

MEMORANDUM OF UNDERSTANDING
between the
NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION
and the
CITY PARKS FOUNDATION

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is executed by and between the New York State Department of Environmental Conservation (“DEC”) and the City Parks Foundation (“CPF”), pursuant to the Third Modified Judgment on Consent by the New York State Supreme Court, County of Kings (Index No. 196/88, Newtown Creek) filed and entered August 3, 2009. The MOU shall become effective once it has been executed by all the signatories.

GENERAL: CPF was founded in 1989 to support the vast majority of New York City parks without access to private resources. By creating arts, sports and educational programs in over 700 public parks, and by encouraging community development within public parks as a focal point, CPF helps to revitalize not only parks but also the neighborhoods that surround them. CPF is the only independent, nonprofit organization to offer programming in parks throughout the five boroughs of New York City.

WHEREAS:

1. The DEC and the City of New York began negotiating a comprehensive resolution of violations and other issues regarding the City’s Newtown Creek Water Pollution Control Plant (the “Facility”) in 2008 under a second modified consent judgment.
2. In resolution of all stipulated penalties that have accrued as of the effective date of the third modification to the Newtown Creek consent judgment (the “Third Modified Consent Judgment”), the parties have agreed that the City will fund \$10,000,000 in environmental benefit projects (“EBPs”) designed to provide environmental benefits to the Greenpoint, Brooklyn community and adjacent areas impacted by the Facility upgrade.
3. CPF will receive a total of \$7,000,000 from the total EBP fund according to the following schedule: \$4,000,000 on or before December 1, 2009; \$3,000,000 on July 1, 2010. The money shall be kept by CPF in a separate account (the “CPF Account”).
4. Pursuant to the judgment, the CPF will fund projects in communities in and around Greenpoint Brooklyn, along Newtown Creek and the East River (both Brooklyn and Queens), with the highest priority assigned to projects in and around Greenpoint and along Newtown Creek. All projects designed and selected shall adhere to the requirements of DEC’s CP-37, “Environmental Benefit Projects Policy,” dated December 21, 2009 and any future or updated EBP policies.

5. The DEC and CPF are mutually interested in and desire to cooperate in the implementation of an environmental benefit project in a manner that will benefit New York State's environment and the region harmed by the violations cited in paragraph "1" above of this MOU.
6. CPF has experience in funding and developing open space programs, funding, upgrading and maintaining city parks, community parks and green streets, and the management of projects subsequently selected through its processes.
7. Based upon their mutual interests and beliefs, and their respective areas of expertise and experience, the DEC and CPF worked together to develop this MOU to implement this environmental benefit project.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I: PROJECT DESCRIPTION

The CPF account shall be used for the implementation of projects that address green infrastructure such as green streets or tree planting, the creation and/or improvement of open space, public city parks, waterfront access, ecological and recreational programs, and stormwater management in the communities in and around Greenpoint, Brooklyn, along Newtown Creek and the East River (both Brooklyn and Queens), with the highest priority assigned to projects in and around Greenpoint and along Newtown Creek.

ARTICLE II: RESPONSIBILITIES OF CPF

- a. CPF will receive seven million dollars (\$7,000,000.00) from the City for the funding of this EBP ("CPF Account"). Such funds will be provided to CPF in two separate payments, and upon the receipt of such funds CPF shall deposit such funds, invest and separately account for such funding in accordance with generally accepted accounting principles.
- b. CPF will apply the funds, and any accrued interest for the Greenpoint/Newtown Creek EBPs and not for any other purpose. CPF will implement and monitor the EBPs as set forth in the Third Modified Consent Decree and this MOU.
- c. The selected projects shall address green infrastructure such as green streets or tree planting, the creation and/or improvement of open space, public city parks, waterfront access, ecological and recreational programs, and or stormwater management in the communities in and around Greenpoint, Brooklyn, along Newtown Creek and the East River (both Brooklyn and Queens), with the highest priority assigned to projects in and around Greenpoint and along Newtown Creek. CPF will design and implement these EBPs with the assistance and consultation of the community. Attachment A provides a

general framework for potential projects for the Greenpoint community that may be realized through the community consultation planning process.

- d. CPF will apply no more than 10% of the CPF Account to cover the cost of administering the Greenpoint/Newtown Creek EBPs.
- e. CPF shall develop a Community Consultation Plan within three months of execution of this MOU. The Plan will outline the efforts CPF will engage in to seek input from the community, including Greenpoint, Brooklyn and Long Island City and Maspeth, Queens. DEC shall review and approve the Community Consultation Plan. The Plan shall enable consultation in selecting and designing the projects, as well identifying specific areas to undertake such projects.
- f. CPF shall require any Contractor or Sub-contractor receiving such Project funding, to agree that they 1) will comply with all applicable federal, state, and local laws relating to nondiscrimination in employment, 2) will comply with all applicable federal, state, and local labor and employment laws and regulations, 3) will not discriminate against any individual who applies for employment on this project on the basis of actual or perceived age, race, creed, religion, color, national origin, gender, disability, marital status, sexual orientation, alienage, or citizenship, and 4) will obtain all required permits, including but not limited to, local, state and federal permits prior to the commencement of the EBP projects.

Reporting and Deliverables

- g. CPF shall provide written reports to DEC twice a year, as to 1) the status of all work performed to implement and operate the EBPs, 2) any fiscal arrangements or contracts with contractors or subcontractors; and 3) all expenditures and fiscal accounting, until the CPF Account is exhausted. Such reporting shall be provided both electronically and as a hard copy in compatible Word, Excell, and or pdf formats.
- h. Upon request of the DEC, CPF must provide reports, documents, data, contractual documents, administrative records and other information pertinent to the projects from the CPF fund.
- i. CPF shall, within thirty (30) days of exhausting the funding in the amount of seven million dollars (\$7,000,000.00) from the City, submit a final project report to the DEC that includes an accounting of all expenditures, a description of the status of the EBPs and the environmental benefits of the projects.
- j. CPF shall have five years from the effective date of the Third Modified Consent Judgment to expend or enter into a binding commitment to expend the money in the CPF account, unless DEC, in its sole discretion, decides to extend this time limit.

- k. If the DEC determines that CPF fails to comply with any of these requirements, or any funds received under this MOU are not used or needed to institute the EBPs described in this MOU, CPF hereby agrees to return any unused funds or make full repayment to a separate escrow account, or deliver the funds to an alternate non-profit organization selected by the DEC to receive and administer those funds.

ARTICLE III: RESPONSIBILITIES OF DEC

- a. DEC shall ensure that the CPF funds are provided in a timely manner to implement the EBPs.
- b. DEC shall assist with the community consultation planning and outreach process described above.
- c. In a timely manner, DEC shall review and give final approval over the community consultation plan.
- d. In a timely manner, DEC shall review and give final approval of the projects to be funded by the CPF Account.
- e. If DEC determines that CPF has failed to comply with any of the requirements described in this MOU, DEC may request that any funds received be paid to an alternate non-profit organization selected by the DEC to receive and administer those funds.
- f. DEC shall have the right to direct CPF to pay any uncommitted funds remaining in the CPF Account five years after the effective date of the Third Modified Consent judgment either to (a) an alternate non-profit organization selected by the DEC to receive and administer those funds, or (b) DEC as a penalty to be paid to the General Fund.

ARTICLE IV: KEY OFFICIALS

- a. The personnel specified are considered to be essential to ensure maximum coordination and communication between the parties. Either party, on notice to the other party, may designate another person or persons to act in his/her place in an emergency or otherwise.

The key officials for the DEC are:

Louis Oliva
Regional Attorney

Department of Environmental Conservation, Region 2
47 40 21st Street, Long Island City, New York 11101

The key officials for CPF are:

David Rivel
Executive Director
City Parks Foundation,
830 Fifth Avenue, New York, NY 10065-7001

- b. In the event that the DEC or CPF must make a change to a key official, it shall provide timely notice to the other agencies of such change. The notification shall include a justification in sufficient detail to permit evaluation of the impact of such a change on the scope of work outlined within the MOU and its attachments.

ARTICLE IV: MISCELLANEOUS


- a. *Term:* This MOU shall remain in force from the time of execution until all Funds have been exhausted and CPF submits its final report as stated in Article III of this MOU.
- b. *Availability of Funding:* Nothing contained herein obligates or shall be deemed to obligate the DEC or CPF to expend any funds on the Project other than the funds set forth in this MOU and attachments.
- c. *Public Information:* CPF shall not issue any press releases, issue any publications or announcements, or make any public statement about the Project without approval from DEC.
- d. *Entire Agreement/No Third Party Beneficiaries:* This MOU represents the entire agreement between the parties hereto with regard to the subject matter hereof and supercedes any prior agreement and/or understanding, whether written or oral, between the parties hereto. No third party beneficiaries are intended by this MOU.

ARTICLE V: AUTHORIZING SIGNATURES


This memorandum of understanding shall be effective upon execution by both the Commissioner of NYSDEC or his designee and CPF.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed by their respective duly authorized officers or representatives:

FOR DEC:

By: 
Name: Suzanne Mattei
Title: Regional Director, Region 2 DEC
Date: April 27, 2010

FOR CPF:

By: 
Name: David Rivel
Title: Executive Director
Date: 4/26/10