Ordinance No. 123528

Council Bill No. 117083

AN ORDINANCE relating to the Meridian Playground and the Good Shepherd Center property; authorizing the Superintendent of Parks and Recreation to enter into a ten-year use and occupancy agreement with the Seattle Tilth Association for continued use of a portion of Meridian Playground property for urban garden demonstration and programs.

CF No. _____

Date Introduced: 1.3.11	Parks + Seattle
Date 1st Referred:	To: (committee) Arts
Date Re - Referred:	To: (committee)
Date Re - Referred:	To: (committee)
Date of Final Passage: Jan. 24, 2011	Full Council Vote: 8-0
Date Presented to Mayor: Jan. 25, 2011	Date Approved: 1.28.11
Date Returned to City Clerk: 1.28.11	Date Published: T.O. ✓ F.T. ___
Date Vetoed by Mayor:	Date Veto Published:
Date Passed Over Veto:	Veto Sustained:

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: Sg Bagshaw
Councilmember

Committee Action:

1/20/11 PASS 2-0 (SB/TR)

1/24/11 Full Council PASSED 8-0 (Excused: Conlin)

This file is complete and ready for presentation to Full Council. Committee: 1/20/11 SgB
(initial/date)

Law Department

Law Dept. Review	OMP Review	City Clerk Review	Electronic Copy Loaded	Indexed

Suzanne Simmons
DPR Seattle Tilth Lease ORD
November 29, 2010
Version #2

ORDINANCE 123528

AN ORDINANCE relating to the Meridian Playground and the Good Shepherd Center property; authorizing the Superintendent of Parks and Recreation to enter into a ten-year use and occupancy agreement with the Seattle Tilth Association for continued use of a portion of Meridian Playground property for urban garden demonstration and programs.

WHEREAS, Ordinance 105956, adopted in 1976, authorized acquisition and development of property located on North 50th Street between Meridian Avenue North and Sunnyside Avenue North for a playground and self-sustaining multi-purpose community center, now known as Meridian Playground and the Good Shepherd Center (collectively the Property); and

WHEREAS, Ordinance 111828, adopted in 1984, identified discrete areas of the Property and described uses for the areas, including a P-Patch and an adjacent area for Seattle Tilth, a non-profit corporation, to establish a demonstration garden; and

WHEREAS, Ordinance 111865, adopted in 1984, adopted a Comprehensive Site Plan (Site Plan) for the property that specified the P-Patch and the demonstration garden use shall continue not longer than 25 years and at which time the land would become part of Meridian Playground under jurisdiction of the Department of Parks and Recreation; and

WHEREAS, Ordinance 111882, adopted in 1984, designated the entire Meridian Playground and Good Shepherd Center site a landmark, subject to certain reviews and approvals prior to changes to the site, as represented by the Site Plan; and

WHEREAS, Ordinance 123095, adopted in 2009, established and clarified City-department jurisdiction of the Meridian Playground and the Good Shepherd Center property; revised the Site Plan for the property; and authorized the Superintendent of Parks and Recreation to enter into agreements for use of the property since the P-Patch and demonstration garden use have continued; and

WHEREAS, continuing gardening opportunities and providing educational programs are within the scope of park and recreation activities; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

SEA CITY CLERK

Section 1. The Superintendent of Parks and Recreation ("Superintendent") is authorized to execute, for and on behalf of the City of Seattle, an agreement with Seattle Tilth Association substantially in the form of the Use and Occupancy Agreement between the City of Seattle Department of Parks and Recreation and the Seattle Tilth Association, attached hereto as Attachment 1, for the purpose of managing and maintaining a demonstration garden and for implementing urban gardening educational programs and events for the public on portions of the Meridian Playground site.

FILED CITY CLERK

Section 2. 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 24th day of January, 2011, and signed by me in open session in authentication of its passage this 24th day of January, 2011.

President Pro Tem of the City Council

Approved by me this 28th day of January, 2011.

Michael McGinn, Mayor

Filed by me this 28th day of January, 2011.

City Clerk

(Seal)

Attachment 1 – Use and Occupancy Agreement between the City of Seattle and the Seattle Tilth Association

COUNCIL CLERK

USE AND OCCUPANCY AGREEMENT
Between
THE CITY OF SEATTLE
DEPARTMENT OF PARKS AND RECREATION
And
THE SEATTLE TILTH ASSOCIATION

Demonstration Project in Urban Agriculture

This Use and Occupancy Agreement ("Agreement") is entered into by and between THE CITY OF SEATTLE, a municipal corporation ("City"), acting by and through its Seattle Department of Parks and Recreation ("DPR"), and the SEATTLE TILTH ASSOCIATION, a Washington non-profit corporation ("Seattle Tilth").

Recitals

WHEREAS, the Superintendent of DPR is responsible for administering broad and varied programs of public recreation activities pursuant to SMC 3.26.040; and

WHEREAS, the City believes that Seattle residents' use and enjoyment of the City's park and recreation system is increased through the provision of recreational and educational opportunities; and

WHEREAS, an Agreement for a Demonstration Project in Urban Agriculture between the City and Seattle Tilth, entered into by the parties on September 12, 1997, expired June 1, 2010; and

WHEREAS, continuing gardening opportunities and providing educational programs are within the scope of park and recreation activities; and

WHEREAS, Seattle Tilth is willing and able to continue providing such opportunities and programs to Seattle residents; and

WHEREAS, DPR and Seattle Tilth desire to enter into this Agreement in order to continue providing gardening and educational opportunities to Seattle residents;

NOW THEREFORE, in consideration of Seattle Tilth providing public gardening and educational opportunities, paying use fees subject to offset, and other valuable consideration, the City and Seattle Tilth agree as follows:

ARTICLE 1. DEFINITIONS

1.1 "Commencement Date" means the date on which the Agreement is executed by an authorized representative of both parties.

SEA CITY CLERK

1.2 "Community Programming" means the educational and recreational opportunities more particularly described in Article 3.1.

1.3 "Chairperson" means the Executive Director of Seattle Tilth.

1.4 "Service Credits" means those credits for services of benefit to the City, in particular the provision of Community Programming, and gardening-related educational opportunities, proposed by Seattle Tilth and accepted by DPR to offset the amount of Use Fee due to DPR under this Agreement, and further described in Exhibit 2.

1.5 "Premises" means the Demonstration Garden area and the Outdoor Education Area located on the Good Shepherd Center site, more specifically described in Article 2.

1.6 "Superintendent" means the Superintendent of the Seattle Department of Parks and Recreation or his/her designee.

1.7 "Use Fee" means the annual fee due to DPR under 5.1.

ARTICLE 2. PREMISES

2.1 Premises Defined. The Premises are a portion of Meridian Playground described as follows:

2.1.1 Meridian Playground:

The westerly 433.13 feet of
The West ¾ of the North ½ of the Southwest ¼ of the Southwest ¼ of Section 8, Township 25 North, Range 4 East, W.M.; EXCEPT those portions deeded to the City of Seattle for street purposes by deed recorded under Auditor's File No. 453172 and EXCEPT that portion lying with HOPE ADDITION, as per plat recorded in Volume 26 of Plats, Page 10, records of King County, Washington. TOGETHER WITH certain portions of said described property, illustrated and identified on Exhibit A to Ordinance 111828 as Parcel 1-A, Parcel 2, and Parcel 4.

2.1.2 Portions of Meridian Playground that are authorized for Seattle Tilth's use under this Agreement:

2.1.2 (a) Demonstration Garden:

The Seattle Tilth Demonstration Garden is described as:

A parcel of land beginning at the N.W. Corner
of the S.W. ¼ of the S.W. ¼ of the Section 8;
thence S. 00°12'25" W, 665.58 feet;

CITY CLERK

thence S. 89°40"49" E, 303.10 feet;
thence N. 00°12"25" E, 129.32 feet to the
True Point of Beginning;
thence S. 89°40"49" E, 181.88 feet;
thence S. 00°12"25" W, 129.32 feet;
thence N. 89°40"49" W, 73.88 feet;
thence N. 00°12"25" E, 82.00 feet;
thence N. 89°40"49" W, 58.00 feet;
thence N. 00°12"25" E, 40.00 feet;
thence N. 89°40"49" W, 50.00 feet;
thence N. 00°12"25" E, 7.32 feet to the
True Point of Beginning;
said parcel containing 12,665 square feet.

2.1.2 (b) Outdoor Education Area:

The Outdoor Education Area portion of the Premises is described as:

The northerly approximately 100 feet of that portion of Meridian Playground identified as East Entrance and Outdoor Education Area as created by Ordinance 123095, and including the summerhouse, located immediately west of the East Entrance and Outdoor Education Area.

A site map depicting the location of the Premises is attached as Exhibit 1.

2.2 Condition and Acceptance. Seattle Tilth has examined the Premises, has had a reasonable opportunity to obtain inspections and reports of professionals regarding the same, and has determined, after such examination, that the Premises is suitable for the use desired by Seattle Tilth hereunder. Seattle Tilth ACCEPTS THE PREMISES in its condition "AS IS", WITH ALL DEFECTS, AND ASSUMES ALL RISK that one or more defects exist in the Premises. The CITY MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, express or implied, with respect to the condition of the Premises or the use authorized other than as specified in this Agreement. Seattle Tilth agrees that any express or implied representations, statements, or warranties made by or on behalf of the City prior to the Commencement Date, unless expressly set forth in this Agreement, have been effectively revoked and withdrawn and have no force or effect whatsoever.

2.3 Grant and Permitted Use of Demonstration Garden. The City grants Seattle Tilth the right to use and occupy the portion of the Premises identified as the Demonstration Garden for park purposes as follows:

DNS CITY CLERK

a. Seattle Tilth shall provide Community Programming, open to and available for public use, falling into the categories described, and for the hours required, in Article 3 of this Agreement.

b. Seattle Tilth is authorized to use the Demonstration Garden to hold Seattle Tilth and community meetings, and engage in fund raising activities supporting Seattle Tilth programs. However, Seattle Tilth shall maximize the use of the Premises by making the space available to DPR and to other community groups during its non-use periods, and as appropriate and approved by DPR, may sublease the facility for special events and other activities.

c. Seattle Tilth is allowed to use the summerhouse shelter for Tilth's children's gardening program classes, provided the summerhouse shelter is available for use, and such use is arranged and approved through the Seattle Parks and Recreation Events Scheduling office.

d. Seattle Tilth shall not use the Demonstration Garden for any other purpose or make any other use of the Premises inconsistent with the foregoing described purposes without the prior written consent of DPR, whose consent shall be given or withheld in DPR's sole discretion.

2.4 Grant and Permitted Use of Outdoor Education Area. The City grants Seattle Tilth the non-exclusive right, subject to Section 2.4.b, to use and occupy the portion of the Premises identified as the Outdoor Education Area for park purposes as follows:

a. Seattle Tilth shall provide Community Programming, open to and available for public use, falling into the categories described, and for the hours required, in Article 3 of this Agreement.

b. Seattle Tilth is authorized to have dedicated and exclusive use of the portion of the Outdoor Education Area that is already a garden area used by Tilth for its children's education program, which area is depicted and identified on the site map attached as Exhibit 1.

c. Seattle Tilth shall not make any alterations or install any type of improvements or amenities to this area without securing prior review and approval by DPR.

d. Seattle Tilth acknowledges that this area is a public space and open to the public and that even if DPR approves Tilth's use, such use will not adversely impact access or public enjoyment to the surrounding common spaces and park.

Seattle Tilth shall not use the Outdoor Education Area for any other purpose or make any other use of the Premises inconsistent with the foregoing described purposes without the prior written consent of DPR, whose consent shall be given or withheld in DPR's sole discretion.

SMC CITY CLERK

2.5 DPR Reservation; City Right to Close Premises. DPR reserves the right to use the Premises as provided under Article 19.1. The City reserves and retains the right to close the Premises at its convenience for reasons of public safety or other good cause upon a written notice given to Seattle Tilth not less than seven (7) days prior to such closure or, in case of emergency, without notice of any kind.

2.6 Use of Common Area. Additionally, Seattle Tilth is also granted a right in common with Historic Seattle, including its licensees and invitees, and any other authorized user to use that certain paved driveway and service area at the Corliss Avenue North entrance as identified in Exhibit 1, and to use the common areas of the Good Shepherd Center playground and park in common with other users.

ARTICLE 3. SEATTLE TILTH OPERATION AND SERVICES

3.1 Community Programming Offered. Seattle Tilth shall provide to the public a variety of Community Programming and public access opportunities which promote gardening and resource conservation as a recreation activity for healthy living for multiple age groups and developmental levels. With prior review and approval by DPR, Community Programming may change over time to meet newly identified needs of the community and provide additional public benefit. Initially, Community Programming shall be within the following categories:

a. Public Access. Seattle Tilth will provide a minimum of forty (40) hours a week of free public access to the Premises.

b. Community Service. Seattle Tilth will recruit community members, including students from the Seattle Public Schools, to participate in work parties to teach, demonstrate, and implement organic gardening programs and educational events.

c. Workshops. Seattle Tilth will provide a minimum of six (6) hours of free workshops per year on organic gardening and/or natural resource conservation related topics. A minimum of 100 duplicated/75 unduplicated individuals will participate in the workshops, including both youth and adults.

d. Community Festival. Seattle Tilth will host an annual community event to celebrate community assets and/or urban gardening. The event is anticipated to attract over 200 participants of all ages.

3.2 Permissible Fees. Seattle Tilth may charge fees for its Community Programming; however, Community Programming for which fees are charged shall not qualify for Service Credit offset under Article 5.3, and the fees shall be charged uniformly and shall be consistent with the current Seattle Department of Parks and Recreation Fees and Charges which can be found at http://www.seattle.gov/parks/reservations/feesandcharges/contents.htm

3.3 Seattle Tilth Operation Hours and Closure of Premises. Seattle Tilth shall post its hours of operation and schedule of Community Programming in a place and manner on the

DNS CITY CLERK

Premises that is readily visible to the public. Subject to the prior written approval of the Superintendent, Seattle Tilth may for good cause close the Premises or a portion thereof for a reasonable period during its regularly scheduled hours of operation and Community Programming.

3.4 Mandatory Closures. The Premises shall be closed during the hours of 11:30 p.m. to 4:30 a.m., and no activity shall occur on the Premises during such time, except with the prior written approval of the Superintendent, whose approval shall be given or withheld in his/her sole discretion.

3.5 Materials Storage. DPR understands that some Community Programs offered by Seattle Tilth involve the use of supplies and materials. DPR will allow Seattle Tilth to store such supplies and materials on the Premises only if, in the opinion of the Superintendent, all such supplies and materials are safely and appropriately stored and secured so as to not unreasonably inconvenience or conflict with other Community Programming and uses of the Premises. There shall be no storage of any items not used in connection with Community Programming permitted under this Agreement. Seattle Tilth shall store all personal property on the Premises at its own risk; under no circumstances will the City be liable for loss of any items stored on the Premises.

3.6 No Intoxicating Beverages Without Written Permission. Seattle Tilth shall not permit intoxicating beverages of any kind to be used, sold, consumed, or dispensed upon the Premises unless previously approved in writing by the Superintendent for such use, sale, consumption, or dispensation in accordance with applicable laws, ordinances, rules, and regulations, as now or hereafter amended.

3.7 Staff. Seattle Tilth shall employ personnel or assign volunteers in numbers sufficient to meet the Community Programming, drop-in use (if applicable), and all other staffing needs on the Premises. All staff shall submit to a check of his/her background, to the satisfaction of the Superintendent, before being employed by Seattle Tilth. Seattle Tilth will provide a written listing of its Board of Directors and staff at the beginning of each fiscal year, and notify DPR of changes throughout the year.

3.8 Reporting. No more than sixty (60) days after the end of its fiscal year, Seattle Tilth shall submit a summary of its Community Programming and other uses to DPR for its records. Such summary shall consist of all Community Programming and other permitted uses, dates, identification of the user/groups, and purposes for non-programming uses. If Seattle Tilth requests a Use Fee Offset under Article 5.3, then Seattle Tilth must submit reports that are similar to those noted in Exhibit 2.

ARTICLE 4. TERM; EXTENDED TERM

4.1 Term of Agreement. The initial term of this Agreement shall be for ten (10) years, beginning on the Commencement Date, unless extended under 4.2 or terminated earlier under this Agreement. As used in this Agreement, "Term" means the initial term and any extensions under 4.2.

2010 CITY CLERK

4.2 Opportunity to Extend Term of Agreement. If (i) Seattle Tilth provides written notice to DPR of its desire to continue its use and occupancy of the Premises no later than thirty (30) days prior to the expiration of the then current Term and (ii) Seattle Tilth is not in Default at any time during the then current Term, whether before or after Seattle Tilth provides notice hereunder, then Seattle Tilth may extend this Agreement for use of the Premises for up two (2) additional successive terms, the first of which will be ten (10) years and the second term of which will be five (5) years, both subject to DPR approval. The terms and conditions of Seattle Tilth's continued use and occupancy for the successive terms will be subject to mutual agreement of the parties.

ARTICLE 5. USE FEES; TAXES; OFFSETS; LATE FEES

5.1 Annual Use Fee. For the term of this agreement, Seattle Tilth shall pay to DPR an annual Use Fee of $35,000, payable in arrears in two installments of $17,500; one payable and due annually on the thirtieth (30th) day of June and the second one due annually on the thirty-first (31st) day of December.

5.2 Annual Use Fee Exclusive of Taxes. The Use Fee is exclusive of any sales, business, occupation, leasehold excise tax, or other tax levied or assessed as a consequence of this Agreement or any activity of Seattle Tilth. Any and all taxes shall be paid by Seattle Tilth with no offset or deduction whatsoever.

5.3 Annual Use Fee Offset. One hundred percent (100 %) of the annual Use Fee due under this Agreement and noted in Article 5.1 is eligible for offset with programming services to or for the benefit of the City ("Service Credits"). Services that are eligible for Service Credits are Community Programming and other activities as specified in Exhibit 2. If Seattle Tilth desires to take advantage of this opportunity during the term of this Agreement, then Seattle Tilth must perform these program services and maintenance work prior to the due dates noted in Article 5.1. Seattle Tilth shall send a written report in accordance with Article 3.8 which details the program services and maintenance rendered and the value of such services, supported by an itemized accounting of time, labor rates, and materials, with corresponding dollar values.

The parties recognize that the value of the Community Programming and maintenance and other items that Seattle Tilth must provide under this Agreement may exceed the amount of the annual Use Fee. Under no circumstances will the City owe Seattle Tilth any money or credit if the value of the Community Programming and maintenance and other items exceeds the amount of the annual Use Fee. Under no circumstances may program activities funded from grants or other financial assistance provided by the City of Seattle be used to offset the annual Use Fee. Moreover, Seattle Tilth's obligation to use the Premises for Community Programming and to provide maintenance and perform its obligations under this Agreement shall not be limited by the amount of Service Credits that offset the annual Use Fee.

SMS CITY CLERK

5.4 Late and Refused Payments. Seattle Tilth acknowledges that late payment to the City of the Use Fee or any other sum due to the City hereunder will cause DPR to incur costs not contemplated by this Agreement, including, but not limited to, processing and accounting charges. Therefore, in the event Seattle Tilth fails to pay any sum after such amount is due to the City, such amount shall bear interest at the rate of twelve percent (12%) per annum from the date due until the date paid. Additionally, a Twenty Dollar ($20.00) charge shall be paid by Seattle Tilth to the City for each check refused payment for insufficient funds or any other reason.

ARTICLE 6. PAYMENT PROCESSES

All payments due to the City hereunder, including Use Fee and leasehold excise tax payments (if applicable), shall be made according to the schedule noted in Article 5 and paid to the Department of Parks and Recreation, Attention: Grants and Contracts Coordinator, Contract and Business Resources Office, 6310 NE 74th Street, #109E Seattle, WA 98115-8164, accompanied by an explanatory cover letter.

ARTICLE 7. UTILITIES AND OTHER CHARGES

7.1 Responsibility for Utility. During the term of this Agreement, Seattle Tilth shall be responsible for payment for all utilities related to its occupancy and use of the Premises. Such responsibility includes paying for telephone, electricity, gas, oil, water, sewer, recycling, garbage collection, cable, computer, and any and all other utility services. Seattle Tilth shall pay for all related utility activation charges.

7.2 Interruption. City shall not be liable, and Seattle Tilth hereby waives any claim against City, for the interruption in service due to the failure, for any reason whatsoever, of any utility service for the Premises.

ARTICLE 8. CARE OF PREMISES; MAINTENANCE

Seattle Tilth shall comply with this Article 8 at no cost or expense to the City:

8.1 Seattle Tilth's Routine Maintenance of Premises. Seattle Tilth, at no cost or expense to the City, shall (except as otherwise provided) make all routine maintenance and upkeep of the Premises, including, but not limited to, cleaning, minor landscaping, weeding, and plantings as appropriate.

8.2 DPR Right of Inspection at Any Time. DPR shall have the right to inspect the Premises at all reasonable times and enter the same for purposes of cleaning, repairing, altering, or improving the Premises with reasonable notification to Seattle Tilth, but nothing contained in this Agreement shall be construed so as to impose any obligation on DPR to make any cleaning, repair, alteration, or improvement, unless set forth by this Agreement.

8.3 City Remedy Upon Seattle Tilth's Failure to Maintain Premises. If DPR provides Seattle Tilth with written notice of the need for maintenance required under this Agreement, then

CITY CLERK

Seattle Tilth must, within ten (10) calendar days after receiving such notice, commence such work and diligently prosecute until completion.

If Seattle Tilth fails to so commence and diligently prosecute by the tenth (10^{th}) calendar day, then in addition to all other remedies under this Agreement and at law and equity, DPR or City reserves the right (but shall have no obligation) to undertake such work. DPR or City shall have the right to enter the Premises for such purposes. If DPR or City undertakes such work for Seattle Tilth pursuant to this subsection, then Seattle Tilth shall promptly pay DPR or City, upon receipt of a written statement, the actual expenses incurred in undertaking such work plus an administrative charge of $250.00. DPR shall have no liability to Seattle Tilth for any damage, inconvenience, or interference with Seattle Tilth's use of the Premises as a result of the City's performing any such work.

If an urgent health safety issue arises requiring immediate attention, as determined by DPR, then Seattle Tilth must immediately undertake such work. Additionally, DPR may immediately access the Premises in order to undertake such work and shall invoice Seattle Tilth for the costs incurred by the City in connection therewith.

ARTICLE 9. INDEMNIFICATION AND INSURANCE

9.1 Indemnification. Seattle Tilth shall fully indemnify and hold the City harmless from all claims, actions, suits, liability, loss, costs, expense, or damages of any kind whatsoever which may accrue to be or be suffered by any person (including, but not limited to Seattle Tilth, its agents, employees, contractors, tenants, invitees, licensees, or their successors or assigns) arising out of or in connection with Seattle Tilth's use and occupation of the Premises, including use by its employees, agents, volunteers, and invitees, and/or any of its activities undertaken pursuant to this Agreement, except only for those losses resulting solely from the negligence of the City. Upon commencement of any such suit or action against the City, Seattle Tilth shall upon notice defend the same at its own cost and expense, and in case judgment shall be rendered against the City in such an action or suit, shall fully satisfy the judgment within ninety (90) days after the same has been finally determined. Seattle Tilth hereby waives its immunity under RCW Title 51, but only with respect to the City and to the extent required to provide the City with a full indemnity as required herein. The obligations in this Section will survive the expiration or termination of this Agreement. BY SIGNATURE BELOW, BOTH PARTIES ACKNOWLEDGE THAT THIS SECTION 9.1 WAS MUTUALLY NEGOTIATED AND AGREED UPON.

9.2 Insurance. Seattle Tilth shall secure and shall thereafter maintain in full force and effect at no expense to City, insurance as specified below that shall (1) be issued by a company rated A-VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or be issued as a surplus line by a Washington Surplus lines broker; (2) be otherwise subject to approval by the City's Risk Manager as to company, form, and coverage; and (3) protect City from claims and risks in connection with activities performed by or for Seattle Tilth under this Agreement, or any use and occupancy of the Premises authorized by this Agreement.

2010 CITY CLERK

9.2.1 Commercial General Liability (CGL) Insurance including:

Premises/Operations Liability
- Products/Completed Operations
- Personal/Advertising Injury
- Contractual Liability
- Independent Contractors Liability
- Stop Gap/Employers Liability
- Fire Damage/Tenant Legal Liability

with a minimum limit of liability of $1,000,000 each occurrence combined single limit bodily injury and property damage (CSL), except:
- $2,000,000 General Aggregate
- $2,000,000 Products & Completed Operations Aggregate
- $1,000,000 Personal & Advertising Injury
- $ 100,000 Fire Damage/Tenant Legal Liability
- $1,000,000 Each Accident/Disease/Employee

9.2.2 Automobile Liability insurance applicable to owned or non-owned vehicles with a minimum limit of liability of $1,000,000 CSL.

Such CGL and Automobile Liability insurance above shall include the City of Seattle as an additional insured for primary and non-contributory limits of liability and shall not be canceled without thirty (30) days prior written notice to the City, except ten (10) days with respect to cancellation for non-payment of premium.

9.2.3 Workers Compensation for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. Any deductible or self-insured retention must be disclosed and is subject to approval by the City's Risk Manager. The cost of any claim payments falling within the deductible shall be the responsibility of Seattle Tilth.

9.2.4 Evidence of insurance shall comprise of:

- An original certificate of liability insurance documenting compliance with the requirements herein, and
- An attached actual copy of the CGL additional insured policy provision.

Should the CGL policy not be issued, in lieu of a certificate of insurance and copy of the CGL additional insured policy provision, a current insurance binder shall be substituted with a statement of additional insured status.

Such evidence of insurance shall be mailed to:

CITY CLERK

The City of Seattle Department of Parks and Recreation
Grants and Contracts Coordinator
Business Resources Office
6310 NE 74th Street, #109E
Seattle, WA 98115-8164

With a copy delivered electronically by facsimile transmission to (206) 470-1270 or as an email attachment in PDF or XLS file format to riskmanagement@seattle.gov.

9.2.5 Notwithstanding any other provision of this Agreement, the failure of Seattle Tilth to comply with the above provisions of this section shall subject this Agreement to immediate termination at the discretion of the Superintendent without notice to any party, in order to protect the public interest.

9.2.6 The placement and storage of any and all personal property on the Premises shall be the complete responsibility, and at the sole risk, of Seattle Tilth.

ARTICLE 10. CITY'S CONTROL OF PREMISES AND VICINITY

All common and other facilities provided by the City in or about the Premises, including parking areas, are subject to the exclusive control and management by the City. Accordingly, the City may, therefore, do any and all of the following (among other activities in support of DPR or other municipal objectives) without incurring any liability whatsoever to Seattle Tilth:

10.1 Change of Vicinity. Increase, reduce, or change in any manner whatsoever the number, dimensions and locations of the walks, buildings, and parking areas in the vicinity of the Premises;

10.2 Traffic and Parking Regulation. Regulate all traffic near and adjacent to the Premises, including the operation and parking of vehicles of Seattle Tilth and its invitees, employees, and patrons, and including the relocation or removal of the parking spaces adjacent to the Premises. Seattle Tilth understands that the parking spaces adjacent to the Premises are not reserved for Seattle Tilth use but may be used by Seattle Tilth, its invitees, employees, and patrons on an as available basis in common with other users of the Good Shepherd Center and adjacent facilities;

10.3 Display of Promotional Materials. Erect, display, and remove promotional exhibits and materials and permit special events on property adjacent to the Premises;

10.4 Promulgation of Rules. Promulgate reasonable rules and regulations from time to time regarding the use and occupancy of any DPR property including but not limited to the Premises;

DNS CITY CLERK

10.5 Change of Businesses. Change the size, number, and type and identity of any concessions, stores, businesses, programs, and operations being conducted or undertaken in the vicinity of the Premises; and

10.6 DPR Ability to Show Premises. At any time during the term of this Agreement, DPR shall have the right to show the Premises to other prospective users at its convenience, upon reasonable notice to Seattle Tilth.

ARTICLE 11. RENOVATIONS, IMPROVEMENTS, ALTERATIONS, ADDITIONS

11.1 Prior Written Consent of DPR Required. Seattle Tilth shall make no alteration, addition, renovation, or improvement in or to the Premises without first obtaining the written consent of the Superintendent, whose consent shall be given or withheld in his/her sole discretion. All alterations, additions, renovations, or improvements that are made shall be at the sole cost and expense of Seattle Tilth. DPR reserves the right to review and approve or disapprove Seattle Tilth plans, specifications, and proposed contractors for any and all such alterations, additions, renovations, and improvements. DPR reserves the right to impose restrictions or conditions upon its consent to any aspect of any work, including without limitation, the requirement that Seattle Tilth appropriately bond such work, that Seattle Tilth enter into written contracts for such work in a form approved by DPR, and any applicable municipal bidding requirements.

As appropriate, the Superintendent will present any proposed alterations, additions, renovations, and improvements addressed in this Article to the Seattle Landmarks Preservation Board for review.

11.2 Renovations or Improvements Become Property of DPR. Any and all alterations, additions, renovations, or improvements shall remain in and be surrendered with the Premises as a part thereof at the expiration or earlier termination of this Agreement; provided, to the extent that DPR determines in its sole discretion that it approves and that it is practicable, Seattle Tilth may remove any approved improvements at Seattle Tilth's sole expense. If so removed, Seattle Tilth shall repair at its sole expense any damage done to the Premises as a result of such removal.

The alterations, additions, renovations, and improvements addressed in this Article expressly include, without limitation, those made and installed pursuant to any prior permits or agreements; all items acquired by Seattle Tilth with any grant funds provided by or through DPR; and all capital improvements and fixtures installed pursuant to any construction agreement.

11.3 Programming and Use Fee Obligation in the Event of Approved Alterations or Improvements. If Seattle Tilth obtains DPR approval and undertakes an alteration, addition, renovation, or improvement, and if during such undertaking the Premises is wholly or partially unusable, then Seattle Tilth's obligation to provide Community Programming under Article 3 shall be abated wholly or partially, as reasonably determined by the Superintendent and confirmed by one or more notices to Seattle Tilth, for the duration of such unusable or partially unusable state. Seattle Tilth's obligation to pay Use Fees, however, shall not be abated.

DNS CITY CLERK

ARTICLE 12. DAMAGE OR DESTRUCTION

12.1 Report of Damage or Destruction. If the Premises is partially or wholly destroyed or damaged by fire, earthquake, or other casualty, Seattle Tilth shall notify DPR in writing within twenty-four (24) hours after its discovery.

12.2 Use Fee Obligation in Event of Damage or Destruction. If the Premises is destroyed or damaged by fire or other casualty, and such destruction or damage is so extensive as to render such Premises unusable (either because of the need to rebuild or to clean and refurbish the same), and if Seattle Tilth has given timely notice of such destruction or damage as provided by this Article, then Seattle Tilth's obligation to pay Use Fees shall be abated until the date that the Premises is made usable. The unusability of the Premises and the duration of any such Use Fee abatement shall be reasonably determined by the Superintendent and confirmed by one or more notices to Seattle Tilth. If only a portion of the Premises is damaged or destroyed by fire or other casualty but the remainder of such Premises remains usable, as reasonably determined by the Superintendent, and Seattle Tilth has given timely notice of such destruction or damage as provided by this Article, then Seattle Tilth shall pay a reduced amount of Use Fee that is proportionate to the extent of the Premises that remains usable for the purposes identified in Article 2 hereof, which reduced Use Fee amount shall be reasonably determined by the Superintendent and identified by notice to Seattle Tilth, and paid by Seattle Tilth through the date reasonably specified by the Superintendent in such notice or the later date specified in any subsequent notice.

12.3 Community Programming Obligation in Event of Damage or Destruction. If the Premises is destroyed or damaged by fire or other casualty, and such destruction or damage is so extensive as to render such Premises unusable (either because of the need to rebuild or to clean and refurbish the same), then Seattle Tilth's obligation to provide Community Programming shall be abated until the date that the Premises is made usable. The unusability of the Premises and the duration of any such Community Programming abatement shall be reasonably determined by the Superintendent and confirmed by one or more notices to Seattle Tilth. If only a portion of the Premises is damaged or destroyed by fire or other casualty but the remainder of such Premises remains usable, as reasonably determined by the Superintendent, then Seattle Tilth shall offer a reduced schedule of Community Programming and/or offer Community Programming with a reduced capacity, as shall be reasonably determined by the Superintendent, in consultation with Seattle Tilth, and identified by notice to Seattle Tilth.

12.4 Rebuilding and Repair. If the Premises is damaged or destroyed, whether in whole or in part, the City, in its sole discretion, may repair, rebuild, or demolish the Premises. If the City elects to repair or rebuild, then upon written notice from the Superintendent, Seattle Tilth shall re-occupy the Premises, the Use Fee abatement or reduction provided pursuant to this Article shall be discontinued, the full Use Fee shall again be due and payable, and the Community Programming schedule shall resume. The City shall not be liable to Seattle Tilth for damages, compensation, or any other sum for inconvenience, loss of business, or disruption arising from any repair, rebuilding, or closure of any portion or the whole of the Premises. Nor

DNS CITY CLERK

shall City be required to repair or replace any equipment or property located on the Premises and owned or maintained by Seattle Tilth or other users of the Premises.

12.5 Termination Rights in Event of Damage or Destruction. By Seattle Tilth: If a loss to any portion of the Premises effectively renders the entire Premises unusable in the reasonable opinion of the Superintendent, then either party may terminate this Agreement by written notice to the other no later than sixty (60) calendar days after the occurrence of the casualty.

ARTICLE 13. COMPLIANCE WITH LAW

13.1 General Requirements. Seattle Tilth, at no cost to the City, shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter and Municipal Code of The City of Seattle; and the rules, regulations, orders, and directives of their administrative agencies and the officers thereof, as such enactments now exist or are hereafter enacted or promulgated. Whenever Seattle Tilth is informed of any violation of any such law, ordinance, rule, regulation, license, permit, or authorization committed by it or any of its officers, employees, volunteers, contractors, subcontractors, agents, or invitees, or any person admitted to the Premises, Seattle Tilth shall immediately desist from and/or prevent or correct such violation.

13.2 Licenses and Other Authorizations. Seattle Tilth, at no cost to the City, shall secure and maintain in full force and effect during the term of this Agreement, all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof, and shall submit to DPR evidence of Seattle Tilth's satisfaction of all such requirements prior to the commencement of any modification of the Premises. Seattle Tilth shall be responsible for payment of all fees and charges incurred in obtaining any required permits or other governmental approvals and for obtaining a certificate of occupancy prior to the use or occupancy of any modified portion of the Premises.

13.3 Compliance with Law. Seattle Tilth shall comply with all applicable laws of the United States of America and the State of Washington; the Charter and ordinances of the City of Seattle; and rules and regulations of each of them and with orders and directives of public officials implementing the same.

13.4 Equality of Treatment. Seattle Tilth shall conduct its business in a manner that assures fair, equal, and nondiscriminatory treatment at all times, in all respects, to all persons in accordance with all applicable laws, ordinances, resolutions, rules, and regulations. Any failure to comply with this provision shall be a material breach of this Agreement.

13.5 Nondiscrimination. Seattle Tilth will 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), as they may be amended; and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

FILED CITY CLERK

13.6 Americans with Disabilities Act Compliance. Seattle Tilth, at no cost to the City, shall comply with all requirements of the Americans With Disabilities Act ("ADA"), as now or hereafter amended, and all rules and regulations implementing the same in connection with all aspects of its use and operation of the Premises hereunder; provided, however, that the City shall be responsible for ADA compliance with respect to any alterations or improvements it makes to the Premises.

13.7 Recycling of Waste Materials. Seattle Tilth, at no cost to the City, shall collect, sort, and separate into such categories as may be legally required, all solid waste products on the Premises, and recycle all such products that are locally accepted for recycling. Each separately sorted category of waste products shall be placed in separate receptacles reasonably approved by the City, which receptacles shall be dumped or removed from the Premises at such minimum frequency as is specified by DPR. The City reserves the right to refuse to collect or accept from Seattle Tilth any waste product that is not sorted and separated as required by law, ordinance, rule or regulation, and to require Seattle Tilth to arrange for the collection of the same at Seattle Tilth's sole cost and expense using a contractor satisfactory to the City. Seattle Tilth shall pay all costs, fines, penalties, and damages that may be imposed on City or Seattle Tilth as a consequence of Seattle Tilth's failure to comply with the provisions of this subsection.

13.8 Failure to Comply. Failure to comply with any of the terms of the provisions in this section shall be considered a material breach of this agreement.

ARTICLE 14. LIENS AND ENCUMBRANCES AND CLAIMS

Seattle Tilth shall keep the Premises free and clear of any liens and encumbrances and claims arising or growing out of its use and occupancy of the Premises. At the City's request, Seattle Tilth shall furnish the City written proof of payment of any item that would or might constitute the basis for such a lien on the Premises if not paid.

ARTICLE 15. VISUAL ARTIST RIGHTS ACT

15.1 Reservation of Rights by City; Prohibition Against Installation or Integration of Any Work of Visual Art on Premises Without Superintendent's Prior Express Written Consent. The City reserves to and for itself the right to approve or disapprove of the installation or integration on or into the Premises of any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, and to approve or disapprove of each and every agreement regarding any such installation or integration on or into the Premises of a work of visual art. Seattle Tilth shall not, without the prior, express, written consent of the Superintendent, install on or integrate into, or permit any other person or entity to install on or integrate into, any portion of the Premises any "work of visual art." The Superintendent's consent to the installation of any such art work may be granted, granted upon one or more conditions, or withheld in the Superintendent's discretion.

THIS CITY CLERK

15.2 Seattle Tilth's Indemnification of the City Against Liability under Visual Artists Rights Act of 1990. Seattle Tilth shall protect, defend, and hold the City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; (b) the destruction, distortion, mutilation, or other modification of the art work that results by reason of its removal; or (c) any breach of this section; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Seattle Tilth or any of its officers, employees, agents, invitees, or licensees. This indemnification obligation shall exist regardless of whether the City or any other person employed by the City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Agreement.

ARTICLE 16. RECORDS, BOOKS AND DOCUMENTS FOR CITY ACCESS AND AUDIT

16.1 Seattle Tilth to Maintain Records. Seattle Tilth shall maintain records documenting the following:

- Identify all Community Programming offered, including attendance, any fees charged, any waivers granted, and basis therefore;
- Identify the value of Service Credits (i.e. volunteer time, maintenance, etc.) used to offset Use Fee;
- Identify all community group users, time of use, and purpose of use;
- Maintain all receipts and any other records relating to any and all maintenance and repair;
- All forms and records related to taxes owed and paid.

These records shall be subject at all reasonable times to inspection, review, or audit in King County 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.

16.2 Seattle Tilth to Assist City in Providing Data to State and Federal Governments. Upon the request of the City, Seattle Tilth shall promptly provide, at Seattle Tilth's sole expense, necessary data to enable the City to fully comply with any and every requirement of the State of Washington or the United States of America for information or reports relating to this Agreement and to Seattle Tilth's use of the Premises.

16.3 Retention of Records. Seattle Tilth shall retain in King County all records, documents, and other material relevant to this Agreement for six (6) years after the expiration or termination of this Agreement, and make them available for inspection by the City at such times and on such forms as the City may require. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

2010 CITY CLERK

ARTICLE 17. NAME, SIGNS OR ADVERTISING

17.1 The Seattle Tilth Name. Seattle Tilth shall operate its organization under the name "Seattle Tilth" and may not refer to itself as the "Seattle Department of Parks and Recreation" or "The City of Seattle" on any correspondence, merchandise, or marketing information.

17.2 Seattle Tilth Signs. Seattle Tilth shall have the right, upon prior written approval from DPR, to install a sign on the Premises that identifies the same for Seattle Tilth purposes. Any such sign shall include the name:

"Seattle Tilth"

and shall be constructed in a style, size, and installed in a method consistent with architectural integrity of the facility and DPR's Design Guidelines for Community Center Signs. Reader boards, kiosks, and other similar signage types shall not be permitted.

17.3 DPR Signs. DPR shall have the right to post its building name, logo, and name in an appropriate size at the premises in a manner compatible with the signage it may approve for Seattle Tilth.

17.4 Bulletin Boards/Other Interior Signs or Postings. Seattle Tilth shall have the right to install bulletin boards and other interior signage or postings within the Premises, and to display community related notices, posters, educational signage, and similar materials thereon as related to Seattle Tilth's operation of the Premises.

17.5 No Other Signage on Premises. Other than the DPR approved exterior signage and interior bulletin boards and other interior signage permitted by Subsections 17.2 and 17.4, above, Seattle Tilth shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever exterior to the Premises, without first obtaining DPR's written consent thereto. At the expiration or sooner termination of this Agreement, Seattle Tilth will remove all signage it installed and repair any damage or injury to the Premises caused thereby at Seattle Tilth's sole expense.

ARTICLE 18. WASTEFUL AND DANGEROUS USE

Seattle Tilth shall not commit or suffer any waste upon the Premises and will not do or permit to be done in or about the Premises anything that is inconsistent with this Agreement or the Park Code as now existing or hereafter amended, or any activity that is inconsistent with the uses authorized by this Agreement or that will be dangerous to life or limb, or any activity that will increase any insurance rate upon the Premises.

CITY CLERK

ARTICLE 19. DPR USE OF PREMISES; OTHER COMMUNITY GROUPS USE OF PREMISES

19.1 DPR Use of Premises. DPR may use the Premises by request during times when the Premises are available. The parties agree that the Premises will be considered "available" if there is no other scheduled program at the time of DPR's request. DPR shall provide qualified staffing if it uses the Premises on a day or during a time that Seattle Tilth does not open the Premises; or, if DPR staff is not available to do such opening and closing, then Seattle Tilth shall perform such function and DPR will pay Seattle Tilth for its reasonable opening and closing charges. Such use by DPR shall not entitle DPR to use any Seattle Tilth equipment during its use without the prior approval and supervision of Seattle Tilth staff.

19.2 Other Community Groups Use of the Premises.

19.2.1 Permissible Fees Charged. Seattle Tilth may charge fees for use of the Premises; provided that such fees shall be charged uniformly and shall be consistent with the Seattle Parks and Recreation Fees and Charges, which can be found at http://www.seattle.gov/Parks/facilities/rentals/#top.

If Seattle Tilth waives any fees for particular users, Seattle Tilth shall document all such waivers, describing the user and category of waiver or in-kind value received in lieu of payment, and Seattle Tilth shall provide such documentation to DPR annually. Additionally, Seattle Tilth may charge for opening, closing, and staffing charges.

19.2.2 Scheduling. Seattle Tilth shall allow community groups use of the Premises on an as available basis. The parties agree that the space will be considered "available" if there is no other scheduled program at the time of user's request.

19.2.3 Supervision, Volunteer, and Staffing. Seattle Tilth shall provide qualified staffing, volunteers, and supervision or assign volunteers during all subordinate uses of the Premises under this Article 19.2. Seattle Tilth shall be responsible for opening and closing the facility if the use is on a day or during a time that Seattle Tilth does not open the facility. Seattle Tilth shall be responsible for the security of equipment and property inside the facility.

ARTICLE 20. ASSIGNMENT & OTHER INTEREST TRANSFERS

Seattle Tilth shall not assign, mortgage, encumber, or otherwise transfer any of its rights under this Agreement, in whole or in part, including leasing or licensing use or occupancy of the Premises or any part thereof or any of the rights or privileges or any portion of the Premises granted under this Agreement to any other person, firm, or corporation, except as allowed in Article 19, without the prior written authorization of DPR, which authorization may be granted, withheld, or conditioned in each instance in the sole discretion of the Superintendent. This prohibition against transfers and assignments includes any transfer or assignment by operation of law. The rights and privileges granted hereunder, and the Premises are not assignable or

SEA CITY CLERK

transferable by any process or proceedings in any court, or by attachment. Any assignee or other transferee approved by DPR must accept and assume in writing all the terms and conditions of this Agreement to be kept and performed by Seattle Tilth. Any transfer of this Agreement from Seattle Tilth by merger, consolidation, transfer of assets, or liquidation shall constitute an assignment for purposes of this Agreement. If Seattle Tilth in any manner permits anyone to occupy all or any portion of the Premises for any purpose not within the intent of this Agreement, such permission shall be deemed an assignment or other interest transfer, as deemed appropriate by DPR. DPR consent to any assignment or transfer shall not operate as a waiver of the necessity for consent to any subsequent assignment or transfer, and the terms of such consent shall be binding upon any person or entity using or occupying the Premises by, under, or through Seattle Tilth. The City may charge Seattle Tilth reasonable costs of processing any assignment or other interest transfer, including attorney's fees (not to exceed $500). In no event shall any assignment or any other transfer of this Agreement relieve Seattle Tilth of any of its obligations under this Agreement; and as a condition to DPR's approval of an assignment or other transfer, Seattle Tilth and such assignee or other transferee shall agree in writing to be jointly and severally liable for the performance of all of Seattle Tilth's obligations under this Agreement.

ARTICLE 21. DEFAULT, BREACH, AND TERMINATION

21.1 Default Defined. In the event that Seattle Tilth violates, breaches, or fails to keep or perform any term, provision, covenant, or any obligation of this Agreement; or if Seattle Tilth abandons, deserts, vacates, or otherwise removes its operations from the Premises without the prior consent of the Superintendent; or if Seattle Tilth files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Seattle Tilth's assets or if Seattle Tilth makes an assignment for the benefit of creditors, or if Seattle Tilth is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise; or if Seattle Tilth violates, breaches, or fails to keep or perform any term, provision, covenant, or any obligation of any separate agreement between the City and Seattle Tilth addressing funding or construction of an alteration, addition, renovation, or improvement or other construction project on the Premises, then Seattle Tilth shall be deemed in default ("Default").

21.2 Process for Termination of Agreement.

21.2.1 For Cause. Either party may terminate this Agreement in the event that the other party is in Default and such Default has not been corrected to the reasonable satisfaction of the dissatisfied party within thirty (30) days after written notice of Default has been provided, or within ten (10) days if such Default is for nonpayment of any monetary obligations owed under this Agreement; provided, however, that if the nature of such party's obligation (other than monetary obligations) is such that more than thirty (30) days are required for performance, then such party shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

CITY CLERK

21.2.2 For Reasons Beyond the Control of the Parties. Either party may terminate this Agreement without recourse by the other party where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as but not limited to: acts of Nature; war or warlike operations; civil commotion; riot; labor dispute including strike, walkout, or lockout; sabotage; or superior governmental regulation or control.

21.3 Notice of Termination. Either party terminating this Agreement pursuant to Subsections 21.2.1 or 21.2.2 shall give written notice pursuant to Article 24 after any applicable cure period in 21.2.1 has elapsed and not less than five (5) days prior to the effective date of termination.

21.4 Superintendent to Determine Default on Behalf of City. The Superintendent shall have the right to determine, on the City's behalf, whether Seattle Tilth has defaulted in the performance of its obligations hereunder or has otherwise materially breached any of the terms and conditions of this Agreement.

21.5 Re-entry by City Upon Termination. Upon the termination of this Agreement, the City may re-enter said Premises. Seattle Tilth shall be liable and shall reimburse City upon demand for all costs and expenses of every kind and nature incurred in retaking possession of the Premises. If City retakes the Premises, City shall have the right, but not the obligation, to remove there from all or any part of the personal property located therein and may place the same in storage at any place selected by City, including a public warehouse, at the expense and risk of Seattle Tilth. The City shall have the right to sell such stored property, without notice to Seattle Tilth or such owner(s), after it has been stored for a period of thirty (30) days or more. The proceeds of such sale shall be applied first, to the cost of such sale; second, to the payment of the charges for storage, if any; and third, to the payment of any other sums of money that may be due from Seattle Tilth to the City; the balance, if any, shall be paid to Seattle Tilth.

21.6 City's Non-exclusive Remedies upon Termination due to Default of Seattle Tilth. Notwithstanding such re-entry and anything to the contrary in this Agreement, in the event of the termination of this Agreement because of the Default of Seattle Tilth, the liability of Seattle Tilth for the Use Fees and all other sums due under this Agreement provided herein shall not be extinguished for the balance of the term of this Agreement and shall be subject to the late fees and interest provided for in Section 5.4. Seattle Tilth shall also be liable to City for any other amount necessary to compensate City for all the detriment proximately caused by Seattle Tilth's failure to perform its obligations under this Agreement or that in the ordinary course of things would be likely to result there from, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington and at equity.

DNS CITY CLERK

ARTICLE 22. TERMINATION AT OPTION OF SEATTLE TILTH

In the event Seattle Tilth determines, at any time during the term of this Agreement, that the Premises is no longer required for its use, this Agreement shall be subject to termination upon ninety (90) days' prior written notice by Seattle Tilth to DPR and in accordance with all terms and conditions of this Agreement.

ARTICLE 23. VACATING OF PREMISES

23.1 Surrender & Delivery. Upon the expiration or termination date of this Agreement, whichever is earlier, Seattle Tilth shall surrender the Premises in clean and good condition, reasonable wear and tear excepted. Immediately following the vacating of the Premises and the surrender of the same to the City, Seattle Tilth shall inspect the Premises with DPR to determine the condition of the Premises. The results of such inspection shall be summarized by DPR on a Premises inspection report, a copy of which shall be provided to Seattle Tilth. If DPR determines that Seattle Tilth has failed to surrender the Premises in an acceptable state, DPR shall have the right, but not the obligation, to restore the Premises to the state it was prior to the project at the expense of Seattle Tilth. Seattle Tilth shall reimburse the City for its costs therefor, including any administrative costs.

23.2 Removal of Seattle Tilth's Property. Prior to the expiration date of this Agreement, or in the event this Agreement is terminated, within fifteen (15) days after the termination date, whichever is earlier, Seattle Tilth shall remove, at its sole expense, all equipment and property owned or installed by Seattle Tilth in, on, or from the Premises, unless DPR agrees in writing that any requested items may stay. Seattle Tilth shall take due care to not injure or damage the Premises, and shall make such repairs to the Premises as shall be necessary to restore the same to their condition as of the commencement date of this Agreement, ordinary wear and tear and improvements, additions, and alterations approved by the City excepted.

23.3 Storage of Seattle Tilth's Property. If Seattle Tilth fails to remove equipment and property owned or installed by Seattle Tilth by the expiration date or sooner termination date, the City may, but shall not be required to, remove such material from the Premises and store the same, all at Seattle Tilth's expense; and in the event the City removes or arranges for the storage of such material, Seattle Tilth shall reimburse the City for its costs therefor, including any administrative costs.

23.4 Surrender of Premises. If Seattle Tilth fails to surrender the Premises upon the expiration or sooner termination of this Agreement without DPR's prior written consent, Seattle Tilth shall indemnify, defend, and hold harmless the City from all losses, damages, liabilities, and expenses resulting from such failure, including without limiting the generality of the foregoing, any claims made by any succeeding user of the Premises arising out of such failure.

23.5 No Claim for Removal. In no event shall Seattle Tilth make any claim or demand upon the City nor shall the City be liable for any inconvenience, annoyance, disturbance, or any other damage suffered by Seattle Tilth arising out of removal operations under this Agreement.

2010 CITY CLERK

ARTICLE 24. NOTICES

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, or designations under this Agreement by either party to the other shall be in writing and shall be sufficiently given if either served upon the other party or sent via the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed as follows:

If to Seattle Tilth:
Andrea Platt Dwyer, Executive Director
Seattle Tilth Association
4649 Sunnyside Avenue N, #120
Seattle, WA 98103

If to the City:
The City of Seattle
Department of Parks and Recreation
Grants and Contracts Coordinator
Business Resources Office
6310 NE 74th Street, #109E
Seattle, WA 98115-8164

or to such other address as either party hereto may specify for itself in a notice to the other.

ARTICLE 25. MISCELLANEOUS

25.1 Captions. The paragraph and section headings hereof are for convenience only and shall not be used to expand or interpret the meaning of any part of this Agreement.

25.2 Time. Time is of the essence.

25.3 Partial Invalidity. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be found or held to be invalid or unenforceable, the remainder of this Agreement, and the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

25.4 Binding Effect. The provisions, covenants, and conditions contained in this Agreement are binding upon the parties hereto and their legal representatives, successors, assigns and subsidiaries.

25.5 Applicable Law. This Agreement shall be interpreted under the laws of the State of Washington.

CITY CLERK

25.6 Jurisdiction and Venue. The jurisdiction and venue for any litigation between the parties regarding this Agreement or any question, claim, loss, or injury arising hereunder shall be the Superior Court of the State of Washington for King County.

25.7 No Partnership or Joint Venture Created. The City does not by this Agreement, in any way or for any purpose, become a partner or joint venture of Seattle Tilth in the conduct of its business or otherwise.

25.8 City's Remedies Cumulative. The City's rights under this Agreement are cumulative; failure on the part of the City to exercise promptly any rights given hereunder shall not operate to forfeit any such rights. The City shall also have any other remedy given by law. The use of one remedy shall not be taken to exclude or waive the right to use another.

25.9 Amendments. No modification of this Agreement shall be binding upon the City or Seattle Tilth unless reduced to writing and signed by an authorized representative of each of the parties hereto.

25.10 No Third Party Rights. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation that is not a party hereto nor shall any person, firm, organization, or corporation other than a party hereto have any right or cause of action hereunder.

25.11 No Waivers. No action other than a written document from the Superintendent specifically so stating shall constitute a waiver by the City of any particular breach or default by Seattle Tilth, nor shall such a document waive any failure by Seattle Tilth to fully comply with any other term or condition of this Agreement, irrespective of any knowledge any City officer or employee may have of such breach, default, or noncompliance. The City's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future.

25.12 Appendices and Attachments. The following documents are attached hereto and hereby incorporated into this Agreement as if set forth in full herein:

Exhibit 1: Premises Map

Exhibit 2: Schedule of Public Benefits

25.13 Entire Agreement. This Agreement and all attachments and exhibits pertaining to same constitute the entire agreement and understanding of the parties with respect to the subject matter hereof. This Agreement supersedes all prior oral or written understandings, agreements, promises or other undertakings between the parties regarding the subject matter hereof. The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of the Agreement are not to be construed against any party on the basis of such party's preparation of the same.

DNS CITY CLERK

IN WITNESS WHEREOF, the parties have executed this contract:

SEATTLE TILTH

_____ _____

Andrea Platt Dwyer, Executive Director — Date
SEATTLE TILTH ASSOCIATION

_____ _____

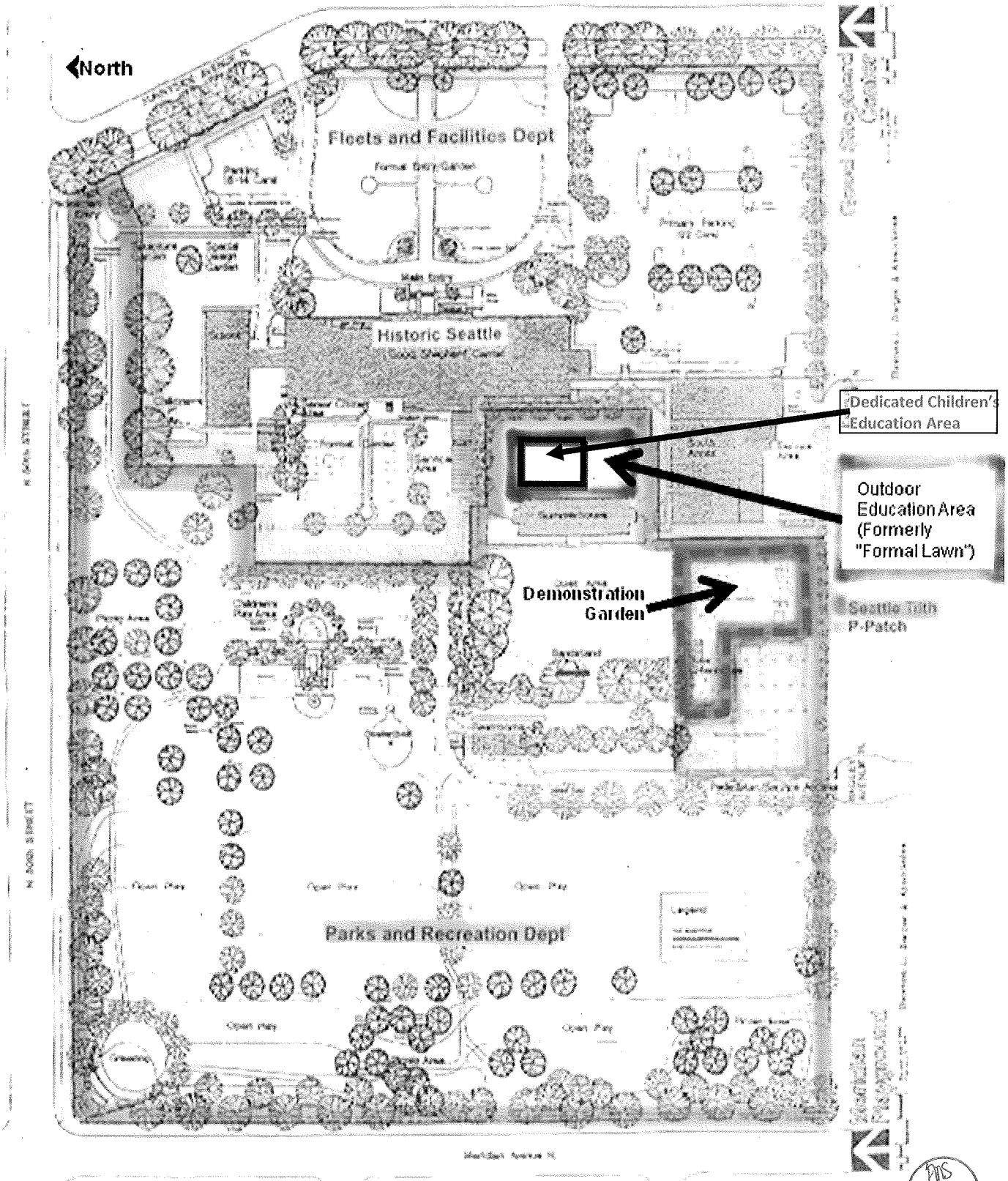
Christopher Williams, Acting Superintendent — Date
THE CITY OF SEATTLE
DEPARTMENT OF PARKS AND RECREATION

DPR CITY CLERK

Suzanne Simmons
DPR Seattle Tilth Lease ORD Attachment 1
December 16, 2010
Version #2

Exhibit from Comprehensive Site Plan (1984)

Exhibit 1 – Premises Map



CITY CLERK

Exhibit 2
Seattle Tilth Association, Demonstration Garden

Schedule of Public Benefits

Seattle Tilth Association, a non-profit 501(c)3 organization, shall provide the following programs and services for the City of Seattle Department of Parks and Recreation and residents of the City as offsets to the annual Use Fee.

I. Public Access

1. Public Access to facility and resources. Seattle Tilth will provide a minimum of 40 hours a week of free access to the Demonstration Garden and the Outdoor Education Area for passive recreation, meetings, classes and workshops, family and community events to local organizations, neighborhood groups, individuals and families.

II. Educational Programs

1. Community Service. Seattle Tilth shall recruit community members including students from the Seattle Public Schools to participate in work parties to teach, demonstrate, and implement organic gardening and sustainability practices. Seattle Tilth will host periodic work parties, at least one of which will be targeted to youth for a total of 8 activity hours. The minimum number of participants shall be a total of 40 duplicated/30 unduplicated volunteers and 320 volunteer hours annually.

2. Workshops. Seattle Tilth will host free workshops on organic gardening principles and practices and/or resource conservation. At least one of the workshops will target youth. The minimum number of participants shall be a total of 100 duplicated/75 unduplicated participants for a total of 6 hours of education annually.

III. Community-Building and Events

1. Seattle Tilth will host an annual community event to celebrate community assets and/or urban gardening. The event is anticipated to attract over 200 participants of all ages.

CITY CLERK

IV. Site Maintenance

1. Seattle Tilth will recruit and support regular volunteer Garden Crew and Work Parties to provide general site maintenance activities for a total of 264 hours valued at $5,504 based upon the 2009 rate of $20.85 an hour for volunteer service as defined by Independent Sector.
   http://www.independentsector.org/programs/research/volunteer_time.html

2. Seattle Tilth will oversee and support Garden Interns to assist with education programs, site maintenance, and the coordination of volunteer work parties. Garden Interns will provide at least 100 volunteer hours valued at $2,085 based upon the 2009 rate of $20.85 an hour for volunteer service as defined by Independent Sector.

V. Activities and Budget for Public Benefit

1. Sample Activity Summary

Activity Category	Estimated Activity Hours	Estimated Staff Hours	Estimated Volunteer Hours	Volunteer Value	Total Volunteers/ Participants (Duplicated Count)
Garden Interns	10	250	100	$ 2,085	10
Community Service	8	40	320	$ 6,672	40
Community Festival	6	670	1200	$ 25,020	400
Garden Crew/Work Parties	264	550	264	$ 5,504	90
Free Classes, Workshops & Tours	6	50	100	$ 2,085	100
Total	294	1560	1984	$ 41,366	640
FTE Equivalent		.75	.95		

Activity Hours include the number of hours for which the activity/event actually occurs.

Staff Hours include planning, collaboration, volunteer support and coordination, administration and facilitation of activities.

Volunteer Hours include planning, collaboration, staff/volunteer support, volunteer coordination, administration and facilitation of activities.

Volunteer Value is the total value calculated by multiplying the number of volunteer hours by the current volunteer hourly rate as defined by Independent Sector.

DNS CITY CLERK

Total Volunteers includes the actual number of volunteers donating their time, skills and/or expertise to the organization and its programs.

2. Budget

Seattle Tilth Association provides the above described activities and services free of charge to community members. Therefore the estimated value of the public benefit is based upon the expenses incurred by Seattle Tilth in the delivery of these programs and services. These expenses are outlined in the sample budget below.

Sample Budget:

Salaries (.75 FTE)	$26,520
Benefits/Taxes (.25)	$6,630
Volunteer Value	$40,414
Total	$73,564

Salary based upon .75 FTE (1560 hr/yr) Program Coordinator/Manager @ $17.00/hour.
Benefits @ 25% of Salary include FICA, L&I, Taxes, Medical, Dental, etc.

CITY CLERK

Suzanne Simmons
DPR Seattle Tilth Lease FISC
November 29, 2010
Version #2

Form revised: August 9, 2010

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Parks and Recreation	Suzanne Simmons/ 684-8003	Jennifer Devore/ 615-1328

Legislation Title:
AN ORDINANCE relating to the Meridian Playground and the Good Shepherd Center property; authorizing the Superintendent of Parks and Recreation to enter into a ten-year use and occupancy agreement with the Seattle Tilth Association for continued use of a portion of Meridian Playground property for urban garden demonstration and programs.

Summary of the Legislation:
This legislation fulfills the terms of Ordinance 123095 (September 2009), which directed the Department of Parks and Recreation (DPR) to negotiate a new use and occupancy agreement with Seattle Tilth at the expiration of the previous 25-year lease agreement which expired June 1, 2010. This legislation authorizes the Superintendent of DPR to enter into a new ten-year use and occupancy agreement with the Seattle Tilth Association, with a provision for one additional ten-year renewal term, and subsequently one additional five-year renewal term. The use and occupancy agreement will allow Seattle Tilth continued use of a portion of the property located at the Meridian Playground in Wallingford for the purposes of urban garden demonstration and implementing urban garden programs and events for the public.

Background:
The following is the legislative history for the Meridian Playground property and Seattle Tilth's use of a portion of it for demonstration gardening.

- Ordinance 105956, adopted in 1976, authorized acquisition and development of property located on North 50th Street between Meridian Avenue North and Sunnyside Avenue North, for a playground and self-sustaining multi-purpose community center, now known as Meridian Playground and the Good Shepherd Center (collectively the property).

- Ordinance 111828, adopted in 1984, identified discrete areas of the property and described uses for the areas, including a P-Patch and an adjacent area for Seattle Tilth, a nonprofit corporation, to establish a demonstration garden.

- Ordinance 111882, adopted in 1984, designated the entire Meridian Playground and Good Shepherd Center site a landmark, subject to certain reviews and approvals prior to changes to the site, as represented by the Site Plan.

- Ordinance 111865, adopted in 1985, adopted a Comprehensive Site Plan (Site Plan) for the property that specified the P-Patch and the demonstration garden use shall continue

DNS CITY CLERK

not longer than 25 years and at which time, the land would become part of Meridian Playground under the jurisdiction of the Department of Parks and Recreation.

- Ordinance 123095, adopted in 2009, established and clarified City-department jurisdiction of the Meridian Playground and the Good Shepherd Center property; revised the Comprehensive Site Plan for the property; and authorized the Superintendent of Parks and Recreation to enter into agreements for use of the property since the P-Patch and the demonstration garden use have continued.

____ **This legislation does not have any financial implications.**

__X__ **This legislation has financial implications.**

Seattle Tilth shall pay an Annual Use Fee of $35,000. Of this fee, 100% is eligible for offset through "in-kind" community programming services and other activities to or for the benefit of the City. The value of these services is expected to exceed the amount of the Annual Use Fee. Under no circumstances will the City owe Seattle Tilth any money or credit if the value of the community programming and maintenance and other items exceeds the amount of the Annual Use Fee.

Appropriations: N/A

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

Appropriations Notes: There are no appropriations associated with this legislation.

Anticipated Revenue/Reimbursement: Resulting from this Legislation: N/A

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

Revenue/Reimbursement Notes: No revenues are anticipated as a result of this legislation, as the fee to the City will be offset through "in-kind" community programming services and other activities to or for the benefit of the City that equate to the Annual Fee for the use of the site.

DNS CITY CLERK

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*
TOTAL	N/A	N/A	N/A	N/A	N/A	N/A	N/A

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

Do positions sunset in the future? N/A

Spending/Cash Flow: N/A

Fund Name & #	Department	Budget Control Level*	2010 Expenditures	2011 Anticipated Expenditures
TOTAL	N/A	N/A	N/A	N/A

Spending/Cash Flow Notes:

What is the financial cost of not implementing the legislation?
If this agreement is not implemented, the City may have to take on the responsibility of maintaining and caring for the demonstration and education gardens, for which it currently does not have budget appropriations, or close down the gardens.

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: None

List attachments to the fiscal note below:

Attachment A: Contract Summary

DNS CITY CLERK

Attachment A

Seattle Department of Parks and Recreation

CONTRACT SUMMARY

Date: November 29, 2010

Name of Contracting Party/ Lessee/ Concessionaire/Other: Seattle Tilth

Contract Type: Lease and Public Benefits

Non-Profit X or **For Profit**_____

New __ or **Renewal (or extension of existing Lease)** ___X___

Term of Lease: 10 years, with one ten-year renewal option and one 5-year renewal option

Purpose of Lease: Sets the terms for the use and occupancy of a portion of the Meridian Playground premises by the Seattle Tilth Association.

Public Benefit: Free public access to the facility and specified resources; maintenance of the premises; free classes, workshops, tours, and events.

Brief description, overview, history, general terms, and other pertinent info: Seattle Tilth inspires and educates people to garden organically, conserve natural resources, and support local food systems in order to cultivate a healthy urban environment and community. The organization provides both free and fee services to the public, including classes for youth and adults, camps, master composting programs, community learning gardens, special events, volunteer opportunities, a garden hotline, and educational organic gardening publications.

Seattle Tilth is based at the Meridian Playground campus and has an office in the Good Shepherd Center (owned by Historic Seattle) at the site. The most recent lease for the Demonstration Garden expired September 30, 2009. Ordinance 123095 extended the term to June 1, 2010, with the provision that Parks would develop a new lease.

The new use and occupancy agreement establishes the contract term, defines the public benefits, and incorporates the Education Area (the Children's Garden) into the contract.

DPS CITY CLERK

City of Seattle
Office of the Mayor

December 7, 2010

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to submit the attached proposed Council Bill concerning the Seattle Tilth Use and Occupancy Agreement. The proposed legislation authorizes the Superintendent of Parks and Recreation to enter into a ten-year use and occupancy agreement with the Seattle Tilth Association to continue use of a portion of the Meridian Playground site, a property under the Department of Parks and Recreation's (DPR) jurisdiction.

A Comprehensive Site Plan for the property located at North 50th Street between Meridian Avenue N and Sunnyside Avenue N was adopted by Ordinance 111865 in 1984. In addition, the Ordinance also directed that a P-Patch and demonstration garden area maintained by Seattle Tilth (a nonprofit organization) would transfer to DPR and become part of Meridian Playground at the end of 25 years or sooner. As the P-Patch and demonstration garden have continued to offer recreational and learning opportunities consistent with park and recreation purposes for the past 25 years, this proposed Bill allows Seattle Tilth's continued use of the demonstration garden site and allows Seattle Tilth to plan and provide programming for the public at the site.

Approval of this legislation supports Seattle's Year of Urban Agriculture through the continuation of Seattle Tilth's education programs at Meridian Playground. Thank you for your consideration of this legislation. Should you have questions, please contact Suzanne Simmons at 684-8003.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

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

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

2010 CITY CLERK

STATE OF WASHINGTON – KING COUNTY

--ss.

266707 No. TITLE ONLY

CITY OF SEATTLE,CLERKS OFFICE

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 12th 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:123527-123531

was published on

02/03/11

The amount of the fee charged for the foregoing publication is the sum of $ 75.08, which amount has been paid in full.

JENNIFER A. PATZER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES OCT. 24, 2011

Subscribed and sworn to before me on

02/03/11

Notary public for the State of Washington, residing in Seattle

Affidavit of Publication

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on January 24, 2011, 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. 123527

AN ORDINANCE related to the Enforcement of Civil Rights, amending Sections 14.04, 14.06, 14.08, and 14.10 of the Seattle Municipal Code to be consistent with Federal and State anti-discrimination law.

ORDINANCE NO. 123528

AN ORDINANCE relating to the Meridian Playground and the Good Shepherd Center property; authorizing the Superintendent of Parks and Recreation to enter into a ten-year use and occupancy agreement with the Seattle Tilth Association for continued use of a portion of Meridian Playground property for urban garden demonstration and programs.

ORDINANCE NO. 123529

AN ORDINANCE relating to the City Light Department, authorizing the acceptance of a deed to certain land in Skagit County, Washington for wildlife habitat protection purposes, placing said land under the jurisdiction of the City Light Department, and ratifying and confirming certain prior acts.

ORDINANCE NO. 123530

AN ORDINANCE relating to the City Light Department, authorizing the acceptance of the transfer of certain state trust lands in Skagit County, Washington from the Washington State Department of Natural Resources, authorizing the acceptance of the quitclaim deeds thereto, ratifying and confirming certain prior acts, and placing said lands under the jurisdiction of the City Light Department.

ORDINANCE NO. 123531

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, February 3, 2011.

2/3(266707)