your efforts for restoration of this key community and city asset.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter M. Merles', is written over a faint, larger version of the same signature.

Peter M. Merles
Executive Director

cc: Jason S. Curtis - Chair, Midtown Community Benefits District

1221 N. Calvert St.

Baltimore, MD

21202

tel 410-528-1512

fax 410-468-0129

EXHIBIT 5
COMMITMENT TO COMPLY
WITH THE
MINORITY AND WOMEN'S BUSINESS ENTERPRISE PROGRAM
OF THE CITY OF BALTIMORE

In consideration for receiving fiscal assistance from or through the City of Baltimore, the Developer covenants and agrees to comply with Article 5, Subtitle 28 of the Baltimore City Code (2007 Edition) regarding participation by Minority Business Enterprises (MBE) and Women's Business Enterprises (WBE) in its development of the project known as _____ . Developer covenants and agrees to use all reasonable good faith efforts to meet the following MBE and WBE participation goals for this project:

MBE GOAL 27%

WBE GOAL 10%

Prior to the commencement of construction, Developer agrees to submit to the City written documentation, including executed contracts, service agreements, or utilization commitment forms which shall identify the particular minority and women's business enterprises (i) contracting directly with the Developer, or (ii) subcontracting with prime contractors who have contracted directly with the Developer. The executed contracts, service agreements, or utilization commitment forms submitted to the City shall specify the dollar value of the participation, the type of work to be performed, and such other information as may be reasonably required by the City.

In the event that after reasonable and good faith efforts to meet the goals,

Developer is able to demonstrate to the satisfaction of the City that sufficient qualified and willing MBE's and WBE's are unavailable in the market area of the project as defined by City law, then the Developer may request a waiver or reduction of the MBE and/or WBE goals.

The City's Minority and Women's Business Opportunity Office (MWBOO), or its successor, is designated to administer the provisions of the law on behalf of the City. Developer shall comply with the rules and regulations of the MWBOO or its successor in meeting the requirements of the law.

THE UNDERSIGNED DO SOLEMNLY DECLARE AND AFFIRM THAT THEY ARE AUTHORIZED TO MAKE THIS COMMITMENT.

FOR: _____

BY: _____

BY: _____

DATE: _____

Chief, Minority and Women's Business Opportunity Office

Anticipated Starting Date of Construction

Date: _____

EXHIBIT 6

Excerpts from the Restoration Plan filed with CHAP relating to the background of the Special Conditions.

On February 8, 2011, the Baltimore City Commission for Historical and Architectural Preservation approved the Mount Vernon Place Restoration Plan dated July 16, 2010 prepared by Olin Partnership, Ltd. (to the extent then and thereafter approved by the City, the "*Restoration Plan*"), subject to approval by the City of construction plans and other specified items.

General Principles

The Restoration Plan (page 86) cites entities which have a particular interest in Mount Vernon Place as follows:

- Friends of Mt. Vernon Place
- Mount Vernon Belvedere Association
- Department of Planning (City)
- CHAP – Commission for Historical and Architectural Preservation (City)
- Department of Recreation and Parks (City)
- Maryland Historical Trust (State)
- National Park Service

Additional entities having an interest in Mount Vernon Place are the Midtown Community Benefits District and the institutions adjoining Mount Vernon Place, including

- The Peabody Institute of the Johns Hopkins University
- The Walters Art Museum,
- Mount Vernon Place United Methodist Church,
- Mount Vernon Club,
- The Engineers Club,
- Agora Inc.,
- The Annie E. Casey Foundation
- Stafford Apartments
- Peabody Court Hotel,
- The Time Group, and
- Westminster House

The Restoration Plan (page 87) notes the
"several large events that take place in the park annually.

These include

- Monument Lighting Ceremony
- Flower Mart
- Baltimore Book Festival
- First Thursday Concert Series

All of these large scale events [based on industry standards] exceed

the recommended carrying capacity of Mount Vernon Place resulting in increased incidence of damage to both hardscape and horticultural areas. It will be necessary to develop criteria to evaluate and augment aspect of the existing large scale event layouts and also promote and implement new small scale events which are more appropriate to the scale to Mount Vernon Place to achieve a sustainable level of programming.”

The Restoration Plan (page 88) categorizes these large events as having 30,000 to 75,000 visitors, i.e., affecting the entire Mount Vernon Place site, and notes different entities organize and sponsor those events, for example:

The Monument Lighting and the Book Festival are both organized by (BOPA) Baltimore Office of Promotion & the Arts
The Flower Mart is organized by The Flower Mart at Mount Vernon, Ltd, a non-profit organization
First Thursday Concert Series is sponsored by 89.7 WTMD

The Restoration Plan then recognizes that

[c]riteria for evaluating large event planning at Mount Vernon Place should include:

Respond to slope: the north and west squares offer more ideal level slope than the south and east squares
Minimize impact to parks
Consolidate activities on paved area
Limit circulation on lawn areas
Distribute program elements to move people around the squares
Engage local merchants and businesses
Focus activities with large gathering requirements around monument

The Restoration Plan (at page 88) considers medium scale events as 5,000 to 10,000 visitors, i.e., affecting between 50% and 75% of the entire Mount Vernon Place site, which include events like the

Craft Fair – West Square
Friends of Mt. Vernon Place – East Square
Walter’s Art Museum – South Square
Filming – East & West Squares

and small scale events as under 5,000 visitors, i.e., affecting less than 50% of the entire Mount Vernon Place site, such as filming in the North Square. The Restoration Plan (page 89) suggests that “[e]fforts should be made to schedule smaller scale events throughout the year and not rely solely on large events”.

As an example, the Restoration Plan (page 91) makes the following

recommendations for the Book Festival:

- Relocate large tents and stages from East and West Squares to central Monument area; dimensions may need to be altered; may impact accessibility (emergency/vehicular) to central Monument area
- Tents/structures sited along streets should be aligned so there are clear paths running N-S, E-W
- Tents or furnishings to remain in the squares should be restricted to paved areas if possible
- Determine power needs; locate tents requiring the most power close to power source
- Relocating some tents from squares to adjacent streets may make it necessary to alter existing event traffic patterns

Additional recommendations (page 91) include for the permittee to be responsible for the cleaning up of the site, to post a bond to cover expenses for damage and clean up, to keep vehicles on paved surfaces, and to have all planted areas fenced and protected during large events.