



# City of Asheville, NC

Office of the City Attorney

May 14, 2010

Mr. Guy F. Clerici  
Attorney at Law  
Capital Center Building, Suite 601  
82 Patton Avenue  
Asheville, NC 28801

Re: Pack Square Conservancy

Dear Guy:

We received your draft letter proposing a resolution of the financial issues between the Pack Square Conservancy and the City of Asheville regarding the completion of work on Pack Square/City County Plaza.

First of all, we appreciate the Conservancy's work in getting the park to the point that it now is. This project was a major design and construction undertaking, and has required coordinated work and commitment of finances and resources from many different organizations and individuals. It continues to be a true community effort.

We also appreciate the Conservancy's recognition of its continued financial commitment to the City, and its commitment to satisfy that obligation within a defined period of time. As you know, there are additional issues of importance in the completion of work and ongoing management of the park. The City hopes to address those additional issues in any agreement with the Conservancy.

We have the following specific comments on your draft letter:

- Amount. We agree that the total final cost for completion of the park and the Conservancy's obligation to the City is subject to change at this point; \$2,000,000 is an acceptable working figure for purposes of our correspondence, as long as whatever agreement is reached contains provisions for adjusting that figure as costs become final.
- Term: We would prefer that the time for payment of this obligation be one year, with final payment being due on or about June 1, 2011, instead of December 31, 2011. We understand that economic times are difficult, but think that the Conservancy's fundraising efforts will be strongest and most successful in the first year. Note that satisfaction of the obligation may take the form of payments made or firm commitments for such payments.

- In any agreement, the following other issues need to be addressed:
  - Completion of work. As part of reaching a final cost figure, all punch list items and other issues with Valley Crest or other contractors or suppliers should be resolved as soon as possible.
  - Restrooms. As you and the Conservancy know, public restrooms in the park are a feature that is important to the Council. We understand that construction of the planned pavilion, which was to house public restrooms, has been delayed indefinitely. We further understand that until such time as a pavilion can be built, a small kiosk or office facility will be constructed or installed in the park. Pursuant to our agreements, this change would require approval by the City Council, and possibly by the North Carolina Department of Transportation. In any event, public restrooms should be included in whatever facility is planned for the park.
  - Programming. Unless and until the Conservancy's financial commitment to the City is satisfied, the City cannot agree to allow the Conservancy to operate or manage the park to any substantial degree. This limitation includes the following:
    - May 28<sup>th</sup> event. The planned May 28<sup>th</sup> event, currently billed as a grand opening, must be re-characterized or restyled to reflect current actual circumstances. As we have been discussing, work on the park is not complete, and - - importantly - - the conservancy's financial obligation to the City has not been satisfied. While an event recognizing the substantial progress made on the park and encouraging further fundraising is certainly appropriate, a grand opening or ribbon cutting is not, and Council will not participate in or recognize such an event. We will be glad to assist or participate in a "milestone" event on May 28, but only if the need to close the financial gap is recognized and fundraising is encouraged. When the work is done and the obligation paid, we will be glad to assist with a major celebration.
    - Programming/Management. No agreement for operation or management of the park by the Conservancy will be considered by the City at this time. While this will be an additional burden on the City, we cannot allow the Conservancy to program the park or manage events in the park while the financial obligation is outstanding. To this end, the City could agree to waiving event fees for Conservancy fundraising events, but not for any other purpose.
    - Financial review. As a part of any agreement, the City expects to be able to review the Conservancy's financial management practices, including priorities for accounts payable, and direction/application of financial

Page 3  
Mr. Guy F. Clerici  
May 14, 2010

donations or commitments for donations. We would also expect the Conservancy to permit an independent financial audit.

Again, we are pleased that the park is nearing completion, and do not wish the Conservancy's efforts to go unrecognized. We are concerned, however, that if the public perception is that the work is finished and the Conservancy's financial commitment satisfied, momentum will be lost and further fundraising may become more difficult. We would like to meet with you to discuss these matters next week. Kendra Turner of the City Manager's office will be in touch with you to set up a meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Oast", with a long horizontal flourish extending to the right.

Robert W. Oast, Jr.  
City Attorney

RWOjr./sc

cc: Mayor Terry Bellamy  
City Council  
Gary Jackson