

Ordinance No. 123412

Council Bill No. 116976

AN ORDINANCE relating to the Department of Parks and Recreation, authorizing the Superintendent to enter into an agreement with the Seattle Chinese Garden Society for an easement and public benefits at Knowing the Spring Courtyard and additional phases of the Seattle Chinese Garden.

CF No. \_\_\_\_\_

Date Introduced:	<u>Sept. 29, 2010</u>	
Date 1st Referred:	<u>Sept. 20, 2010</u>	
Date Re - Referred:	To: (committee) <u>Parks and Seattle Center</u>	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	Full Council Vote:	
<u>9.27.10</u>	<u>8-0</u>	
Date Presented to Mayor:	Date Approved:	
<u>9.28.10</u>	<u>10/6/10</u>	
Date Returned to City Clerk:	Date Published:	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
<u>10/6/10</u>		
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: \_\_\_\_\_

SqBaplan  
Councilmember

### Committee Action:

9/23/10 PASS 1-0 SB

9.27.10 Passed 8-0 Excused: TR

This file is complete and ready for presentation to Full Council.

Committee: PR 9/23/10  
(initial/date)

Law Dept. Review

OMP  
Review

City Clerk  
Review

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ORDINANCE 123412

AN ORDINANCE relating to the Department of Parks and Recreation, authorizing the Superintendent to enter into an agreement with the Seattle Chinese Garden Society for an easement and public benefits at Knowing the Spring Courtyard and additional phases of the Seattle Chinese Garden.

WHEREAS, the City of Seattle ("City"), its Sister City of Chongqing, China, and the Seattle Chinese Garden Society ("SCGS") have worked closely for over 20 years to develop one of the largest Chinese gardens outside of China that will reflect the beauty and composition of an authentic Sichuan Chinese garden (the "Garden"); and

WHEREAS, City Council Ordinance 121727, adopted in 2005, authorized a Memorandum of Agreement for the City to pay SCGS \$600,000 for an easement and restrictive covenant with benefits to Seattle residents to begin when the entire Garden is expected to open in 2016 and last for twenty-five years; and

WHEREAS, the Garden is to be constructed in phases and Phase One, the Knowing the Spring Courtyard, is expected to open by December 31, 2010, with subsequent elements opened as they are completed; and

WHEREAS, the Knowing the Spring Courtyard, along with the other Garden phases as they are completed, will provide a place for personal tranquility through a beautiful and ancient Chinese experience; and

WHEREAS, SCGS will begin to charge admission to the Garden once Knowing the Spring Courtyard opens to the public; and

WHEREAS, free admission for Seattle residents for the five years preceding the opening of the entire Garden will not only be beneficial to the citizens of Seattle but will help to establish the Garden as a major destination and cultural Seattle institution;

NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. Contingent upon an effective ordinance appropriating the funds, the City Budget Director is authorized to spend \$317,500 budgeted in the Finance General Support to



1 Community Development Budget Control Level for the purpose of purchasing an Easement and  
2 Public Benefits at the Seattle Chinese Garden. The Director shall spend the money in accordance  
3 with the conditions in the Agreement Regarding the Purchase of an Easement and Public  
4 Benefits which is attached hereto as Attachment 1 (the "Agreement").

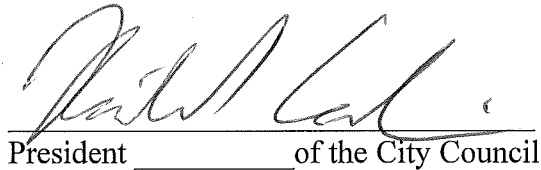
5         Section 2. Contingent upon an effective ordinance appropriating the funds due under the  
6 Agreement, the Superintendent of Parks and Recreation ("Superintendent") is authorized to  
7 execute the Agreement for and on behalf of The City of Seattle ("City"), and is authorized to  
8 make such minor additions, modifications, or deletions to the Agreement as the Superintendent  
9 deems to be consistent with the purposes in this ordinance and in the best interest of the City.  
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11         The Superintendent is further authorized to record the Agreement with the King County  
12 Recorder's Office.  
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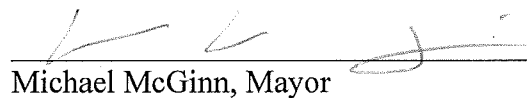


Section 3. This ordinance shall take effect and be in force 30 days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

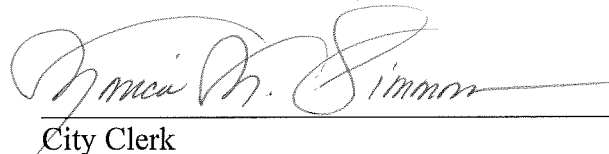
Passed by the City Council the 27 day of September, 2010, and signed by me in open session in authentication of its passage this 27 day of September, 2010.

  
President \_\_\_\_\_ of the City Council

Approved by me this 10<sup>th</sup> day of October, 2010.

  
Michael McGinn, Mayor

Filed by me this 6<sup>th</sup> day of October, 2010.

  
City Clerk

(Seal)

Attachment 1: Agreement Regarding an Easement and Public Benefits at the Seattle Chinese Garden

Attachment 1

**AGREEMENT  
regarding  
AN EASEMENT AND PUBLIC BENEFITS  
AT THE SEATTLE CHINESE GARDEN**

This Agreement regarding an Easement and Public Benefits at the Seattle Chinese Garden ("Agreement") is made and entered into by and between the following parties:

**The City of Seattle** ("the City"), a first class city of the State of Washington, acting by and through its Department of Parks and Recreation ("DPR") and its Superintendent (the "Superintendent"); and **Seattle Chinese Garden Society ("SCGS")**, a Washington non-profit corporation.

**I. PURPOSE OF AGREEMENT**

WHEREAS, SCGS is a non-profit organization founded in 1986 to design and create a Sichuan-style Seattle Chinese Garden (the "Garden") in Seattle for the public to enjoy; and

WHEREAS, an authentic Chinese Garden in Seattle will help further the Department of Parks and Recreation's mission "to Create Community through People, Parks, and Programs;" and

WHEREAS, City Council Resolution 27832, adopted in 1988, designated a site approximately 7.1 acres in size on the campus of South Seattle Community College ("SSCC") as the preferred site for the Garden; and

WHEREAS, in 1998 the SSCC and SCGS executed a long-term agreement for SCGS to use and occupy the site for the Garden; and

WHEREAS, Ordinance 121727 adopted in January 31, 2005, authorized a Memorandum of Understanding (MOU), Contract Number AG05-2551-011, between the City and SCGS whereby the City purchased a restrictive covenant and easement granting public access to the Garden and providing additional public benefits once the Garden is fully completed; and

WHEREAS, the Garden is being completed in phases defined by the seasons, and Phase One, Knowing the Spring Courtyard ("Spring"), is scheduled for completion by December 31, 2010; and

WHEREAS, the SCGS will begin charging fees to the general public for admission once Phase One is complete and open to the public, and will continue



## Attachment 1

to construct in phases and open additional elements of the Garden prior to the completion and opening of the entire Garden; and

WHEREAS, the City desires to obtain public access and benefits to the Garden for its citizens during the phases completed prior to final completion and has included in its 2008 Adopted Budget compensation for the same; and

WHEREAS, this Agreement will not supersede, duplicate, and/or alter the terms and conditions of the previous Memorandum of Understanding (MOU);

Now therefore, in consideration of the foregoing, and the mutual benefits and covenants herein, the City and SCGS agree as follows:

### 2. DEFINITIONS

Easement: The public use and access rights granted in this Agreement and described more completely in Section 4.

Property: The land generally located on the campus of South Seattle Community College and legally described in Exhibit A to this Agreement, and all improvements and fixtures now or hereafter thereon, including, without limitation, the entire facility to be known as the Garden.

Seattle Chinese Garden (or "Garden"): A Sichuan-style Seattle Chinese Garden and appurtenant amenities in the process of being constructed on the Property owned by the South Seattle Community College and leased by SCGS, including Spring and all subsequent phases.

Spring: Knowing the Spring Courtyard, Phase One of the Garden, as further described in Exhibit B.

Use Period: The period of time beginning on the date when the construction of Spring is completed and open and available for use by the City and its residents pursuant to the Easement and public benefits granted herein, and ending five (5) years later, except as it may be extended pursuant to Section 11 hereof.

### 3. TERM OF AGREEMENT

This Agreement shall be effective when authorized by Seattle City Council and fully executed and delivered by both parties, which may be in separate counterparts, and shall continue in full force and effect until the Use Period has expired or until otherwise terminated as permitted herein.



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**4. EASEMENT AND PUBLIC BENEFITS**

For and in consideration of the City's obligations and promises herein, SCGS hereby grants and conveys to the City of Seattle and all Seattle City residents an easement in gross whereby the City and its residents have the right to access and admission to Spring and all subsequently completed portions of the Garden, including programs and services, free of any fee or charge, for the duration of the Use Period and as further described in this Agreement.

This Easement is intended to bind both SCGS and any subsequent owner or assignee of SCGS's rights in the Property for the duration of the Term of this Agreement. In order to secure performance of this Easement, SCGS shall execute and deliver an original of this Agreement to DPR for recording with the King County Recorder and shall promptly upon demand deliver any other documents, signed by all necessary persons, as may be required for this Easement and for its recording with the King County recorder.

**5. HOURS OF OPERATION**

For the duration of the Use Period, SCGS guarantees that it will keep Spring and all subsequently completed portions of the Garden open to the public for no less than five (5) days per week. The minimum hours of operation will be:

June 15 through August 30:	12 noon – 7:00 pm
September 1 through October 31:	12 noon – 5:30 pm
November 1 through March 31:	12 noon – 4:30 pm
April 1 through June 14:	12 noon – 5:30 pm

The Superintendent and SCGS may amend the minimum days and hours of operation depending upon public usage patterns and needs.

**6. COMPENSATION, MANNER AND METHOD OF PAYMENT**

(a) In consideration of SCGS's obligations and promises herein, the City agrees to purchase the easement and public benefits from SCGS for \$317,750.

(b) Payment by the City is conditioned upon SCGS providing the Superintendent with the following documents: (i) evidence acceptable to the Superintendent that SCGS Spring will be completed and suitable to be open to the public by December 31, 2010, (ii) a draft copy of the press release notifying the public of the opening and free admission to Seattle residents, (iii) signage design concept for the entrance to the Garden notifying the public of free admission to Seattle residents, (iv) evidence of insurance as required in Section 10, (v) lessor's approval of this Agreement or other evidence acceptable to the



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Superintendent as described in Section 13 demonstrating that this Agreement does not violate the terms of SCGS's lease with South Seattle Community College, and (vi) any additional documents required in order for DPR to record this Agreement. Items (i) – (vi) in this section are collectively referred to as the Invoice.

(c) Within 15 days of receiving the Invoice that complies with the requirements in Section 6(b), the Superintendent or his designee shall record this Agreement and authorize payment, or notify SCGS of any deficiencies in the request or additional information required. Within 30 days after the Superintendent or his designee has approved the Invoice, the City will issue payment of \$317,750 to SCGS.

(d) The satisfaction of the requirements in Section 6 (b) are conditions to the City's obligation to complete the purchase of the easement and public benefits. If the conditions are not satisfied or waived by the City by December 31, 2010, the City may, in its discretion, extend the time period for satisfaction of the conditions in Section 6 (a) or terminate this Agreement without further obligation or liability.

### **7. COMMENCEMENT OF THE USE PERIOD**

SCGS is expected to complete the construction of Knowing the Spring Courtyard and open it no later than December 31, 2010. SCGS shall cause the Use Period to commence no later than December 31, 2010. The failure to meet this deadline will be a Default by SCGS, unless the City, in its discretion, agrees in writing to delay the commencement of the Use Period.

### **8. CONSTRUCTION, TAXES, MAINTENANCE, AND OPERATION RESPONSIBILITIES AND COST**

SCGS shall have sole responsibility for construction, maintenance, and operation of all phases of the Garden. This responsibility includes, but is not limited to, the payment of any and all taxes and construction costs and any costs associated with the acquisition, construction, maintenance, and operation of the Courtyard and all additional phases of the Garden. The City will not be responsible for construction, maintenance, or operation of the Garden in general, nor will the City be responsible for any costs associated with or arising from the Use Rights or operation of the Garden.

### **9. PARKS OVERSIGHT AND AUDITS**

DPR shall have the right to monitor and oversee SCGS's compliance with the requirements and conditions of this Agreement. SCGS shall submit to DPR

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an annual report regarding public use of Spring and subsequent phases of the Garden using a form developed and agreed upon jointly by DPR and SCGS. In addition, upon proper notice by the City, SCGS shall provide DPR with reasonable access to any additional information, records, and facilities that would assist DPR in monitoring SCGS's compliance with this Agreement.

SCGS shall maintain books, records, documents, and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in connection with the operation and management of this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by DPR, the City, the Office of the State Auditor, and other officials so authorized by law, rule, regulation, or contract.

### 10. INSURANCE

10.1 SCGS shall maintain at all times during the Use Period the following insurance:

A. All risk property insurance on the Garden and the Property. The amount of insurance shall be not less than the current replacement cost of the Garden as established upon each annual insurance policy renewal. The City of Seattle shall be an additional insured and loss payee as its interest may appear.

B. General (premises) liability insurance on the Garden with a minimum limit of liability of \$1,000,000 each occurrence bodily injury and property damage combined single limit. The City of Seattle shall be an additional insured for primary and non-contributory limits of liability.

10.2 The insurance described in paragraphs 10.1 (A) and (B) above shall be placed with insurers having A.M. Best's ratings of not less than A- and VII and shall not be cancelled without thirty (30) days prior written notice to the City; except ten (10) days as respects non-payment of premium.

10.3 A copy of all insurance required herein shall be provided to the Superintendent no later than the date when the Use Period commences. Grantor shall also provide the City with documentation of the above insurance policies on an annual basis.

### 11. DAMAGE OR DESTRUCTION

If the Property and/or any portion of the Garden shall be destroyed or damaged by fire or other casualty during the Term of this Agreement and when

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the Use Period has not yet commenced or has time remaining, then SCGS shall restore or rebuild the Property and/or the Garden if sufficient insurance proceeds are available, and the Easement and public access obligations herein shall apply to the rebuilt or restored Property and/or Garden, and the Agreement Term and Use Period shall be extended by a period equal to the time that the Garden was not operating. In the alternative, if the Property and/or the Garden are not rebuilt or restored, or if such building or restoration does not commence within 24 months of the damage or destruction, then SCGS shall pay the City liquidated damages as described in Section 20.

### 12. REPRESENTATIONS AND WARRANTIES

SCGS represents and warrants as follows:

12.1 SCGS has the right, power, and authority to grant the Easement on the Property and the Garden, and to execute, deliver, and perform this Agreement; and that all requisite actions of SCGS to enter, deliver, and perform this Agreement and to authorize the execution by the person signing on behalf of SCGS (including the consent of third parties if applicable) have been taken.

12.2 Neither the Easement nor any provision of this Agreement is in conflict with any provision of any other agreement or instrument by which SCGS is bound or to which the Property and the Garden is subject (including but not limited to any debts that are secured by the Property), nor shall the execution, delivery, or performance of this Agreement constitute an event of default under any such agreement or instrument.

### 13. LESSOR APPROVAL AND GUARANTY

SCGS's right to use and occupy the Property on which the Garden is located is pursuant to a long-term lease. SCGS will obtain a fully executed copy of a Lessor Approval and Guaranty of this Agreement in substantially the form attached and incorporated herein as Exhibit C, or in such other form as is acceptable to the Superintendent in his or her sole discretion.

### 14. RECORDING AND PRIORITY

This Agreement shall be duly recorded with King County. SCGS warrants and covenants that the Easement shall have priority over all encumbrances on the Property and Garden, other than those in favor of the City and any future exceptions to which the City subordinates this Agreement by instrument hereafter recorded, to the extent of such subordination.



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**15. NONDISCRIMINATION**

Without limiting the generality of Section 21, SCGS shall comply, and cause all contractors and subcontractors working on the Garden to comply, with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including but not limited to Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code (SMC), to the extent applicable, and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

**16. ASSIGNMENT OR TRANSFER**

This Agreement is personal to each of the parties hereto and neither party may assign or delegate any of its rights or obligations hereunder without first obtaining the written consent of the other party. In the event that SCGS transfers or assigns its leasehold interest in the Property or the Garden, the parties intend that any transferee will remain bound by SCGS's obligations herein. Any transfer without the City's prior approval or any transfer that results in a breach of SCGS's obligations under this agreement will be an event of default subject to liquidated damages as described in Section 20.

**17. DEFAULT**

17.1 If SCGS fails to perform when required any obligation or breach any term of this Agreement, the City shall provide written notice to SCGS, specifying the nature of the breach and the reasonable number of days, a minimum of thirty (30) days, but in any event the City shall not be required to allow more than sixty (60) days) after the date of the notice within which such breach must be cured. Unless SCGS shall fully cure all breaches specified in such notice within the time allowed, SCGS shall be in Default.

17.2 In case of Default by SCGS, the City may exercise remedies as specified in Section 20, or specified under any applicable provision of this Agreement. In addition to or in lieu of the foregoing, the City shall be entitled to all remedies permitted from time to time by the laws of the State of Washington. The City's rights and remedies hereunder are not exclusive, but cumulative, and the City's exercise of any right or remedy due to SCGS's failure to perform any covenant or condition of this Agreement shall not be deemed a waiver of, or alter, affect, or prejudice any other right or remedy that the City may have under this Agreement or by law or in equity.



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**18. DEFAULT BY CITY AND REMEDIES**

If, within sixty (60) days after SCGS shall have timely satisfied all conditions to the City's obligation for payment hereunder, the City shall not have tendered full payment hereunder, then SCGS may either (1) terminate this Agreement by written notice to the City within thirty (30) days, in which case neither party shall have any liability or obligation hereunder; or (2) pursue any remedy available at law or in equity for enforcement of this Agreement, provided that the City shall not be liable for damages or any other monetary remedy in excess of the total price stated hereunder.

**19. TERMINATION**

19.1 This Agreement shall continue in effect until the earliest to occur of:

- (i) The expiration of the Use Period; or
- (ii) If the City elects to claim liquidated damages after Default in accordance with Section 20 hereof, the date on which the City receives full payment of all liquidated damages.

19.2 The City may terminate this Agreement in the event that, prior to payment by the City hereunder, SCGS is in Default, or the City, in its reasonable discretion, determines that SCGS will be unable to timely complete the construction of Spring.

**20. LIQUIDATED DAMAGES**

20.1 The parties understand and agree that the City's ability to obtain value from this Agreement is conditioned upon the development and construction of Spring and the completion, opening, and operation of Spring and additional phases of the Garden. From the nature of this Agreement, it would be impracticable and extremely difficult to fix the actual damages sustained as a result of the failure of SCGS to complete Spring or make it available for uses contemplated herein, or sustained as a result of SCGS's interference with or failure to provide the City and public use rights granted in the Easement. As a result, the parties agree that in the circumstances expressly set forth in this section and other applicable sections of this Agreement, the City shall have the right to recover, at its option, liquidated damages in the amounts set forth herein, which amounts the

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parties agree are a reasonable estimate of the damage to the City, and are intended to fairly measure the loss to the City and not to be punitive in nature.

- 20.2 In the event of Default after the beginning of the Use Period and prior to the expiration of the Use Period, SCGS agrees to pay the City on demand liquidated damages in the amount of SIXTY-THREE THOUSAND AND SIX HUNDRED AND NO/100 DOLLARS (\$63,600) for each year remaining in the Use Period (prorated for any Partial Use Year based upon the number of months remaining) plus interest. Interest shall accrue from the date on which the City paid SCGS until the date of full repayment to the City, at the rate applied during the same period of time to the participating funds of the consolidated cash portfolio of the City of Seattle.
- 20.3 Any future sale or transfer of the Property shall not extinguish SCGS's obligations hereunder, nor shall it impair the City's ability to pursue liquidated damages from SCGS.
- 20.4 After receipt of liquidated damages in cleared funds, the City shall, within a reasonable time, record an instrument terminating the Easement and this Agreement shall be terminated.
- 20.5 The City may, at its option, set off any liquidated damages under this Section against any amount otherwise payable or distributable by the City to SCGS, whether or not in relation to this Agreement or the Garden.

**21. COMPLIANCE WITH LAW**

- 21.1 SCGS shall comply at its sole expense with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof (all of the foregoing are referred to as "applicable laws"). SCGS shall require all contractors and subcontractors working on the Garden to comply with all applicable laws.
- 21.2 SCGS represents and warrants that any activities in connection with the development of Spring or any other area of the Garden prior to this Agreement have been in compliance with all applicable laws.



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- 21.3 SCGS shall defend and indemnify the City and its officers and employees from and against any claim, demand, liability, or loss resulting from the failure of SCGS or of any contractor or subcontractor to comply with applicable laws.

## 22. Indemnity

SCGS shall have control over and responsibility for the development, construction, operation, and maintenance of the Property, all phases of the Garden, including Spring, and the services provided therein. As a result, SCGS agrees to defend, indemnify, and hold the City of Seattle, its elected officials, officers, employees, and agents harmless from any and all damages, claims, liabilities, losses, and/or costs of any kind, including attorney's fees, that arise in any way from the development, construction, financing, operation, maintenance, or use of the Property and the Garden, including without limitation any public use under the Easement and this Agreement of the Garden and adjacent grounds on the Property. This clause applies to claims, liabilities, costs, losses, and/or damages of any kind notwithstanding any acts, omissions, or negligence of the City or its officers, officials, employees, contractors, or agents; provided, that nothing herein shall be construed as requiring SCGS to indemnify the City against liability for bodily injury or damage to property caused by or resulting from the sole negligence of the City or of any of its officers, elected officials, employees, or agents, and further provided, that if RCW 4.24.115 (or successor provision) shall apply to any claim for any such damage or injury, then to the extent required by such statute, (1) this indemnity shall not apply in case of any liability for damages arising out of bodily injury to persons or damage to property caused or resulting from the sole negligence of the City, its agents or employees, and (2) in case of liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the City or its agents or employees; and (b) SCGS and or its agents or employees, this indemnity shall apply only to the extent of SCGS's negligence. The indemnification obligation set forth in this section shall survive the expiration or earlier termination of this Agreement.

**For purposes of this Section, SCGS waives, solely with respect to City, its immunity under RCW Title 51, Industrial Insurance. SCGS and City acknowledge that this waiver has been specifically negotiated and that City would not have entered into this Agreement absent this waiver.**

This Section 23 shall survive termination of this Agreement for the duration of the time period allowed under applicable laws relating to limitations of actions.



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**24. APPLICABLE LAW; VENUE**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.

**25. HEADINGS**

The headings used in this Agreement are for convenience only and do not define or limit the contents.

**26. NOTICES AND REPORTS**

Any notices or reports required or permitted hereunder shall be effective when hand-delivered during normal business hours or two business days after mailed, postage prepaid, to a party at the addresses set forth below, or to such other address as a party shall designate in writing in accordance with this Section.

**If mailed or delivered to the City of Seattle:**

City of Seattle – Department of Parks and Recreation  
Contracts and Business Resources  
c/o Manager  
6310 NE 74<sup>th</sup> St; Suite 109E  
Seattle, WA 98115

**If mailed or delivered to SCGS:**

SCGS  
Attn: Jon Geiger, President  
1215 Fourth Ave., Suite 1320  
Seattle, WA 98161

**27. EXHIBITS**

The following exhibits are incorporated by reference and are made a part of this Agreement:

- Exhibit A: Legal description of Property
- Exhibit B: Description map of Knowing the Spring Courtyard
- Exhibit C: Lessor Approval Agreement

**28. ASSIGNMENT; NO THIRD PARTY RIGHTS**



Attachment 1

This Agreement is personal to each of the parties hereto and neither party may assign or delegate any of its rights or obligations hereunder without first obtaining the written consent of the other party. Nothing herein shall confer any rights or remedies on any person or entity other than the parties hereto.

**29. ENTIRE AGREEMENT**

This Agreement and the exhibits attached hereto and forming a part hereof, are all of the covenants, promises, agreements, and conditions between the parties with respect to the subject matter hereof. No verbal agreements or conversations between any officer, agent, associate, or employee of the City and any officer, agency, employee, or associate of SCGS shall affect or modify any of the terms or obligations contained in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by having their representatives affix their signatures below.

**CITY OF SEATTLE:**

By: \_\_\_\_\_  
Christopher Williams, Acting Superintendent  
Department of Parks and Recreation

**SEATTLE CHINESE GARDEN SOCIETY:**

By: \_\_\_\_\_  
Jon Geiger, President  
Seattle Chinese Garden Society



Attachment 1

STATE OF WASHINGTON)

) ss. (Acknowledgement for The City of Seattle)

COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared, known to me to be the Acting Superintendent of the Department of Parks and Recreation of **THE CITY OF SEATTLE**, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Printed Name]

NOTARY PUBLIC in and for the State of Washington residing at \_\_\_\_\_

My commission expires \_\_\_\_\_.

STATE OF \_\_\_\_\_)

) ss. (Acknowledgement for SCGS)

COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared \_\_\_\_\_, known to me to be the President of **SCGS**, the agency that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate above written.

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Printed Name]



Attachment 1

NOTARY PUBLIC in and for the State of \_\_\_\_\_ residing at \_\_\_\_\_

My commission expires \_\_\_\_\_.



Exhibit A  
Legal Description

DESCRIPTION OF PROPOSED CHINESE GARDEN PARCEL

THAT PORTION OF BLOCKS 2, 3, 6 AND 7, DUWAMISH HEIGHTS GARDEN TRACTS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 14 OF PLATS, PAGE 45, RECORDS OF KING COUNTY, WASHINGTON, TOGETHER WITH THOSE PORTIONS OF VACATED STREETS WHICH ATTACH THERETO, LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 19, TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M. KING COUNTY, WASHINGTON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

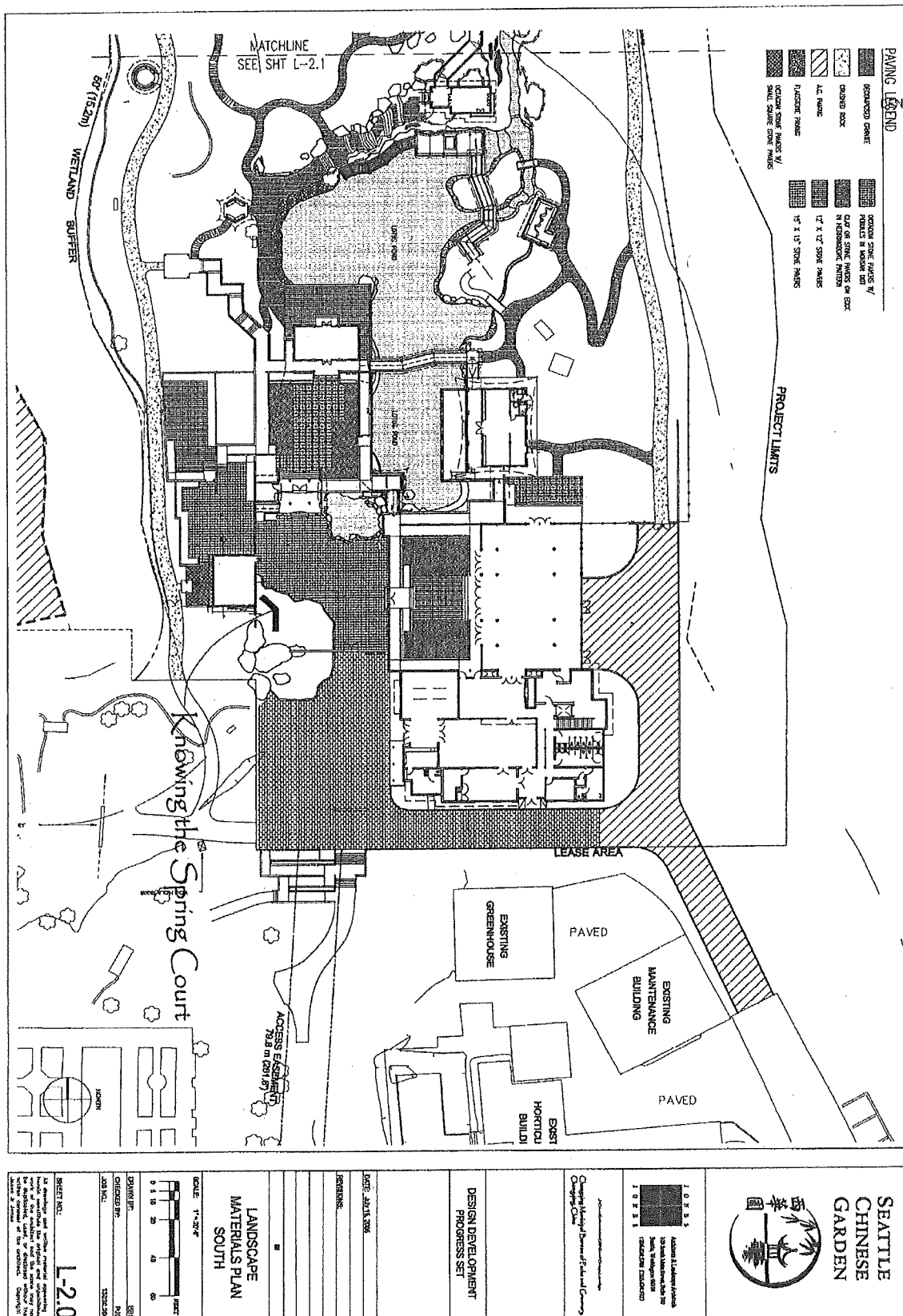
(DISTANCES SHOWN IN PARENTHESIS ARE METERS)

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 19;

THENCE NORTH 00°17'26" EAST 2587.12 FEET (788.556) TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 19; THENCE NORTH 89°40'34" EAST ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER FOR A DISTANCE OF 314.09 FEET (95.735); THENCE SOUTH 00°15'16" WEST 30.00 FEET (9.144) TO THE NORTHWEST CORNER OF BLOCK 3 OF DUWAMISH HEIGHTS GARDEN TRACTS AND THE POINT OF BEGINNING; THENCE NORTH 89°40'34" EAST 282.79 FEET (86.195); THENCE SOUTH 10°40'42" EAST 41.51 FEET (12.652); THENCE SOUTH 37°34'07" EAST 49.20 FEET (14.997); THENCE SOUTH 26°10'03" EAST 118.105 FEET (35.998); THENCE SOUTH 29°59'26" EAST 164.05 FEET (50.002); THENCE SOUTH 04°32'16" EAST 63.20 FEET (19.263); THENCE SOUTH 24°22'35" EAST 70.26 FEET (21.416); THENCE SOUTH 03°07'03" EAST 55.16 FEET (16.814); THENCE SOUTH 05°28'09" WEST 94.43 FEET (28.782); THENCE SOUTH 13°04'10" EAST 57.49 FEET (17.523); THENCE SOUTH 00°15'16" WEST 118.10 FEET (35.388); THENCE SOUTH 89°58'03" WEST 270.25 FEET (82.372); THENCE NORTH 00°01'57" WEST 90.00 FEET (27.432); THENCE SOUTH 89°58'03" WEST 63.00 FEET (19.202); THENCE NORTH 00°15'16" EAST 26.90 FEET (8.199); THENCE SOUTH 89°58'03" WEST 162.07 FEET (49.400); THENCE NORTH 00°15'16" EAST 658.26 FEET (200.64) TO THE POINT OF BEGINNING.



## Exhibit B



## Exhibit C

### LESSOR APPROVAL AGREEMENT

Grantor: Seattle Community College District VI, State Board for Technical and Community Colleges and the Seattle Chinese Garden Society

Grantee: The City of Seattle

Abbreviated Legal Description: Portions of Blocks 2, 3, 6 and 7, Duwamish Heights Garden Tracts, Vol. 14 of Plats, pg. 45, King County, Washington.

Assessor's Tax Parcel I.D. # 6171900005

This Lessor Approval Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2010 by Seattle Community College District VI, State Board for Technical and Community Colleges and the Seattle Chinese Garden Society in favor of the City of Seattle.

#### RECITALS

A. The District is an agency of Washington State government that operates a Washington State community college, South Seattle Community College, located at 6000 16<sup>th</sup> Avenue S.W., Seattle, Washington 98106, and the State Board is an agency of Washington state government with authority to sell, exchange, or convey any interest in community and technical college real property, including the real property on which the South Seattle Community College is located (the "SSCC Campus".)

B. Within the SSCC Campus, the State Board owns that certain real property in the City of Seattle comprising portions of Blocks 2, 3, 6, and 7, Duwamish Heights Garden Tracts, Vol. 14 of Plats, p. 45, King County, Washington, which was established as a separate legal lot (Proposed Parcel A) in Lot Boundary Adjustment for Project No. 2401868 for South Seattle Community College, recorded under King County Recording No. 20041130900009, filed November 30, 2004 (the "Property"). The Property, which is addressed as 5640 16<sup>th</sup> Ave., S.W., is legally described in Exhibit A attached hereto.

C. The City of Seattle and the Seattle Chinese Garden Society have entered into an Agreement regarding an Easement and Public Benefits at the Seattle Chinese Garden dated \_\_\_\_\_.

D. Section 13 of the Agreement, entitled Lessor Approval and Guaranty, requires Seattle Chinese Garden Society (SCGS) to obtain the written approval of Owner, in recordable form, that, in the event that SCGS defaults under its Lease to Owner, Owner



## Exhibit C

will be responsible for either maintaining the operation of the Chinese Garden as specified in Section 17 therein, or, alternatively, undertaking certain repayment obligations to the City, as specified in Section 20 therein also.

E. Owner wishes to provide SCGS with the Lessor Approval as set forth in Section 13 of the Covenant and Easement, and therefore enters into this Agreement according to the terms set forth below.

F. As additional consideration to Owner for entering into this Agreement, the Society is providing certain additional benefits to Owner as identified in Section 12 of the Operating Agreement entered into between Owner and the Society.

### AGREEMENT

**Section 1. Lessor Approval.** Owner hereby covenants, bargains, and agrees, on behalf of itself and its' successors and assigns, that, in the event of default by SCGS under its lease of the Property with Owner, Owner shall be responsible for either maintaining the operation of the Chinese Garden as specified in the Agreement, or alternatively, at Owner's discretion, undertaking the repayment obligation as specified in Section 20.

**Section 2. Agreements Runs With the Land.** This agreement shall be deemed to attach to and run with Property and shall be binding upon Owners, its heirs, successors and assigns.

**Section 3. Governing Laws; Venue.** This Covenant and Easement shall be construed and enforced in accordance with the laws of the State of Washington. Venue of any action hereunder shall be in King County, Washington.

**Section 4. Counterparts.** This Agreement may be executed in counterpart, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.



## Exhibit C

IN WITNESS WHEREOF the respective parties hereto have executed this Agreement the day and year first written above.

### **Seattle Community College District VI**

By: \_\_\_\_\_  
Chancellor for and on behalf of the  
Board of Trustees

Acknowledged and Approved  
State Board for Community and Technical  
Colleges

By: \_\_\_\_\_  
Executive Director

### **Seattle Chinese Garden Society**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Exhibit C

STATE OF WASHINGTON        }  
                                      } ss.  
COUNTY OF KING            }

On this day personally appeared before me \_\_\_\_\_, to me known to be the \_\_\_\_\_ of Seattle Community College, the party that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

STATE OF WASHINGTON        }  
                                      } ss.  
COUNTY OF THURSTON       }

On this day personally appeared before me \_\_\_\_\_, to me known to be the \_\_\_\_\_ of \_\_\_\_\_, the party that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Printed Name



Exhibit C

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

STATE OF WASHINGTON        }  
  } ss.  
COUNTY OF KING            }

On this day personally appeared before me \_\_\_\_\_, to me known to  
be the \_\_\_\_\_ of \_\_\_\_\_, the party that executed the  
foregoing instrument, and acknowledged such instrument to be the free and voluntary act  
and deed of such corporation, for the uses and purposes therein mentioned, and on oath  
stated that he was fully authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL, this \_\_\_\_\_ day of  
\_\_\_\_\_, 2010.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My Commission Expire \_\_\_\_\_



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Parks and Recreation	Isabel Hamilton/ 684-4218	Jennifer Devore/ 615-1328

**Legislation Title:**

AN ORDINANCE relating to the Department of Parks and Recreation, authorizing the Superintendent to enter into an agreement with the Seattle Chinese Garden Society for an easement and public benefits at Knowing the Spring Courtyard and additional phases of the Seattle Chinese Garden.

**Summary of the Legislation:** The proposed legislation authorizes the Superintendent of the Department of Parks and Recreation to purchase an easement and public benefits from the Seattle Chinese Garden Society (Society) at the Knowing the Spring Courtyard (Spring Courtyard), Phase One of the future authentic Sichuan-style Seattle Chinese Garden (Garden.) The complete Garden, with all four seasonal components, is expected to open in January 2016. City Council Ordinance 121727 (2005) adopted an agreement for a schedule of public benefits for Seattle residents to begin at the time the full Garden opened.

The City and Society desire to enter into a new five year Easement and Public Benefits Agreement in order to take advantage of this opening and receive public benefits and access to the Spring Courtyard prior to the opening of a completed garden. As such this ordinance provides an additional \$317,500 to the Society in exchange for receiving free admission for residents of Seattle to the Spring Courtyard as well as free admission to the other Garden elements as they are completed within the term. However, these funds will not be expended until the money is appropriated by Seattle City Council in 2010 for this purpose.

**Background:** The City of Seattle, its Sister City of Chongqing, China, and the Society have worked closely for over 20 years to develop a major Chinese garden in Seattle that reflects the beauty and composition of an authentic Sichuan Chinese garden. The location of the Garden was resolved when the Seattle City Council adopted Resolution 27832 in 1988 which designated land on the campus of South Seattle Community College (SSCC) as the preferred site for the Garden, and directed the Department of Parks and Recreation to complete a feasibility study. In 1989 the City Council adopted Ordinance 114521, authorizing funding to help with the preliminary design of the Garden.

From 1994 to 1998, the Society, the Seattle Community College District IV (District), and SSCC negotiated an Option Agreement and Lease for use of the site by the Society for the development and operation of the Seattle Chinese Garden. In 2005 the City Council adopted Ordinance 121727 authorizing an agreement for Parks to transfer \$600,000 in City funds to the Society to support Phase I of the Chinese Garden Project. This agreement required the Society to provide public benefits during the term of the 25-year agreement, commencing when the full Garden is complete and open to the public, now estimated to be in 2016. However, since the Seattle

Chinese Garden is still years away from opening, this new agreement for an easement and public benefits will create a smaller but still beautiful and tranquil ancient Chinese garden experience available at no cost to Seattle residents for five years.

- Please check one of the following:

       **This legislation does not have any financial implications.** (Stop here and delete the remainder of this document prior to saving and printing.)

  X   **This legislation has financial implications.** (Please complete all relevant sections that follow.)

**Appropriations:** N/A

Fund Name and Number	Department	Budget Control Level*	2010 Appropriation	2011 Anticipated Appropriation
<b>TOTAL</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>

**Notes:** There is no appropriation requested as a result of this legislation. These funds will not be expended until the money is appropriated by Seattle City Council in 2010 for this purpose.

**Anticipated Revenue/Reimbursement: Resulting From This Legislation:** N/A

Fund Name and Number	Department	Revenue Source	2010 Revenue	2011 Revenue
<b>TOTAL</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>

**Notes:** No revenues are anticipated as a result of this legislation.

**Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact:** N/A

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2010 Positions	2010 FTE	2011 Positions*	2011 FTE*
<b>TOTAL</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>

**Notes:** There are no position impacts as a result of this legislation.

- **Do positions sunset in the future?** N/A

**Spending/Cash Flow:**

<b>Fund Name &amp; #</b>	<b>Department</b>	<b>Budget Control Level*</b>	<b>2010 Expenditures</b>	<b>2011 Anticipated Expenditures</b>
General Fund	Finance General	Support to Community Development BCL	\$317,750	
<b>TOTAL</b>			<b>\$317,750</b>	

***Notes:***

- **What is the financial cost of not implementing the legislation?** There is no financial cost if this legislation is not implemented.
- **Does this legislation affect any departments besides the originating department?** No.
- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** There are no viable alternatives that would achieve the same objective.
- **Is the legislation subject to public hearing requirements:** No.
- **Other Issues:** This legislation would benefit the City by guaranteeing free admission to the Knowing the Spring Courtyard expected to open on or before December 31, 2010, and subsequent phases of the Garden as they are completed and open to the public. Previous legislation for public access and use was predicated on the scheduled completion of all phases of the Garden in 2014, but due to the current economy, the completion of all phases may now be January 1, 2016.
- **List attachments to the fiscal note below:**

Attachment A: Contract Summary Form

Attachment A  
Seattle Department of Parks and Recreation

**CONTRACT SUMMARY**

**Date:** July 28, 2010

**Name of Contracting Party/ Lessee/ Concessionaire/Other:** Seattle Chinese Garden Society

**Contract Type:** Easement and Public Benefits

**Non-Profit** ☒ or **For Profit** \_\_\_\_\_

**New** ☒ or **Renewal (or extension of existing Lease)** \_\_\_\_\_

**Term of Lease:** 5 years

**Purpose of Lease:** To purchase an easement and public benefits from the Seattle Chinese Garden Society for Knowing the Spring Courtyard (Spring Courtyard), Phase One of the Seattle Chinese Garden (Garden).

**Public Benefit:** Five years of free admission for residents of Seattle to the Spring Courtyard as well as free admission to the other Garden elements as they are completed within the term.

**Brief description, overview, history, general terms and other pertinent info:**

In 1989 the City Council adopted a resolution designating a site on the campus of South Seattle Community College as the preferred site for the Garden. In 2005 the City Council adopted ordinance 121727 authorizing a Memorandum of Understanding that provided \$600,000 to the Seattle Chinese Garden Society (Society) in exchange for the receipt of a list of public benefits valuing over \$2 million over a 25 year period commencing when the entire Garden is open. The entire garden, when finished, will be one of the largest Chinese gardens outside of China, showcasing not only plants, but also stone, architecture, and water elements. The Garden will provide a place for community celebrations and personal tranquility through a beautiful and ancient Chinese experience. The completed authentic Chinese garden is expected to be finished and open to the public in 2016. This new, mutually beneficial agreement guarantees free admission for Seattle residents for five years as the phases of the Garden are completed and opened. The Chinese Garden design is organized around the four seasons. The first season of the authentic Sichuan garden, Knowing the Spring Courtyard, will be completed and open to the public by December 31, 2010. This five year Easement and Public Benefits Agreement takes advantage of a phased-in opening and receipt of public benefits and



Attachment A

access to the Spring Courtyard prior to the opening of a completed garden. As such this ordinance provides \$317,500 to the Society in exchange for free admission for residents of Seattle to the Spring Courtyard as well as free admission to the other Garden elements as they are completed. However, these funds will not be expended until the money is appropriated by Seattle City Council in 2010 for this purpose.



City of Seattle  
Office of the Mayor

September 7, 2010

Honorable Richard Conlin  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that authorizes the Superintendent of Parks and Recreation to enter into an agreement with the Seattle Chinese Garden Society (Society) to purchase an easement and public benefits for the first phase of the Sichuan Chinese Garden (Garden). The Garden is designed around the four seasons, the first of the four called the Knowing the Spring Courtyard (Spring Courtyard).

In 2005, the City Council adopted Ordinance 121727 authorizing an agreement for Parks to transfer \$600,000 in City funds to the Society to support development of the Chinese Garden Project. This agreement required the Society to provide public benefits during the term of the 25-year agreement, commencing when the full Garden is complete and open to the public, now estimated to be in 2016. However, since the Seattle Chinese Garden is still years away from a full opening, the proposed agreement will ensure five years of free admission to residents of Seattle to the Spring Courtyard. This first phase of the project will be open by December 31, 2010.

The City and Society desire to take advantage of this opening and receive public benefits and access prior to the opening of a completed garden. As such, this ordinance provides an additional \$317,500 to the Society in exchange for free admission to Seattle residents to Spring Courtyard as well as the other Garden elements as they are completed. However, these funds will not be expended until the money is appropriated by Seattle City Council in 2010 for this purpose.

Approval of the proposed agreement will authorize the City's purchase of this easement and help bring the City closer to having the first authentic Chinese Garden in Seattle. Thank you for your consideration of this legislation. Should you have questions, please contact Rebecca Salinas at 684-7279.

Sincerely,

Michael McGinn  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor  
Office of the Mayor  
600 Fourth Avenue, 7<sup>th</sup> Floor  
PO Box 94749  
Seattle, WA 98124-4749

Tel (206) 684-4000  
Fax (206) 684-5360  
TDD (206) 615-0476  
mike.mcgin@seattle.gov



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**STATE OF WASHINGTON – KING COUNTY**

--SS.

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261694  
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

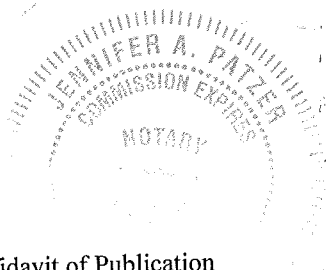
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:123408,10,12-13

was published on

10/14/10

The amount of the fee charged for the foregoing publication is the sum of \$ 81.90, which amount has been paid in full.



Affidavit of Publication

Subscribed and sworn to before me on

10/14/10

Notary public for the State of Washington,  
residing in Seattle

## State of Washington, King County

### City of Seattle

#### TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on September 27, 2010, and published here by title only, will be mailed upon request, or can be accessed at <http://clerk.seattle.gov>. For further information, contact the Seattle City Clerk at 684-8344.

#### ORDINANCE NO. 123408

AN ORDINANCE relating to the redevelopment of the Lake Union Armory Building; amending the Armory Project Development Agreement between The City of Seattle and the Museum of History and Industry ("MOHAI"); accepting an offer from the Washington State Department of Transportation to acquire the MOHAI facility and ancillary improvements at McCurdy Park; authorizing the Superintendent of Parks and Recreation to execute a deed for such improvements and to take other related actions; creating a new budget control level and increasing appropriations in connection therewith; and superseding the requirements of Ordinance 118477 to the extent necessary to carry out the purposes of this ordinance; all by a three-fourths vote of the City Council.

#### ORDINANCE NO. 123410

AN ORDINANCE relating to Conservation Futures Levy proceeds; authorizing the Mayor to amend the Interlocal Cooperation Agreement between the City of Seattle and King County as authorized by City of Seattle Ordinance 114978; and authorizing the deposit of 2010 allocations from King County Conservation Futures Levy proceeds into the City of Seattle's 2000 Parks Levy Fund, Cumulative Reserve Fund and 2009 Multi-purpose LTGO Fund.

#### ORDINANCE NO. 123412

AN ORDINANCE relating to the Department of Parks and Recreation, authorizing the Superintendent to enter into an agreement with the Seattle Chinese Garden Society for an easement and public benefits at Knowing the Spring Courtyard and additional phases of the Seattle Chinese Garden.

#### ORDINANCE NO. 123413

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Publication ordered by the City Clerk  
Date of publication in the Seattle Daily  
Journal of Commerce, October 14, 2010.  
10/14(261694)