#28

Charles Ng/RH
DPR Atlantic City Nursery
July 2, 2012
Version #2

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117554

AN ORDINANCE relating to the City of Seattle's Department of Parks and Recreation and Atlantic City Nursery; authorizing the Superintendent to enter into a five-year agreement, with options to extend, with Seattle Tilth and the Friends of Rainier Beach Urban Farm and Wetlands to operate and provide management of the Atlantic City Nursery located at 5513 S. Cloverdale Street, Seattle, WA 98118.

WHEREAS, Seattle Parks and Recreation ("DPR") owned and operated the Atlantic City Nursery in the Rainier Beach neighborhood for fifty years, providing trees and plants for City parks; and

WHEREAS, in 2009 DPR decided to consolidate horticultural operations at one location at Jefferson Park and closed the Atlantic City Nursery in 2010; and

WHEREAS, after a public process that included community meetings and review by the Board of Park Commissioners, DPR concluded that future use for the nursery property would include public access, community gardening, and management by a nonprofit partner; and

WHEREAS, DPR initiated a Request for Proposal process ("RFP") in 2011that was designed to secure a nonprofit partner to provide for the overall development, renovation, management, and operation of the nursery site; and

WHEREAS, DPR completed the RFP process and selected Seattle Tilth and the Friends of Rainier Beach Urban Farm and Wetlands ("FRBUFW") as the winning proposer of the RFP; and

WHEREAS, Seattle Tilth and FRBUFW will be providing public benefits including classes, workshops, and community events; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of the Department of Parks and Recreation ("Superintendent"), or his designee, is authorized to enter into a five-year operation and management agreement for the City's Atlantic City Nursery with Seattle Tilth and the Friends of Rainier Beach Urban Farm and Wetlands, substantially in the form of the Agreement between

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the City of Seattle and Seattle Tilth and the Friends of Rainier Beach Urban Farm and Wetlands, which is attached to this ordinance as Attachment 1 ("Agreement").

Section 2. The Superintendent is authorized to renew and extend the term of the Agreement for two five-year extensions at the Superintendent's option and as provided in the Agreement.

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Section 3. This ordinance shall take effect and be in force 30 days 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 ____ day of _____, 2012, and signed by me in open session in authentication of its passage this _____ day of _____, 2012.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2012.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2012.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Management and Operating Agreement Between the City of Seattle Department of Parks and Recreation, Seattle Tilth, and the Friends of Atlantic City Nursery AKA/ Friends of Rainier Beach Urban Farm and Wetlands

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MANAGEMENT AND OPERATING AGREEMENT BETWEEN THE CITY OF SEATTLE DEPARTMENT OF PARKS AND RECREATION, SEATTLE TILTH AND THE FRIENDS OF ATLANTIC CITY NURSERY AKA/ FRIENDS OF RAINIER BEACH URBAN FARM AND WETLANDS FOR ATLANTIC CITY NURSERY URBAN FARM AND WETLAND PRESERVATION AND ENHANCEMENT PROJECT

THIS DEVELOPMENT AND OPERATING AGREEMENT ("Agreement") is entered into by and between the City of Seattle, a municipal corporation, acting through its Department of Parks and Recreation ("Department"), AND Seattle Tilth, a Washington nonprofit corporation and the Friends of Rainier Beach Urban Farm and Wetlands, (both referred herein as "Operators").

RECITALS

WHEREAS, pursuant to Article XI of the Seattle Charter, the Superintendent has the responsibility for the operation and control of the parks and recreation system of the City; and

WHEREAS, the City owns Atlantic City Nursery thereon that is administered by the Department of Parks and Recreation acting through its Superintendent; and

WHEREAS, the City desires to enter into an agreement with an experienced nonprofit to provide for the overall management and operation of an Urban Farm and Wetland Preservation and Enhancement Project at the Atlantic City Nursery Site (herein referred to as "Premises"); and

WHEREAS, the City conducted a publicly-advertised Request For Proposals (RFP) to select an operator for the management and operation of the Premises at Atlantic City Nursery; and

WHEREAS, the Operators submitted a Proposal in response to the RFP that was evaluated by an impartial evaluation panel against predetermined objective criteria and was judged to be most advantageous to the City; and

WHEREAS, the City and the Operators intend that any proposed improvements to the Premises and subsequent future contracts between the Operators and any contractor of the Operators to make such improvements to the Premises shall be subject to the review and approval of the City PRIOR to commencing work on any of the proposed improvements;

NOW, THEREFORE; In consideration of the mutual promises made herein, the Operators and the City hereby agree as follows:

ARTICLE I. DEFINITIONS

The following words and terms shall have the following meanings for the purposes of this Agreement. Terms otherwise not defined herein shall be given their usual and customary meaning.

1.1 "City" shall mean the City of Seattle, a municipal Corporation.

1.2 "Department" shall mean the City of Seattle Department of Parks and Recreation and its Superintendent or designee.

1.3 "Premises" also referred to as "Property" and or "Site" shall mean the real property upon which the buildings, wetlands, and uplands are located and the property to be used by the Operators. (See Exhibit D – Site Map.) The 10.9 acre site is located at 5513 S Cloverdale Street and currently known as the Atlantic City Nursery.

1.4 "Operators" shall mean Seattle Tilth and the Friends of Rainier Beach Urban Farm and Wetlands.

1.5 "Contractor" and "Subcontractor" shall mean any person or business entity employed by the Operators, which shall assume parts of the Operators' rights and responsibilities arising from this Agreement pursuant to a contract with the Operators.

ARTICLE II. USE GRANT

2.1 Grant of Right. The City hereby grants to the Operators, for the term and upon the conditions and provisions herein, the right and privilege to manage and operate the Site within Atlantic City Nursery as described in Exhibit A and hereinafter included in this Agreement by reference.

Seattle Tilth is acting as the Fiscal agent for this Agreement and is responsible for all financial and tax reporting purposes. (See Exhibit B – Fiscal Sponsorship Agreement and Exhibit C – Memorandum of Understanding Between Seattle Tilth and the Friends of Rainier Beach Urban Farm and Wetlands.) Therefore, Seattle Tilth retains the decision-making authority on projects within the Site while collaborating with and receiving advice and input from the Friends of Rainier Beach Urban Farm and Wetlands; and with final approval from the Department.

2.2 Quality. The Operators agree to complete the programs and services described in Exhibit A in a diligent and efficient manner within the limits of the authority herein granted.

2.3 Maintenance Requirements. The Operators, at no costs to the Department, are responsible for any and all major maintenance and minor repairs required at the site and under their jurisdiction. The Operators are specifically responsible for:

- winterizing the irrigation system;
- removal of snow or removal of the poly/shade cloth from the greenhouse structures during winter months;
- upland mowing;
- maintaining the wetlands as defined in 1.3 Premises and to agreed-upon standards;
- stabilizing ground cloth on the fields; and
- maintaining the perimeter service road.

The Department will not be responsible for any maintenance on the premises.

ARTICLE III. TERM

The rights granted to the Operators under this Agreement shall be in effect for a period of five (5) years, unless this Agreement is terminated earlier pursuant to the provisions hereof. Two extensions may be possible in five (5) year increments at the sole option of the Department.

Amendments. No modification of this Agreement shall be binding upon the City or Operators unless reduced to writing and signed by an authorized representative of each of the parties hereto. Any future agreement/amendment between the City and the Operators that adds to, changes, or deletes specific responsibilities of this Agreement will be negotiated and if agreed upon, then memorialized in writing by the City.

ARTICLE IV. SITE BUILDINGS AND SITE RENOVATIONS, CONSTRUCTION, AND DEVELOPMENT BY THE CITY.

4.1 The City shall be responsible for any capital improvements to the Site that are funded by the Opportunity Fund Project in the Department's Capital Improvement Program, including managing the design and construction of the improvements to the Site.

4.2 The City and Operators will work together to conduct a Public Involvement Process (PIP) with the objective of soliciting feedback from the neighborhood communities and stakeholders of the Site regarding what types of improvements are appropriate and within the available budget in the Department's Capital Improvement Program Budget for the Site. The PIP will follow the schedule referenced in Exhibit A.

ARTICLE V. POSSIBLE FUTURE IMPROVEMENTS OR ALTERATIONS FINANCED BY THE OPERATORS

5.1 Any future plans for improvements or alterations to the Site by the Operators must be reviewed and approved by the Department. No work on these improvements or alterations will begin without the Department's approval. Any and all approved renovations or improvements are the property of the Department. 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 the Department determines in its sole discretion that it approves and that it is practicable, Operators may remove any approved improvements at Operators' sole expense. If so removed, Operators shall repair at their sole expense any damage done to the Premises as a result of such removal.

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Operators shall be responsible for obtaining all permits, licenses, and meeting all applicable development and construction standards or other requirements including but not limited to compliance with applicable building codes and with the Americans with Disabilities Act (ADA) and its design standards under both Titles II and III thereof. Operators acknowledge expressly that the provisions of the ADA may exceed the building code and will design and construct to comply therewith.

5.2 If such proposed plans and improvements are approved by the Department, the Operators will be responsible for the following requirements, including but not limited to:

5.2.1 Securing all required permits at no cost to the Department, providing evidence to the Department as requested, and paying all of their construction contractor costs, paying all required prevailing wages and City public works requirements, and all applicable City, State, and Federal Taxes associated with these improvements.

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

5.2.3 Minimization of Adverse Impacts. All proposed demolition, construction, alteration, addition, and improvement work performed by or for the Operators at the Premises shall be submitted to the City for review and approval and if approved then must be carried out in a manner that minimizes any adverse impacts on the use of the Premises by the visiting public.

5.2.4 Inspections for any Operators Proposed work on the Premises. Authorized representatives of the Department may inspect all plans, contracts, and work of or for the Operators at any time to determine whether such work is in accordance with the plans and specifications approved by the City for the Operators. If any such work is not according to such plans and specifications, the City may send to the Operators, return receipt requested, a Notice of Non-Compliance. Immediately following the Operators' receipt of any such Notice of Non-Compliance, at the City's sole election the Operators shall either (i) desist from the construction of such improvement, addition, installation, or alteration and remove it from the Site, or (ii) make such improvement, addition, installation, or alteration consistent with such approved plans and specifications. The Operators' failure to make such corrections within five (5) calendar days after the Operators' receipt of such Notice of Non-Compliance, or in the event such corrections require more than five (5) calendar days for completion, the Operators' failure to commence such correction work within five (5) calendar days after receipt of such notice and to diligently prosecute such correction work to completion within a reasonable time shall constitute a material breach of this Agreement.

5.2.5 Utilities, Trash, Debris and Maintenance. The Operators, without charge to the City, shall be responsible for all utilities and containerizing in appropriate containers all waste and debris from their programming and construction activities at the Site. Any hazardous waste shall be placed in air and water tight containers as may be appropriate. The Operators

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shall be liable for any cost for utilities and any charge or expense involved in removing any trash or construction debris including hazardous waste. The Operators are responsible for maintenance of the premises as described in Section 2.3.

5.2.6 No Unlawful Use of Site. During the duration of the agreement, the Operators shall not permit the Site or any part thereof to be used for any unlawful or immoral purpose or injure persons or property in, on, or near said Site; nor permit any act to be done which will in any way mar, deface, or injure any part of the Site.

5.2.7 Emergency Closure. The City has reserved the right to direct the Operators and any subcontractors, during the duration of the Agreement, to temporarily close the site or any portion thereof without notice to meet any emergency, as determined by the Superintendent. In the event of any such closure, the City shall post a sign notifying the public of the closure.

5.2.8 Subcontractors. It is the responsibility of the Operators to assure compliance by any Contractor or Subcontractor(s) with the record-keeping requirements of this Agreement, and shall be responsible for ensuring payment of all subcontractor fees and charges for all work performed as per contractor agreement scope of work as developed by the Operators.

ARTICLE VI USE FEES; TAXES; OFFSETS; LATE FEES

6.1 Base Fee and Use Fee. For the term of this Agreement, the Operators shall pay to the Department a minimum Base Fee of $1,000.00 and a Use Fee of $40,000.00, payable in arrears in two installments of $20,000.00; 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.

6.2 Base Fee and Use Fee Exclusive of Taxes. The Base Fee and Use Fee are 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 Operators. Any and all taxes shall be paid by Operators with no offset or deduction whatsoever.

6.3 Use Fee Offset. One hundred percent (100 %) of the Use Fee due under this Agreement and noted in Article 6.1 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 A. If Operators desire to take advantage of this opportunity during the term of this Agreement, then Operators must perform these program services prior to the due dates noted in Article 6.1. Operators shall send a written report in accordance with Exhibit A 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 the Operators must provide under this Agreement may exceed the amount of the Use Fee. Under no circumstances will the City owe Operators any money or credit if the value of the Community Programming and Capital Improvement Offsets and other

items exceeds the amount of the 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 Use Fee. Moreover, Operators' 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 Use Fee.

The Use Fee may be offset by Department-approved new programs that are a Public Benefit to the extent that these programs support the public mission. If the Operators produce events or programs that are commercial in nature and are not related to the public mission (such as an auto show, corporate or business rental, third party rentals for weddings, birthdays, etc.) then that would not be offset to the fair market rent and the Operators would pay a percentage of the rental fee to the Department.

6.4 Late and Refused Payments. Operators acknowledge that late payment to the City of the Use Fee or any other sum due to the City hereunder will cause the Department to incur costs not contemplated by this Agreement, including, but not limited to, processing and accounting charges. Therefore, in the event Operators fail 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-five Dollar ($25.00) charge shall be paid by Operators to the City for each check refused payment for insufficient funds or any other reason.

6.5 Leasehold Excise Tax. The Operators shall remit to the Department with each payment the appropriate payment for Washington State Leasehold Excise Taxes. These Leasehold Excise Taxes payments shall be made to the Department and shall be listed separately. Leasehold Excise Taxes are not included in the payments shown in this Agreement. The Leasehold Excise Tax rate at the time this agreement is drafted is 12.84% (Twelve and eighty-four hundredths percent) of the Use Fee paid to the Department.

ARTICLE VII. COMPLIANCE WITH LAW

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

7.2 Licenses and Other Authorizations. The Operators, at no cost to 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.

7.3 Equality of Treatment. The Operators and any Subcontractors shall conduct their business(es) in a manner that assures fair, equal, and nondiscriminatory treatment at all times in

all respects to all persons without regard to Age, Ancestry, Color, Creed, Disability, Gender identity, Marital status, National Origin, Parental status, Political ideology, Race, Religion, Sex, Sexual orientation, Use of a Section 8 certificate, Use of a service animal, Military status or Veteran. Any failure to comply with this provision shall be a material breach of this Agreement.

7.4 Nondiscrimination and Affirmative Action. The Operators and all of its Contractors and Subcontractors shall 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.

7.5 Workers Compensation Act. The Operators shall at all times during the term of this Agreement subscribe to and comply with workers compensation laws of the State of Washington and pay such premiums as may be required thereunder and to indemnify and hold harmless the City, its officers, agents, and employees from any liability arising under such act. Prior to any operations being performed in the Site and at such other times as may be requested, the Operators shall furnish a copy of the official certificate of receipt, showing payments in compliance with the Act.

7.6. Operator's Indemnification of the City Against Liability under Visual Artists Rights Act of 1990. The Operators 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 the Operators or any of their 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 VIII. INSURANCE AND INDEMNIFICATION

8.1 Minimum Coverages and Limits Of Liability. Prior to undertaking any work under this Agreement, the Operators, at no direct expense to City, shall secure and thereafter maintain during the full term of this Agreement the following insurance applicable to its operations at the Site.

8.1.1 Commercial General Liability (CGL) insurance including Premises/Operations, Products/Competed Operations, Contractual, Independent Contractors, Tenant Fire Legal Liability, and (if applicable) Employers Liability/Stop Gap with minimum limits of liability of $1,000,000 each occurrence combined single limit bodily injury and property damage and Tenant Fire Legal Liability of $100,000.

8.1.2 Automobile Liability insurance covering owned, non-owned, and hired automobiles as applicable with minimum limits of liability of $1,000,000 each occurrence combined single limit bodily injury and property damage.

8.1.3 If applicable, Workers Compensation in accordance with the provisions of Title 51 of the Revised Code of Washington (RCW).

8.2 Additional Insurance Requirements.

8.2.1 As respects CGL and Automobile Liability insurance, "the City of Seattle" shall be an additional insured on a primary and non-contributory basis subject to a standard separation of insureds provision.

8.2.2 The limits of liability specified in section 8.1.1 and 8.1.2 are minimum limits of liability only and the City shall be an additional insured for the full valid and collectible limits of liability available to the Operators, whether such limits are primary, excess, contingent, or otherwise.

8.2.3 All insurers must either be 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 issued as surplus lines under the provisions of chapter 48.15 RCW, unless otherwise approved by the City.

8.2.4 In the event that the City deems then current insurance coverages and limits of liability to be inadequate to adequately protect the interests of the City and/or Operators, the City may require Operators to increase said coverage and liability limits to such amounts as the City shall deem reasonable within sixty (60) days after the date of notice to Operators.

8.3 Certification of Insurance.

8.3.1 Operators shall cause certification of insurance evidencing compliance with the insurance provisions herein to be delivered to:

Seattle Parks and Recreation
Attn: Charles Ng, Manager
6310 NE 74th Street #109E
Seattle, WA 98115

An electronic copy shall also be emailed in PDF format to riskmanagement@seattle.gov.

8.3.2 Such certification shall include an actual copy of the additional insured endorsement or policy wording that verifies that the City is an additional insured under the Commercial General Liability insurance for primary and non-contributory limits of liability and shall provide not less than thirty (30) days notice of cancellation to the City, except ten (10) days as respects cancellation for non-payment of premium to be sent to the address in paragraph 8.3.1.

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8.3.3 The failure of Operators to comply with any of the terms of the insurance provisions herein shall be considered a material breach of this Agreement. Alternatively, at the option of the City and without waiving any other remedies to which the City may be entitled for such material breach, the City may procure the required insurance for Operators from whatever source the City deems reasonable, and charge Operators the cost of the required premium plus an administrative fee equal to twenty percent (20%) of the premium, which shall be due and payable as of the date of the invoice therefore. Any amount due to the City pursuant to this section that is not paid in full within thirty (30) days after the date invoiced shall bear interest at the maximum legal rate.

8.4 Indemnification by the Operators.

8.4.1 Operators shall fully indemnify and hold the City free and harmless from all liability, risks, costs, claims, actions, suits, demands, losses, expenses, injuries, and/or damages of any kind whatsoever, tangible or intangible, including any consequential damages that may accrue to or be suffered by any person (including the Operators, its Contractor(s), Subcontractor(s), officers, employees, agents, invitees, assigns) arising, directly or indirectly, or suffered by any person by reason of or in connection with any negligent or willful act or omission of the Operators or any of its Contractor(s) or Subcontractor(s), if any, or of any officer, employee, or agent of the Operators' Contractor or its Subcontractors, or any combination thereof, which arise, directly or indirectly, in connection with the program services and any improvement projects, including but not limited to claims for labor or materials in connection with the program services and any future project(s) and from the cost of defending against such claims, including attorneys' fees, whether such construction, repair, and maintenance was performed before or after the commencement of the term of this Agreement, or for or on behalf of the Operators Contractors, any of its Subcontractors, or a third party. The obligations of the Operators under this section shall survive the expiration or earlier termination of this Agreement with respect to any event occurring prior to such expiration or termination.

8.4.2 In the event of any such suit or action against the City, the Operators and their Contractor(s) or Subcontractors, upon notice of the commencement thereof, shall appear and defend the Operators at its sole cost and expense. If judgment is rendered against the City and the Operators or any of its Subcontractors jointly, the Operators and its Subcontractors shall cause the City to be satisfied within ninety (90) days after a final determination thereof. The liability described in this section shall not be diminished except to the extent that any such death, injury, damage, loss, cost, or expense was contributed to in part by the negligence of City, or of any of its officers, employees or agents, except where such death, injury, damage, loss, cost, or expense arose, directly or indirectly, out of the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of any building, excavation, or other structure, project, development, or improvement attached to real estate; provided, however, that in such situation, the liability of the Operators and their Contractor(s) or Subcontractors shall be enforceable to the extent of their negligence as provided in RCW 4.24.115.

8.4.3 In consideration of the various negotiated commitments made and obligations assumed herein, the Operators and its Contractor(s) and Subcontractors respectively

waive their immunity under Title 51 RCW. The obligations of the Operators and its Contractor(s) and Subcontractors under this section shall survive the expiration or earlier termination of this Agreement with respect to any event occurring prior to such expiration or termination. This indemnity Agreement shall extend to protect the City from liens by mechanics, material men, and suppliers (which liens are expressly prohibited) which shall be deemed to include all purchases of expendables, consumables, and other merchandise. The Operators expressly waive any and all claims for compensation and release and discharge the City and its officers, agents, and employees from any and all demands, claims, actions, and causes of action arising from any and all loss or damages sustained by reasons of any defect, deficiency, or impairment of the water supply system, drainage system, heating system, electrical apparatus, or wiring furnished for the Site which may occur from time to time from any cause or for any loss resulting from water, tornado, civil commotion, riot, windstorm, and earthquake.

8.4.4 In the event of any claim made or suits filed, the City shall give the Operators timely written notice thereof, and the Operators shall have the right to defend or settle to the extent of its interest hereunder. The Operators shall promptly accept all tenders of such cases from the City; and if it is necessary for the City to incur attorney's fees, legal expenses, or costs to enforce this provision, all such expenses shall be recoverable from the Operators.

8.5 Damage or Destruction.

8.5.1 If the Site is damaged by fire or other casualty, provided that sufficient funds are available to the City, it may, at its sole election, commence such repairs as will restore the Site, including the improvements therein, to the condition immediately preceding the casualty as near as reasonably possible.

8.5.2 Upon such fire or other casualty either party may, at their option and within thirty (30) days after the casualty, terminate this Agreement by written notice to the other, specifying the effective date of such termination.

8.5.3 If repairs or replacement are made to the Site, rent shall be abated in the proportion that the untenantable portion of the Site bear(s) to the whole thereof, as reasonably determined by the City, unless the casualty results from or is contributed to by the negligence of Operators or any of its officers, contractors, agents, invitees, guests, or employees, or Operators' breach of this Agreement, in which event there shall be no abatement. In no case, however, shall the Operators' total liability for repair or replacement exceed the available valid and collectible limits of Tenant Liability.

8.5.4 In the event of damage by casualty to its own business personal property, Operators shall, to the extent they deem necessary or desirable, at their sole cost and expense, repair all such damage or replace such property. The City shall not be liable to Operators for damages, compensation, or other sums for inconvenience, loss of business, or disruption arising from any repairs to or restoration of any portion of the Structure.

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ARTICLE IX. TERMINATION; SURRENDER AND PROPERTY REMOVAL.

9.1 Termination for Material Breach. In addition to the material breaches and defaults identified throughout this Agreement, each of the following acts and omissions constitutes a default and material breach, for which the City shall be entitled to terminate the Operators' rights and interests in and under this Agreement:

9.1.1 The non-compliance by the Operators or any of its Contractors or Subcontractors of any law, ordinance, rule, or regulation pertinent to this Agreement after notice and opportunity to cure.

9.1.2 Operators' or any of its Contractors' or Subcontractors' repeated failure to perform, or violation of, any other material condition or covenant of this Agreement, the RFP requirements, or its Proposal.

9.2 Removal of Construction Debris. In the event that after the completion of a future project, the Operators have not removed or caused to be removed all construction materials and debris from the Site or the adjacent park property, whether or not such property or material is owned by the Operators, the City may, but need not, remove and store such property, all at the expense and risk of the Operators, which shall reimburse the City for any expense incurred by the City in connection with such removal and storage. Upon notice to the Operators, the City shall have the right to sell such stored property after it has been stored for a period of thirty (30) days or more, with the proceeds of such sale being applied first, to the cost of the sale; second, to the payment of the charges for storage; and third, to the payment of any other amounts which may then be due from the Operators to the City; the balance, if any, shall be paid to the Operators.

9.3 Costs and Expenses. The Operators shall pay in a timely manner legal costs and expenses incurred by the City, including the reasonable fees and expenses of legal counsel, in connection with the approval of any proposed transfer of the Operators' interest in this Agreement, and the enforcement of the City's rights hereunder. Such costs and attorneys' fees shall include, without limitation, costs and attorneys fees incurred in any appeal, forfeiture proceeding, or in any proceedings under any present or future federal bankruptcy or state receivership law.

ARTICLE X. MISCELLANEOUS.

10.1 Notices. Any notices required in accordance with any of the provisions herein shall be sent by registered or certified mail addressed as follows:
To the City:

The City of Seattle Department of Parks & Recreation
Magnuson Park & Business Resources
Attention: Charles Ng
6310 NE 74th Street #109E
Seattle, WA 98115

And to the Operator, Seattle Tilth:
Andrea Platt Dwyer, Executive Director
Seattle Tilth Association
4649 Sunnyside Avenue N, #100
Seattle, WA 98103

And to the Operator, The Friends of Rainier Beach Urban Farm and Wetlands:
Harry Hoffman, Co-Chair
8621 Island Drive S
Seattle, WA 98118

And
Peter Masundire, Co-Chair
9342 57th Avenue S
Seattle, WA 8118

or at such other place as the Operators or the City may in writing direct. All notices shall be deemed effective upon receipt, refusal of delivery, or attempted delivery.

10.2 Governing Law, Time. This Agreement and the rights of the parties hereto shall be governed and construed in accordance with the laws of the State of Washington. In the event any action is brought to enforce the provisions of this Agreement, the venue of any such action shall be King County, Washington, and the parties hereto do hereby stipulate to the jurisdiction and venue of the Superior Court for King County, Washington. Time is of the essence of this Agreement.

10.3 Assignment. The Operators shall not sublet, transfer, convey, assign, nor permit the use of the rights, privileges, or Site granted under this Agreement in whole or in part to any other person, firm, or corporation without the prior written authorization of the City. Said rights, privileges, and Site are not assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceedings in insolvency, or bankruptcy either voluntary or involuntary, or receivership proceedings. Any assignee approved by the City must accept and assume in writing all the terms and conditions of this Agreement to be kept and performed by the Operators and such assignment shall not in any manner discharge or release the Operators or its sureties herein from any other obligation under the terms of this Agreement. Non-compliance with this section shall be deemed to be a default hereunder. The City may transfer or convey this Agreement or any right or interest herein of the City with the prior written consent of the Operators. The terms and provisions of this Agreement shall bind and inure to the benefits of the City's successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year set forth below.

For the **City of Seattle, Department of Parks and Recreation**

_____, _____, 2012
Christopher Williams, Acting Superintendent

For **Seattle Tilth**

_____, _____, 2012
Andrea Dwyer, Executive Director

For **Friends of Rainier Beach Urban Farm and Wetlands**

_____, _____, 2012
_____

EXHIBITS:
A. – Program Goals and Requirements
B. – Fiscal Sponsorship Agreement
C. – Memorandum of Understanding between Seattle Tilth and the Friends of Rainier Beach Urban Farm and Wetlands
D. – Site Map

Charles Ng/RH
DPR Atlantic City Nursery ORD ATT 1 EXH A
May 3, 2012
Version #3

EXHIBIT A

Seattle Tilth and the Friends of Rainier Beach Urban Farm & Wetlands, Atlantic City Nursery Urban Farm and Wetland Preservation and Enhancement Project

Program Goals & Requirements & Schedule of Public Benefits

Seattle Tilth, a non-profit 501(c)3 organization, and the Friends of Rainier Beach Urban Farm and Wetlands (Operators) shall provide the following programs and services for the City of Seattle Parks and Recreation (DPR) and residents of the City.

Each year during the term of the Agreement, the Operators shall submit a list of the programs/ services, staff and volunteer time and maintenance proposed as offset to the annual Use Fee; and the value of such services, supported by an itemized accounting of time, labor rates and materials, with corresponding dollar values. The City will allow the value of these services to offset the Use Fee up to $40,000. During the first year of the Agreement, $40,000 will be provisionally offset to the annual rent. By January 15, 2013 the Operators shall submit to the Superintendent for approval within 30 days a list of the services proposed as offset for the previous year. In the event the Superintendent fails to timely provide certification or written notice, the offsets shall be deemed certified. If the offset certified value is below $40,000 the Operators will pay the City the difference within 30 days of notification. Under no circumstances will the City owe Operators any money or credit if the value of the Community Programming and Capital Improvement Offsets and other items exceeds the amount of the Use Fee.

In subsequent years, beginning October 1, 2012, the Operators will include in their Management and Operations Plan (as noted in Section VI. c. and d.) proposed services to be offset for the following year. On January 15th of each year a list of actual services delivered as offsets credited to the previous year will be submitted to the Superintendent for approval within 30 days. In the event the Superintendent fails to timely provide certification or written notice, the offsets shall be deemed certified.

The following programs/services may be used as offsets to the annual Use Fee.

I. Public Access

1. Public Access to facility and resources. The premises will be open during normal park hours for free public access to the Atlantic City Nursery Site for passive recreation. The Operators will provide a minimum of 8 hours a week in the premises

for meetings, classes, workshops, and family and community events to local organizations, neighborhood groups, individuals and families throughout the term of the Agreement.

II. Educational Programs

1. Community Service. The Operators shall recruit community members including Rainier Beach residents and/or organizations along with students from the Seattle Public Schools to participate in work parties to teach, demonstrate and implement organic gardening and sustainability practices. The Operators will host multiple work parties, one of which will be targeted to youth for a total of 8 activity hours. These work parties will consist of an average of 20 volunteers. It is anticipated the number of participants shall be a total of 40 duplicated/30 unduplicated volunteers and 320 volunteer hours annually.

2. Workshops. The Operators will host workshops on organic gardening principles and practices. At least one of the workshops will target Rainier Beach residents. It is anticipated these workshops will include a total of 100 duplicated/75 unduplicated participants for a total of 6 hours of education annually.

3. Programming. The Operators shall incorporate City and Department initiatives into its programming, including:
   a. Race and Social Justice Initiative training shall be required of all employees of the Site; and
   b. Urban Agriculture Initiative.

III. Community-building and Events

1. The Operators shall consistently reach out to the local Rainier Beach residents and/or organizations at the Site.

2. The Operators will host festivals or large community events to celebrate community assets and/or urban farming. It is anticipated these event(s) will attract over 200 participants of all ages.

3. Events that require an admission fee or other charges to participants that are outside the permitted uses, goals and mission of this agreement will require a 10% payment of all sales and admission fees to the Department. Any event of this nature that anticipates over 50+ participants or has amplified sound will also require a Special Event Permit from the Department. The Operators will be responsible for all

COUNCIL CLERK

associated fees, permits, and requirements. (examples of requirements: liquor control, trade show, health department, etc.)

IV. Site Maintenance

1. The Operators will recruit and support volunteer Garden Crew and Work Parties to provide an average of 6 hours a week in general site maintenance activities for a total of 264 hours per year valued at the 2012 rate for volunteer service as defined by Independent Sector at the following web site: http://www.independentsector.org/programs/research/volunteer_time.html
2. The Operators will oversee and support Garden Interns to maintain the site. Interns lead work parties which average 10 volunteers.

V. Design, Planning and Construction Management

1. The maximum amount of the Operator's award from the 2008 Seattle Parks and Recreation Opportunity Fund is $500,000.
   a. The Operators will work with Seattle Parks and Recreation along with the greater community to identify the most appropriate improvements for the site.
2. The Capital Improvements will be implemented per the tentative schedule for the Capital Improvements, as follows:
   Planning: fall -winter 2011
   Design: spring 2012 – winter 2013
   Construction: spring –fall 2013
3. The Public Involvement Process shall be managed by the Department in conjunction with the Operator.
4. The Capital Improvements shall include an Urban Farm, Wetland Enhancement, and Public Access.
   a. The specific details shall be reviewed by the public, the Department and the Operators to insure feasibility.
   b. The improvements shall take into consideration the site limitations based on areas designated as wetlands and wetland buffers and the requirements for any changes to those areas.
   c. Detailed review of proposed plans is required prior to any implementation.
5. The Capital Improvements shall be consistent with programming goals, safety and reuse of as much existing infrastructure as possible.

Other Requirements

VI. Financial Plan and Monitoring

COUNCIL CLERK

1. The Operators will report to the Department including the Department's urban food committee.
   a. Reports shall include quarterly program metrics and financial reports.
   b. The Operators shall identify any fee-based programs, value added produce/food sales, and number of pounds of product donated to food banks or non-profit organizations.
   c. The Operators' Operation and Maintenance Plan shall be consistent with the Capital Improvements.
   d. By October 1st of each year the Operators will submit to the Superintendent for his or her approval within 30 days, an annual Operating/Maintenance Plan that will outline plans for the following year and include the planned services to be used to offset the rent for the following year. In the event the Superintendent fails to timely provide certification or written notice, the plan shall be deemed certified.

VII. Corporation Organization

1. The Friends of Rainier Beach Urban Farm and Wetlands and Seattle Tilth shall develop an agreement together as Operators of the Site, which identifies their roles and responsibilities. These roles and responsibilities shall be defined and reporting actions required. This agreement shall be used throughout the Operator Agreement to explain the management of the Site. A copy of this agreement shall be delivered to the Department within 30 days of signing the long-term management and operating agreement.
2. The Friends of Rainier Beach Urban Farm and Wetlands shall register with the Department as a volunteer "Friends Of" group and will follow the guidelines for "Friends Of" groups. They will also develop a volunteer agreement with Seattle Tilth which will specifically detail their commitment and responsibilities.
3. The Operators' program management shall be similar to Seattle Tilth's organization.
4. The Operators' Program Manager and the advisory committee, which consists of members from Seattle Tilth and the Friends of Rainier Beach Urban Farm and Wetlands, shall meet regularly to oversee the management of the site. Department staff may attend these meetings in an ex officio capacity, and shall be notified in advance of their time, date and location.

COUNCIL LEGIS

AMENDED AND RESTATED
FISCAL SPONSORSHIP AGREEMENT

This Amended and Restated Fiscal Sponsorship Agreement (the "Agreement") is made on this __ day of January, 2012, by and between SEATTLE TILTH ASSOCIATION, a Washington nonprofit corporation ("Seattle Tilth") and RAINIER BEACH URBAN FARM AND WETLANDS PRESERVATION PROJECT (FRIENDS OF ATLANTIC CITY NURSERY), a Washington nonprofit corporation ("FACN"), and amends and restates that certain Fiscal Sponsorship Agreement dated March 15, 2010 between Seattle Tilth and FACN.

Seattle Tilth is a nonprofit corporation located in Seattle, Washington which is exempt from federal tax under section 501(c)(3) of the Internal Revenue Code, as amended (the "Code"). It is formed for purposes which include educating and inspiring people to garden organically, conserve natural resources and support local food systems in order to cultivate a healthy urban environment and community.

FACN is a nonprofit corporation located in Seattle, Washington, and established to facilitate community participation and guidance in the affairs of the Rainier Beach Urban Farm and Wetlands Project.

The Rainier Beach Urban Farm and Wetlands Project is a project with the primary purpose of developing the Atlantic City Nursery property into an urban agriculture center that could provide the community and organizations with opportunities for training, education and year-round gardening (the "Project"). Seattle Tilth and FACN jointly submitted a proposal to the City of Seattle to develop the Project, which was accepted by City of Seattle.

The Board of Directors of Seattle Tilth has approved the establishment of a restricted fund to receive tax-deductible charitable contributions, grants of cash and other property designated for support of FACN and the Project. Seattle Tilth desires to continue to act as the fiscal sponsor of FACN and the Project, by receiving assets and incurring liabilities identified for the Project beginning on the effective date as defined in Paragraph 1, and using them to pursue the objectives of the Project, which Seattle Tilth's Board of Directors has determined will further its charitable and educational goals.

By entering into this Agreement, the parties agree to the following terms and conditions:

1. Effective Date: Effective March 16, 2010, Seattle Tilth shall commence operation of the Project, which operation shall continue in effect unless and until terminated as provided herein.

2. Project Activities and Sponsorship Policies: All community programs, public information work, fundraising events, processing and acknowledgement of cash and noncash revenue items, accounts payable and receivable, negotiation of leases and contracts, disbursement of Project funds (including grants), and other activities conducted by the Project shall be the ultimate responsibility of Seattle Tilth and shall be conducted in the name of Seattle Tilth, beginning on the effective date of this Agreement. Any tangible or intangible property, including intellectual property, such as copyrights, obtained by FACN from third parties or created by FACN in connection with the Project shall be the property of Seattle Tilth while this Agreement is in effect.

3. Governance: Management of the Project shall be governed by that certain Memorandum of Understanding between Seattle Tilth and FACN dated February 3, 2012 (the "MOU"). In matters governed by this Agreement, (a) FACN's separate legal existence as a nonprofit corporation will be solely for the limited purpose of holding, exercising and enforcing the contractual duties and obligations Seattle Tilth may owe to FACN under this Agreement (and not for binding Seattle Tilth in any other manner), and (b) any director, officer, or employee of FACN shall serve as an individual only, not as a representative or agent of any funding source, employer or any party other than Seattle Tilth.

COUNCIL CLERK

4. Restricted Fund/Variance Power: Beginning on the effective date, Seattle Tilth shall place all gifts, grants, contributions, and other revenues received by Seattle Tilth for the purpose of the Project into a restricted fund to be used for the sole benefit of the Project's mission as that mission may be defined by FACN from time to time with the prior approval of Seattle Tilth. Seattle Tilth retains the unilateral right to spend such funds so as to accomplish the purposes of the Project as nearly as possible within Seattle Tilth's sole judgment, subject to any donor-imposed restrictions, as to the purpose, or the charitable use of such assets. The parties agree that all money, and the fair market value of all property, in the restricted fund be reported as the income of Seattle Tilth, for both tax purposes and for purposes of Seattle Tilth's financial statements. It is the intent of the parties that this Agreement be interpreted to provide Seattle Tilth with variance powers necessary to enable Seattle Tilth to treat the restricted fund as Seattle Tilth's asset in accordance with Statement No. 136 issued by the Financial Accounting Standards Board, while this Agreement is in effect. Seattle Tilth shall acknowledge receipt of any grant, charitable contribution or gift for the purpose of the Project in writing and will furnish evidence of its status as an exempt organization under Section 501(c)(3) to the donor upon request. Seattle Tilth agrees to notify FACN of any change in Seattle Tilth's tax-exempt status.

5. Protection of tax-exempt status: FACN agrees not to use funds received from Seattle Tilth in any way which would jeopardize the tax-exempt status of Seattle Tilth. FACN agrees to comply with any written request by Seattle Tilth that it cease activities which might jeopardize Seattle Tilth's tax status, and further agrees that Seattle Tilth's obligation to make funds available to FACN shall be suspended in the event that FACN fails to comply with any such request. Any changes in the purpose for which grant funds are spent must be approved in writing by Seattle Tilth before implementation. Seattle Tilth retains the right, if FACN breaches this Agreement, or if FACN jeopardizes Seattle Tilth's legal or tax status, to withhold, withdraw, or demand immediate return of gifts, grants, contributions, and other revenues.

6. Use of funds: Seattle Tilth authorizes FACN to make expenditures, subject to Seattle Tilth's prior approval on a case by case basis, which do not exceed total contributions for the Project, on Seattle Tilth's behalf for use in the Project. FACN agrees to use any and all funds received from Seattle Tilth solely for legitimate expenses of the Project and to account fully to Seattle Tilth for the disbursement of these funds. On behalf of the Project and with the Project's funds, Seattle Tilth will pay for the Project's direct expenses like salary and benefits for Project staff, computers, and travel and meeting expenses. Seattle Tilth will obtain acknowledgement from FACN of payment of these expenses using the Project's funds.

7. Financial accounting, reporting, and procedures: Seattle Tilth will maintain books and financial records of the Project in accordance with generally accepted accounting principles. The Project's revenue and expenses shall be a restricted fund and separately classed in the books of Seattle Tilth. Seattle Tilth will provide reports reflecting revenue and expenses to FACN including receipts, expenditures and balances on a regular basis. Seattle Tilth shall submit financial reports required by grant funders of the Project as needed. If funds are used to pay individuals for their services, Seattle Tilth will determine whether they are acting as partners, employees, or independent contractors, and comply with tax reporting requirements accordingly. FACN must abide by Seattle Tilth's financial policies.

8. Administrative Fees: An administrative charge of eight and one-half percent (8.5%) of all amounts deposited into the Project's restricted fund shall be deducted by Seattle Tilth to defray its costs of administering these restricted funds. An estimate of the annual administrative charge will be accrued by Seattle Tilth upon signing of this Agreement and will be deducted from the Project's restricted fund periodically, but no less frequently than quarterly, over the term of this Agreement. From time to time FACN may request services above those included in the regular administrative fee. When the specific costs of these services are identified and agreed upon, Seattle Tilth will charge them directly to the Project's fund.

9. Employment: Unless otherwise agreed, and subject to their consent, all personnel to be compensated for working on the Project shall be at-will employees of Seattle Tilth and subject to the same personnel policies and benefits that apply to all employees of Seattle Tilth. FACN members are volunteers. FACN members are not employees of Seattle Tilth unless expressly agreed to by Seattle Tilth and the particular committee member.

COUNCIL CLERK

10. Fundraising: FACN may solicit gifts, contributions, and grants on behalf of Seattle Tilth which shall be earmarked for the activities of the Project. The funding sources of the Project and the text of the Project's letters of inquiry, grant applications, and other fundraising materials are subject to the prior approval of Seattle Tilth. Seattle Tilth's Executive Director must co-sign all original letters of inquiry, grant proposals, and grant agreements. All grant agreements, pledges, or other commitments with funding sources to support the Project shall be executed by Seattle Tilth. The cost of any reports or other compliance measures required by such funding sources shall be borne by the restricted fund of the Project. Seattle Tilth's Executive Director must be copied at least one week in advance on all progress and final report submissions. Seattle Tilth shall be responsible for the processing and acknowledgment of all monies received for the Project, which shall be reported as the income of Seattle Tilth for both tax purposes and for purposes of Seattle Tilth's financial statements. Grants involving government or public agency monies have substantial reporting and auditing requirements; therefore, if FACN desires to apply for government or public agency grants, FACN must get advance approval to do so from Seattle Tilth's Executive Director.

11. Performance of Charitable Purposes: All of the assets received by Seattle Tilth under the terms of this Agreement shall be devoted to the purposes of the Project, within the tax-exempt purposes of Seattle Tilth. Expenditures for any attempt to influence legislation within the meaning of IRC Section 501(c)(3) shall be subject to limitations imposed by Seattle Tilth. Seattle Tilth shall not use any portion of the assets to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to induce or encourage violations of law or public policy, to cause any private inurement or improper private benefit to occur, nor to take any other action inconsistent with IRC Section 501(c)(3). Seattle Tilth has determined that the restricted fund is not a donor-advised fund within the meaning of IRC Section 4966(d)(2) as presently interpreted under federal tax authorities.

12. Termination: Either Seattle Tilth or FACN may terminate this Agreement on 60 days' written notice to the other party and provided that another nonprofit organization has been identified that is: (i) acceptable to Seattle Tilth's Board of Directors; (ii) tax-exempt under IRC Section 501(c)(3); (iii) not classified as a private foundation under IRC Section 509(a); and (iv) willing and able to sponsor the Project (a "Successor"). (As used in this Paragraph, the word "able" shall mean that the Successor has charitable purposes compatible with the purposes of the Project and has the financial and administrative capacity to competently manage the Project.)

Seattle Tilth will transfer the following items to the Successor at the end of the notice period or any extension thereof, subject to subparagraphs (a) and (b) below: (i) the balance of assets in Seattle Tilth's restricted fund for the Project, after any administrative charges under Paragraph 8, (ii) any other tangible and intangible assets obtained by FACN from third parties or created by FACN in connection with the Project, and (iii) all outstanding liabilities incurred by Seattle Tilth or FACN in connection with the Project.

(a) If the Successor proposes to assume Seattle Tilth's obligations under the MOU and all other agreements related to the Project to which Seattle Tilth is a party, Seattle Tilth shall be obligated to transfer such assets and liabilities to the Successor only upon: (i) the Successor's written assumption of such agreements in a form acceptable to Seattle Tilth, (ii) the written consent to such assignment and assumption by all required third parties, including without limitation the City of Seattle or its Parks Department; and (iii) the written release and indemnification of Seattle Tilth from all future obligations under such agreements.

(b) If the Successor does not propose to assume Seattle Tilth's obligations under the MOU or any other agreement related to the Project to which Seattle Tilth is a party, Seattle Tilth shall not be obligated to transfer such assets and liabilities to the Successor until the MOU or other agreement is amended to reflect the changed circumstances, including but not limited to allocation of liability and risk, insurance requirements, and reasonable compensation to Seattle Tilth for its performance under such agreement.

If FACN qualifies as a Successor or has formed a new organization qualified to be a Successor as set forth in this Paragraph, such organization shall be eligible to receive all such assets and liabilities so long as it has received a determination letter from the Internal Revenue Service, indicating that such qualifications have been met, no later than the end of the notice period or any extension thereof. If no Successor is found, Seattle Tilth may dispose of the Project assets and liabilities in any manner consistent with applicable tax and charitable trust laws. Either party may terminate this Agreement, based upon a material breach of this Agreement by the other party, by giving 30 days' written notice to the other party, and any Project assets and liabilities shall be disposed of at the end of the notice period, but only in a manner consistent with the provisions stated above in this Paragraph. Termination of this Agreement shall not affect the validity or enforceability of any other agreement between the parties.

13. Miscellaneous: In the event of any controversy, claim, or dispute between the parties arising out of or related to this Agreement, or the alleged beach thereof, the prevailing party shall, in addition to any other relief, be entitled to recover its reasonable attorneys' fees and costs of sustaining its position. Each provision of this Agreement shall be separately enforceable, and the invalidity of one provision shall not affect the validity or enforceability of any other provision. This Agreement shall be interpreted and construed in accordance with the laws of the State of Washington. Time is of the essence of this Agreement and of each and every provision thereof. The failure of Seattle Tilth to exercise any of its rights under this Agreement shall not be deemed a waiver of such rights.

14. Entire Agreement. This Agreement constitutes the only agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. This Agreement may not be amended or modified, except in a writing signed by all parties to this Agreement.

15. Assignment. Neither party may directly, indirectly, or by operation of law, assign or transfer this Agreement without the written consent of the other party.

By signing below, both parties agree to execute this Agreement on the day and year first written above.

Seattle Tilth Association

Andrea P Dwyer
Name: Andrea Platt Dwyer
Title: Executive Director

2/7/12
Date:

Rainier Beach Urban Farm and Wetlands Preservation Project (Friends of Atlantic City Nursery)

Name:
Title: Co-Chair

2/2/12
Date:

Name: Peter Masundire
Title: Co-Chair

2-1-12
Date:

4813-2253-9790.02
64110.00002

Memorandum of Understanding
Between
Seattle Tilth and the Friends of Atlantic City Nursery

This Memorandum of Understanding ("MOU") dated February 3, 2012, represents a mutual understanding and agreement between SEATTLE TILTH ASSOCIATION, a Washington nonprofit corporation ("Seattle Tilth") and RAINIER BEACH URBAN FARM AND WETLANDS PRESERVATION PROJECT (FRIENDS OF ATLANTIC CITY NURSERY), a Washington nonprofit corporation ("FACN") for the planning, development, and implementation of the Rainier Beach Urban Farm and Wetlands Preservation Project (the "Project"). With respect to the project, FACN plans to use the name "Friends of Rainier Beach Urban Farm and Wetlands."

The primary purpose of the Project is developing the Atlantic City Nursery property into an urban agriculture center that can provide the community and organizations with opportunities for training, education and year-round food production. Seattle Tilth and FACN jointly submitted a proposal to the City of Seattle to develop the Project, which was accepted by City of Seattle.

The cooperation between Seattle Tilth and FACN under this MOU will facilitate the implementation of the Project, ensure broad community engagement, and clarify the specific roles and responsibilities of each party, beyond those already defined in the Fiscal Sponsorship Agreement executed by both parties.

I. General Responsibilities of Both Parties

By entering into this MOU, both parties agree to:

1. Continue to work together to secure approvals for the development and operation of the Project, and to plan and implement site programs and capital improvements.

2. Comply with the terms of all contracts and agreements regarding the Project that are signed by both FACN and Seattle Tilth.

3. Identify, cultivate, and maintain positive relations with key donors and other parties involved in the Project, including Seattle Parks and Recreation.

4. Collaborate to raise funds necessary for the implementation and ongoing operations of the Project.

5. Develop program metrics and outcomes, and monitor those agreed upon measures to ensure satisfactory program performance.

II. Specific Roles and Responsibilities of Each Party

A. By entering this MOU, FACN agrees to:

1. Act as a community oversight committee consisting of community representatives who will exercise watchful care over the Project, provide advice and guidance to the Seattle Tilth staff and board of directors, as well as community outreach, regarding the Project (the "Community Oversight Committee"). More details regarding the Community Oversight Committee are set forth in Section III below.

COUNCIL CLERK

2. Submit the names of two candidates to serve on the Seattle Tilth board of directors and regularly maintain representation on the Seattle Tilth board. This requirement will be implemented at a future date to be mutually determined.

3. Submit regular reports and recommendations regarding the Project, in its role as the Community Oversight Committee for the Project, to the board of directors and Executive Director of Seattle Tilth.

4. Respond to specific requests for information and reports from the board of directors or Executive Director of Seattle Tilth regarding the Project.

B. By entering into this MOU, Seattle Tilth agrees to:

1. Ensure that two seats on the Seattle Tilth board of directors are available for representatives from the Community Oversight Committee at a mutually agreeable date.

2. Include recommendations, reports, and other information from the Community Oversight Committee to the Seattle Tilth board of directors in the materials provided to board members in advance of board meetings.

3. Manage the finances of the Project, and make financial reports available to FACN on a periodic basis.

4. Serve as the lead operator of the Project, with input and guidance from FACN.

III. Community Advisory Committee

FACN will act as a community oversight and outreach committee for the Project, and will collaborate and provide input to Seattle Tilth with respect to the Project. The Community Oversight Committee shall consist of no fewer than five individuals. Community volunteers are encouraged to serve on the Community Oversight Committee. Two (2) of FACN members may serve as directors on Seattle Tilth's board of directors, subject to the approval of each individual by the Seattle Tilth board of directors, and in compliance with Seattle Tilth's existing governance documents and policies.

IV. Governance/Decision-Making Process

Decisions will be made through consensus and collaboration. However, in the event of a conflict, a small group will be convened to discuss and resolve the issue. The small group will consist of the following:

- three FACN representatives, including the chair or co-chairs
- Seattle Tilth's board president
- one other officer from the Seattle Tilth board
- Seattle Tilth's Executive Director

In the event that an agreement cannot be reached, the parties agree to seek help from a neutral arbitrator, such as the King County Dispute Resolution Center.

V. Terms of MOU

This MOU is effective on the date first written above. It shall remain effective as long as Seattle Tilth and FACN are both parties to the Management and Operating Agreement with the City of Seattle Department of Parks and Recreation regarding the Project, unless terminated earlier by mutual agreement of the parties. This MOU will be reviewed annually by the signing parties. Amendments will be made as deemed necessary and agreed to by the representatives of the signing parties.

SEATTLE TILTH

Signature/Board President

Justine Dell'Aringa
Printed Name

Signature/Executive Director

ANDREA P. DWYER
Printed Name

FACN

Signature/Co-Chair

Harry Hoffman
Printed Name

Signature/Co-Chair

Peter K. Masundire
Printed Name

Rita Hollomon/CN
DPR Atlantic City Nursery ORD ATT 1 EXH D
March 22, 2012
Version #2

Exhibit D – Premises
Atlantic City Nursery Property

Form revised: December 6, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Parks and Recreation	Rita Hollomon/ 684-8008	Amy Williams/ 233-2651

Legislation Title:
AN ORDINANCE relating to the City of Seattle's Department of Parks and Recreation and Atlantic City Nursery; authorizing the Superintendent to enter into a five-year agreement, with options to extend, with Seattle Tilth and the Friends of Rainier Beach Urban Farm and Wetlands to operate and provide management of the Atlantic City Nursery located at 5513 S. Cloverdale Street, Seattle, WA 98118.

Summary of the Legislation:
The proposed legislation authorizes the Department of Parks and Recreation (DPR) to enter into a five-year agreement with Seattle Tilth, a Washington non-profit corporation, and the Friends of Rainier Beach Urban Farm and Wetlands for the development and operation of the nursery and buildings at the Atlantic City Nursery. The proposed agreement includes two five-year options to extend the agreement at the discretion of DPR.

Background:
The 72-year old Atlantic City Nursery is an almost 10-acre parcel located between Beer Sheva Park and the Pritchard Island Wetlands in the Rainier Beach neighborhood. The south end of the nursery meets Lake Washington and the entire site was once part of the Dunlap Slough, which disappeared when the lake was lowered by nine feet when the Ship Canal opened in 1916. Various City departments have used this location to grow trees and ornamental plants, and for the past 50 years the nursery provided much of DPR's horticulture needs. The nursery's structures include two functioning greenhouses, three shade houses, a small office, a tool shed, and some open work space. The remainder of the nursery encompasses two acres of wetlands restored by Sound Transit for light rail mitigation and about six acres of open space, most of it covered with non-native grasses and weeds.

In 2009, DPR decided to consolidate its horticultural operations in a single site at Jefferson Park on Beacon Hill and to close the Atlantic City Nursery. Through a community process that included several neighborhood meetings and review by the Board of Park Commissioners, a Use Plan was developed. The Plan recommended that the site be used for urban agriculture, public access, and wetland preservation. The intent was to contract with an experienced nonprofit to provide for the overall management and operation of the nursery. Since the first public hearing in December 2009, community support for this approach has grown with multiple endorsements for the Use Plan from local businesses, service clubs, nonprofit organizations, and over 100 South Seattle community members.

In 2011, the City conducted a publicly-advertised Request for Proposals (RFP) process to select an operator to manage the site. The joint proposal from Seattle Tilth and Friends of Rainier Beach Urban Farm and Wetlands was the only response received. After evaluation by a review panel, the panel determined the proposal met the RFP review criteria and was judged advantageous to the City.

Per the terms of the agreement, Seattle Tilth and Friends of Rainier Beach Urban Farm and Wetlands (the Operators) will be subject to a $41,000 use fee for the site. They can offset up to $40,000 of this amount by providing public benefits to the extent that these programs support the public mission. If the Operators produce events or programs that are commercial in nature and are not related to the public mission (such as an auto show, corporate or business rental, third party rentals for weddings, birthdays, etc.) then that would not be offset to the fair market rent and the Operators would pay a percentage of the rental fee to the Department. Eligible public benefits include the provision of community programs and scholarships for those programs approved by DPR. Additional public benefits in the form of security and community building will occur from the operators' ongoing presence at the site.

Seattle Tilth is acting as the fiscal agent for this Agreement and is responsible for all financial and tax reporting purposes. The Operators, at no costs to the Department, are responsible for any and all major maintenance and minor repairs required at the site and under their jurisdiction. The Operators are specifically responsible for: winterizing the irrigation system; removal of snow or removal of the poly/shade cloth from the greenhouse structures during winter months; upland mowing; maintaining the wetlands; stabilizing ground cloth on the fields; and maintaining the perimeter service road. The Department will not be responsible for any maintenance on the premises. The Operators, without charge to the City, will also be responsible for all utilities and waste removal expenses.

The agreement also calls for a one time capital investment to be funded by the City through the first round of the 2008 Parks and Green Spaces Levy Opportunity Fund (Ordinance 123560, March 2011). The City and Operators will work together to conduct a Public Involvement Process (PIP) with the objective of soliciting feedback from the neighborhood communities and stakeholders of the Site regarding what types of improvements are appropriate and within the available budget in the Department's Capital Improvement Program Budget for the site.

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

_X__ **This legislation has financial implications.**

Appropriations: N/A

Fund Name and Number	Department	Budget Control Level*	2012 Appropriation	2013 Anticipated Appropriation
TOTAL	N/A	N/A	N/A	N/A

Appropriations Notes:

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2012 Revenue	2013 Revenue
Park and Recreation Fund (10200)	Parks and Recreation	Income from base fee payment	$750	$1,000
TOTAL			**$750**	**$1,000**

Revenue/Reimbursement Notes:
The use fee for the Atlantic City Nursery site is $40,000 annually, plus a $1,000 annual base fee. The agreement allows the operators to offset the use fee with public benefits for the community and DPR. Such offsets are called Service Credits and are to be approved in writing by DPR before use by the operators. Service Credits are expected to fully offset all use fees assessed except for the $1,000 base fee.

This legislation will result in $750 of revenue in 2012 from the beginning of the proposed agreement in May through December 31 based on a minimum base payment of $1,000 per year. The new agreement will also transfer utility costs for the premises to the operators, which will result in a cost savings to DPR an average of $3,500 to $5,000 per year as well as savings in maintenance and operation costs of $10,000 annually.

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	2012 Positions	2012 FTE	2013 Positions*	2013 FTE*
TOTAL	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**

Position Notes:

Do positions sunset in the future? N/A

Spending/Cash Flow: N/A

Fund Name & #	Department	Budget Control Level*	2012 Expenditures	2013 Anticipated Expenditures
TOTAL	**N/A**	**N/A**	**N/A**	**N/A**

Spending/Cash Flow Notes:

COUNCIL CLERK

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?** No.

b) **What is the financial cost of not implementing the legislation?** The proposed five-year agreement would save DPR at least $10,000 annually or $50,000 in operation and maintenance costs over the term of the initial five-year agreement. These savings will continue if DPR agrees to the two possible five-year extensions.

c) **Does this legislation affect any departments besides the originating department?** No.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** There are none.

e) **Is a public hearing required for this legislation?** No.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** No.

g) **Does this legislation affect a piece of property?** Yes, the Atlantic City Nursery located at 5513 S. Cloverdale St.

h) **Other Issues:** None.

List attachments to the fiscal note below:

Attachment A: Contract Summary Form

COUNCIL CLERK

Charles Ng/RH
DPR Atlantic City Nursery
March 22, 2012
Version #2

Attachment A
Seattle Department of Parks and Recreation

CONTRACT SUMMARY

March 22, 2012

Name of Contracting Party/ Lessee/ Concessionaire/Other: Seattle Tilth and the Friends of Rainier Beach Urban Farm and Wetlands

Contract Type: Agreement

Non-Profit _X_ or **For Profit**_____

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

Term of Original Agreement: Five years with an option for two five-year extensions at the option of the Superintendent.

Purpose of Agreement: To enter into a five-year agreement with Seattle Tilth and the Friends of Rainier Beach Urban Farm and Wetlands for the development and operation of the site and buildings at Atlantic City Nursery.

Public Benefit: Seattle Tilth and the Friends of Rainier Beach Urban Farm and Wetlands will undertake site improvements, including construction, development, and operation of the site and buildings. The operators will also encourage participation by a wide range of diverse individuals living in the neighborhood, manage youth development programs in partnership with DPR, coordinate volunteer work parties, provide classes, workshops, family, and community events for local organizations, neighborhood groups, individuals, and families.

Brief description, overview, history, general terms and other pertinent info:
The Atlantic City Nursery provided plants and trees for DPR for 50 years. After DPR's consolidation of horticulture at Jefferson Park, the nursery was closed. Through a public process a Use Plan was developed recommending the site be used for urban agriculture, community access, and wetland preservation.

COUNCIL CLERK

City of Seattle
Office of the Mayor

July 17, 2012

Honorable Sally Clark
President
Seattle City Council
City Hall, 2nd Floor
Seattle, WA 98104

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill which authorizes the Superintendent of Parks and Recreation (DPR) to enter into an agreement for the operation and management of the City's Atlantic City Nursery located in the Rainier Beach neighborhood at 5513 S. Cloverdale Street. The Ordinance authorizes a five-year agreement with Seattle Tilth and the Friends of Rainier Beach Urban Farm and Wetlands, with two five-year options to extend.

Prior to 2009, DPR owned and operated the Atlantic City Nursery to house part of its horticultural operation. In 2009, DPR decided to consolidate its horticultural operations in a single site at Jefferson Park on Beacon Hill, and closed the 72-year-old Atlantic City Nursery in 2010. Through 2009 and 2010, DPR conducted a public process that included community meetings and review by the Board of Park Commissioners to determine the best future use for the nursery. The public process resulted in a Use Plan approving use of the nursery for public access, urban gardening, and wetland preservation with management by a nonprofit partner. In February 2011, DPR completed a Request for Proposal (RFP) process to select the management partner. One response to the RFP was received, a joint proposal from Seattle Tilth and the Friends of Rainier Beach Urban Farm and Wetlands. An evaluation panel concluded that the proposal met the RFP review criteria and was judged advantageous to the City. The resulting operating agreement provides for a wide range of public benefit activities as well as maintenance obligations that allow the Department to keep the facility programmed without requiring any ongoing city staff or maintenance commitments.

Approval of this legislation will provide gardening and educational opportunities for the surrounding neighborhood as well as bring site improvements to the premises. Thank you for your consideration of this legislation. Should you have questions, please contact Charles Ng at 684-8001.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
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