

CITY OF SEATTLE
ORDINANCE 126750
COUNCIL BILL 120489

AN ORDINANCE authorizing The City of Seattle, through Seattle Parks and Recreation, to enter into an agreement with the Arboretum Foundation for support of the Seattle Japanese Garden consistent with the Non-Government Agreement in Attachment 1 to this ordinance.

WHEREAS, Seattle Parks and Recreation (“SPR”) desires to develop the Seattle Japanese Garden (“Garden”), located within the Washington Park Arboretum (“Arboretum”), to ensure its long-term sustainability and preserve the cultural connection the Garden provides; and

WHEREAS, in 2014 SPR and the Japanese Garden Society undertook an Optimal Operations Study (“Study”) to determine how best to operate and support the Garden, and the Study concluded that operation by a nonprofit entity would best serve the Garden’s long-term needs; and

WHEREAS, the Arboretum Foundation (“Foundation”), a Washington nonprofit corporation, was selected in 2016 to support the Garden through programming, marketing, membership support, event delivery, marketing, and fundraising; and

WHEREAS, SPR’s Superintendent was authorized to enter into an agreement with the Foundation via Ordinance 124979; and

WHEREAS, the Foundation, in partnership with SPR, has worked since 2016 to provide high quality educational and culturally relevant community programs and events, and significantly fundraise for capital projects, at the Garden in an effort to leverage resources and to expand access and improve the user experience at the Garden; and

1 WHEREAS, at the conclusion of the initial agreement the Foundation was selected by SPR
2 through a Letter of Interest application process to continue fundraising, event, and
3 program support for the Garden and has committed to providing substantial public
4 benefits in the new agreement; and

5 WHEREAS, the City desires to enter into a new agreement to continue its productive working
6 relationship with the Foundation to enhance the operations and sustainability of the
7 Garden as authorized by the attached Non-Government Agreement; NOW,

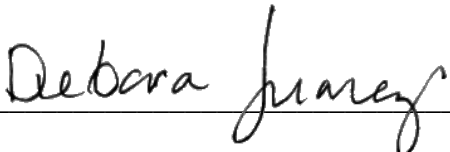
8 THEREFORE,

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


10 Section 1. The Superintendent of Parks and Recreation or the Superintendent's designee
11 is authorized for and on behalf of The City of Seattle to negotiate an agreement with the
12 Arboretum Foundation for support of the Seattle Japanese Garden operation that is consistent
13 with the terms and conditions contained in Attachment 1 to this ordinance.

1 Section 2. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within 10 days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.


4 Passed by the City Council the 10th day of January, 2023,
5 and signed by me in open session in authentication of its passage this 10th day of
6 January, 2023.

7 
8 _____
President _____ of the City Council

9 Approved / returned unsigned / vetoed this 13th day of January, 2023.

10 
11 _____
Bruce A. Harrell, Mayor

12 Filed by me this 13th day of January, 2023.

13 
14 _____
Elizabeth M. Adkisson, Interim City Clerk

15 (Seal)

16 Attachments:
17 Attachment 1 – Non-Government Agreement for the Support and Development of the Seattle
18 Japanese Garden between The City of Seattle Acting By and Through Seattle Parks and
19 Recreation and the Arboretum Foundation
20



Attachment 1
Non-Government Agreement for the Support and Development of the Seattle Japanese Garden
Between
THE CITY OF SEATTLE
ACTING BY AND THROUGH
SEATTLE PARKS AND RECREATION
And
THE ARBORETUM FOUNDATION

THIS AGREEMENT for the Support and Development of the Seattle Japanese Garden (Agreement) is dated _____, 2022 and is entered into by and between The City of Seattle (City), a Washington municipal corporation, through Seattle Parks and Recreation (SPR), as represented by the Superintendent; and the Arboretum Foundation (Foundation), a nonprofit organization of the State of Washington and authorized to do business in the State of Washington.

WHEREAS, The Seattle Japanese Garden (Japanese Garden), an important educational and cultural park space for the community, is located in the Washington Park Arboretum and is owned and operated by SPR; and

WHEREAS, SPR is committed to offering safe and welcoming opportunities for residents and visitors to play, learn, contemplate and build community; and

WHEREAS, SPR and the Foundation entered into a six-year Support and Development Agreement for the Japanese Garden on January 16, 2016 which supported increased attendance, expanded programming and community access, and private fundraising on behalf of the Japanese Garden; and

WHEREAS, SPR and the Foundation entered into a one-year extension of the 2016 Agreement on November 3, 2021 due to pandemic-related operating uncertainties; and

WHEREAS, the Foundation is well-known and supported by the community, with a proven track record in marketing, fundraising, endowment, event coordination and membership support, all of which are characteristics recommended in the SPR's 2014 Optimal Operations Study for a support organization for the Japanese Garden; and

WHEREAS, SPR and the Foundation desire to further develop the Japanese Garden, improve the visitor experience, and increase equity and access; and

WHEREAS, SPR and the Foundation share a commitment to value, respect and expand on the Japanese Garden's traditional emphasis on culturally relevant events and activities and a goal of increasing the public benefit of the Japanese Garden to the community as further detailed in Exhibit A; and

WHEREAS, SPR and the Foundation desire to utilize each other’s expertise to ensure the Japanese Garden has a long and sustainable future;

NOW, THEREFORE, SPR and the Foundation agree to the following:

1. TERM OF AGREEMENT:

The term of this agreement shall commence on January 1, 2023, and shall terminate no later than December 31, 2032 unless SPR and the Foundation agree in writing to extend the term of the Agreement for no more than five years on or before September 30, 2032.

2. ROLES, RESPONSIBILITIES AND FINANCIAL STRUCTURE

SPR is engaging the Foundation to support the Japanese Garden as an independent entity. The parties will be acting in their individual capacities, not as agents, employees, partners, joint ventures or associates of one another. The roles and responsibilities of the two parties are outlined below:

Category	Seattle Park and Recreation (SPR) shall:	Arboretum Foundation (Foundation) shall:
General		
Mutual Recognition	Recognize the Foundation as the primary support organization for the Seattle Japanese Garden for the duration of this Agreement, responsible for programming, operating and conducting events, fundraising, membership program, volunteer coordination, branding and marketing subject to SPR oversight and approval and consistent with City park policy.	Recognize SPR, acting on behalf of the City, as the owner and operator of the Japanese Garden.
Roles	Operate, maintain, and manage the Japanese Garden including grounds, entry gatehouse and buildings associated with the garden.	In close collaboration with SPR, assume the role as the primary nonprofit support organization for the Japanese Garden, responsible for programming, operating and conducting events, fundraising, membership program, volunteer coordination, branding and marketing.
Policy Development	Provide input and guidance on policy issues when requested by the Foundation. Review and provide additional clarity if necessary for policies regarding the garden rental fee, alcohol rules for sponsorship events, and inclement weather policies. Review donor recognition	Provide input and support to SPR on policy issues pertinent to the Japanese Garden and communication of these policies to the public. Provide input to SPR on appropriate donor recognition and support implementation.

	policies as applied to the Japanese Garden.	
Steering Committee	Participate in Japanese Garden Steering Committee meetings.	Support the Japanese Garden Steering Committee under the Arboretum Foundation Board of Directors that will meet 8-10 times annually to discuss public programming, marketing, fundraising, capital projects, endowment support, equity, and membership programs.
Finance		
Revenue Sharing (Exhibit C includes a revenue sharing summary)	<p>Retain the first \$425,000 of gate revenue annually which will include daily admission, membership and other agreed on categories of revenue excluding merchandise and donations. \$3,600 of the above amount is assumed to cover SPR staffing for approximately 2-4 Foundation fundraising events.</p> <p>Retain 50% of all gate revenue annually from \$500,001-\$750,000.</p> <p>Retain 40% of all gate revenue annually beyond the first \$750,000.</p> <p>City payment of Annual Support Payment and additional payments below shall be contingent on City legislative appropriation of funding sufficient for such payment. The Superintendent will request such annual appropriation from City Council.</p> <p>On a semi-annual basis, SPR will provide to Foundation a report of attendance at the Japanese Garden and gate revenue received, along</p>	<p>Provide event reports, year-end financials, and an annual report to SPR. In January of each year provide a work plan to SPR. The annual report shall include a reporting of public benefits included in Exhibit A.</p>

	<p>with the balance of annual gate revenue not retained by SPR (“Gate Percentage Share”) as set out above.</p> <p><u>Mid-Year Payment:</u> SPR will pay the Foundation \$75,000 in Annual Support Payment through one payment of \$75,000 in July along with any donations and merchandise revenue collected for the months of January through June.</p> <p><u>End-of-Year Payment:</u> By January 10th of each year, SPR will pay Foundation 50% share of gate revenue earned between \$500,001-\$750,000 plus 60% of any additional gate revenue earned beyond \$750,000, along with any donations and merchandise revenue collected July-December.</p>	
<p>Fees and Charges</p>	<p>After consultation with Foundation and community stakeholders, set bi-annual fees and charges for Japanese Garden entry and programs for Seattle City Council review and approval. The City will strive to balance equity, access, sustainability, and revenue goals in determining fee levels.</p>	<p>Support SPR in the development of bi-annual fees and charges that balance equity, access, sustainability, and revenue goals.</p>
<p>Membership</p>	<p>Approve a membership program. Work collaboratively with Foundation to offer and grow a membership program. Agree annually on a communication plan for members. Evaluate results of membership options study and consider alternative membership program options.</p>	<p>Develop and implement a Japanese Garden membership program with agreement from SPR about the annual pass and membership fee structure. Work collaboratively with SPR to offer and grow a membership program. Develop and administer membership benefits. Agree annually on a communication plan for members. Sponsor study to evaluate alternate membership options.</p>

<p>Fundraising</p>	<p>So long as fundraising revenue continues to be deployed to Japanese Garden programming and/or capital needs, SPR will provide the Tateuchi Room, entrance plaza or Garden free of charge for an agreed upon number of days and times per year for fundraising and donor recognition purposes. Provide an agreed upon number of day passes to the Foundation for Japanese Garden fundraising purposes.</p>	<p>Work with SPR to develop a fundraising/endowment/asset preservation plan for the Japanese Garden and recognition program to support garden programming, maintenance, capital improvements, and special projects.</p>
<p>Fundraising Event Support</p>	<p>Events other than the Moon Viewing and Garden Party (or similar separately ticketed events up to four events a year) will be considered shared revenue generating events and included in the semi-annual calculation for revenue sharing. New events or changes in the existing event calendar will need to be approved by both parties. For fundraising events, provide parking support, pre-event coordination and maintenance, and post-event clean up assistance.</p>	<p>Moon Viewing and Garden Party or similar separately ticketed events will be revenue-generating events for the Foundation, up to four a year unless otherwise agreed. New events or changes in the existing event calendar will need to be approved by both parties. Provide on-line ticketing for revenue-generating events for the Foundation. Provide event staff and equipment as necessary. Provide after-event reports to Steering Committee. Provide \$3,600 annual staffing allowance for fundraising event support, which is incorporated in the base amount retained by SPR as part of the overall revenue settlement.</p>
<p>Merchandise</p>	<p>At SPR’s reasonable discretion, sell merchandise to members of the public through the Gatehouse point-of-sale system. Remit merchandise proceeds to Foundation (less sales taxes) as part of bi-annual settlement process. Retain 10% of revenues to support administrative expenses.</p>	<p>Work with Unit 86 Garden volunteers to approve, manage, update, and maintain merchandise. 10% of annual merchandise revenue will go to SPR as part of the bi-annual settlement process.</p>
<p>Programs</p>		

<p>Coordination</p>	<p>Agree to coordination meeting plan that supports the operations and programming of the Japanese Garden including pre and peak season.</p> <p>Provide at least an annual collaboration opportunity with key SPR leadership contact, at SPR Division Director or equivalent staff level.</p>	<p>Agree to coordination meeting plan that supports the operations and programming of the Japanese Garden including pre and peak season. Solicit input on monthly Steering Committee agenda items.</p> <p>Attend collaboration opportunity with SPR Division Directors or equivalent staff level.</p> <p>Agree to annual performance measures.</p>
<p>Education and Cultural Enrichment Programs</p>	<p>SPR and the Foundation will agree on an annual “free access” calendar for use of the Tateuchi Room, Tea House and Japanese Garden for cultural enrichment and education programs.</p> <p>Agree on operational hours and number of days available for this purpose.</p>	<p>SPR and the Foundation will agree on an annual “free access” calendar for use of the Tateuchi Room, Tea House and Japanese Garden for cultural enrichment and education programs. Develop a public education and cultural enrichment program.</p> <p>Provide a draft event calendar for the following year by the end of October each year. Align program metrics with public benefit, equity, and access goals. Provide post programming write-ups to support internal and external messaging.</p>
<p>Tea Groups</p>	<p>Sell tickets to public tea ceremonies through the Gatehouse point-of-sale system. Enter into agreements with third-party tea groups as appropriate and consistent with then-current City parks policies.</p>	<p>Work with local tea groups to offer public and private tea ceremonies in the Shoseian Tea House on a regular schedule.</p>
<p>Staffing</p>	<p>City will be responsible for cashier operations including facility rentals, and for a minimum of 0.5 FTE supervisory support.</p>	<p>Provide a Japanese Garden Program Manager. Provide additional staffing as needed to support programming, events, fundraising, marketing, membership and tour guide coordination.</p>

Alcohol	Review and determine in SPR’s reasonable discretion, based on then-current City parks policies, whether to approve an annual schedule of events including alcohol sales or service presented by the Foundation.	Submit an annual schedule of events including alcohol sales or service to SPR for review.
Volunteers	Provide training and onsite support for maintenance volunteers. Provide safety training for garden volunteers.	Recruit, coordinate and train volunteers and tour guides. Organize public and private tours. Recruit maintenance stewards. Provide quarterly total volunteer hours.
Community Access and Outreach	Work with the Foundation to develop an annual community outreach plan that supports the SPR’s Race and Social Justice Initiative (RSJI) and goals related to equity and access. These opportunities include free first Thursdays, Family Saturdays, Seattle Public School outreach and new community outreach initiatives.	Work with SPR to develop an annual community outreach plan that supports the Foundation’s and SPR’s goals related to public benefits, equity, and access. These opportunities include free first Thursdays, Family Saturdays, Seattle Public School outreach, and new community outreach initiatives.
Marketing	Work with the Foundation to maintain consistent branding and a mission statement.	Work with the SPR to maintain consistent branding and a mission statement. Develop and implement a branding and marketing strategy. Maintain a robust social media presence. Coordinate with SPR and City communications team as relevant.
Website and Social Media	Maintain the Japanese Garden website on the SPR site and ensure it is linked to the Japanese Garden website that is maintained by the Foundation.	Maintain a Japanese Garden website. Maintain and grow the Garden’s social media presence. Provide timely edits and updates.
Infrastructure		

<p>Capital Improvements</p>	<p>Develop and maintain a prioritized list of periodic maintenance and Capital Improvement Projects and potential matching fund sources. SPR will maintain discretion to determine whether and when capital improvement projects are necessary and desirable at the Japanese Garden except where authority is otherwise provided by the Arboretum and Botanical Garden Committee under the Master Plan.</p>	<p>Work with SPR on prioritizing Capital Improvement Project funding and completion of special projects. When so requested by SPR, provide funds to SPR or SPR-approved vendors per mutual agreement in support of approved projects. Comply with applicable federal, state and City public works laws and regulations, including bidding and prevailing wage requirements.</p>
<p>Japanese Garden Closures</p>	<p>Recognize both parties are aligned in attempting to schedule planned closures in a manner to limit impacts on access, revenues, and programs. Consult with the Foundation, in advance when possible, regarding proposed closures to receive input about stakeholders about impacts and ways to minimize negative effects of any closures SPR determines to be necessary.</p>	<p>Provide input to SPR on potential closures and support communication about closures, recognizing optimal closure times can be impacted by moving variables such as garden conditions, resource availability, city and federal laws, and related factors.</p>
<p>Tateuchi Room Use and Rental</p>	<p>Provide Tateuchi Room rental and usage for the Foundation on an agreed upon schedule.</p>	<p>Work with SPR to develop a calendar for Tateuchi Room rental.</p>
<p>Computers, Tech, Workspaces</p>	<p>SPR will provide internet connections and collaborate with Foundation on identifying regular workstation dates and times for Foundation staff at the Japanese Garden as available.</p>	<p>Foundation will provide computers and technology for Foundation staff.</p>
<p>Safety Plan</p>	<p>Work with SPR’s Emergency Manager to develop and revise Japanese Garden Safety Plan, including emergency egress in the back of the Garden. Provide training opportunities for staff and volunteers. Post safety information in Tateuchi Room and other Garden locations.</p>	<p>Support SPR in the development and communication of a Japanese Garden Safety Plan. Collaborate with SPR on safety training.</p>

3. NONDISCRIMINATION

The parties agree to and 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. Failure to comply with any of the terms of these provisions shall be a material breach of this permit.

4. INDEMNIFICATION

The City hereby agrees to indemnify, save harmless and defend Foundation from any and all losses, claims, actions or damage arising out of bodily injury or death to persons and damage to property suffered by any person or entity by reason of or resulting from any act or omission of the City or any of its officers, agents, or employees in connection with use or occupancy of the Property; but only to the extent such claims, actions, costs, damages or expenses are caused by the negligence or intentional misconduct of the City, its authorized officers, agents, or employees. The indemnification provided for in this section shall survive any termination or expiration of this Agreement. The City's obligations under this indemnification Section 4 shall not exceed the appropriation authorized at the time the City must fulfill its indemnity obligations and nothing in this Agreement may be considered as ensuring that the City will appropriate sufficient funds in the future to fulfill its indemnity obligations. Appropriated funds that are subject to this indemnity obligation include, but are not limited to, funds in the City's self-insurance program and in the Judgment Claims Subfund (00126) established by Ordinance 124088, and future moneys appropriated for the same purposes.

The Foundation hereby agrees to indemnify, save harmless and defend the City from any and all losses, claims, actions or damages arising out of bodily injury or death to persons and damage to property suffered by any person or entity by reason of or resulting from any act or omission of Foundation or any of its officers, agents, or employees in connection with use or occupancy of the Property but only to the extent such claims, actions, costs, damages or expenses are caused by the negligence or intentional misconduct of Foundation, its authorized officers, agents, or employees. The indemnification provided for in this section shall survive any termination or expiration of this Agreement.

5. INSURANCE

A. STANDARD INSURANCE COVERAGES AND LIMITS OF LIABILITY REQUIRED:

- 1. Commercial General Liability (CGL)** or equivalent insurance including coverage for:
Premises/Operations, Products/Completed Operations, Personal/Advertising Injury, Contractual and top Gap/Employers Liability (coverage may be provided under a separate policy). Minimum limit of liability shall be
\$ 2,000,000 each occurrence Combined Single Limit bodily injury and property damage ("CSL")
\$2,000,000 Products/Completed Operations Aggregate
\$4,000,000 General Aggregate
\$2,000,000 each accident/disease—policy limit/disease—each employee stop gap/Employer's Liability
\$2,000,000 Liquor Liability (hosted)

2. Commercial General Automobile Liability insurance for owned, non-owned, leased or hired vehicles, as applicable, written on a form CA 00 01 or equivalent with minimum limits per accident for bodily injury and property damage of:

\$1,000,000 for each occurrence

3. Worker's Compensation insurance for Washington State as required by Title 51 RC.

- B. CHANGES IN INSURANCE REQUIREMENTS:** The City shall have the right to periodically review the adequacy of coverages and/or limits of liability in view of inflation and/or a change in loss exposures and shall have the right to require an increase in such coverages and/or limits upon ninety (90) days prior written notice to Foundation.
- C. CITY AS ADDITIONAL INSURED; PRODUCTS-COMPLETED OPERATIONS:** Foundation shall include “the City of Seattle” as an additional insured to all of the insurance coverage listed and checked above in Sections A (except workers comp); which must also be as primary and non-contributory with any insurance or self-insurance coverage or limits of liability maintained by the City, and in the form of a duly issued additional insured endorsement and attached to the policy or by the appropriate blanket additional insured policy wording, and in any other manner further required by Foundation’s insurance coverage to provide the City of Seattle additional insured coverage as set forth herein.
- D. NO LIMITATION OF LIABILITY:** Insurance coverage and limits of liability as specified herein are minimum coverage and limit of liability requirements only. Nothing in the City of Seattle’s requirements for minimum insurance coverage shall be interpreted to limit or release liability of the FOUNDATION or any of the FOUNDATION’s insurers. The City shall be an additional insured as required in paragraph C. regarding the total limits of liability maintained, whether such limits are primary, excess, contingent or otherwise.
- E. REQUIRED SEPARATION OF INSURED PROVISION; CROSS-LIABILITY EXCLUSION AND OTHER ENDORSEMENTS PROHIBITED:** FOUNDATION’s insurance policy shall include a “separation of insureds” or “severability” clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer’s liability. FOUNDATION’s insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under the FOUNDATION’s insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Foundation’s failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Contract with the City of Seattle; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by Foundation or reduced and/or offset against the Contract.
- F. NOTICE OF CANCELLATION:** The above checked insurance coverages shall not be canceled by Foundation or Insurer without at least forty-five (45) days written notice to the City, except ten (10) days’ notice for non-payment of premium.
- G. CLAIMS MADE FORM:** If any insurance policy is issued on a “claims made” basis, the retroactive date shall be prior to or coincident with the effective date of the Contract. The Foundation shall

either maintain "claims made" forms coverage for a minimum of three years following the expiration or earlier termination of the Contract, providing the City with a Renewal Certificate of Insurance annually; purchase an extended reporting period ("tail") for the same period; or execute another form of guarantee acceptable to the City to assure the Foundation's financial responsibility for liability for services performed.

H. INSURER'S A.M. BEST'S RATING: Each insurance policy shall be issued by an insurer rated A-: VII or higher in the A.M. Best's Key Rating Guide.

I. EVIDENCE OF INSURANCE (NOT APPLICABLE TO WORKERS COMPENSATION): Foundation must provide the following evidence of insurance:

- a) A certificate of liability insurance evidencing coverages, limits of liability and other terms and conditions as specified herein;
- b) An attached City of Seattle designated additional insured endorsement or blanket additional insured wording to the CGL or other additional insurances required.

At any time upon the City's request, Foundation shall also cause to be timely furnished a copy of declarations pages and schedules of forms and endorsements. In the event the City tenders a claim or lawsuit for defense and indemnity invoking additional insured status, and the insurer either denies the tender or issues a reservation of rights letter, Foundation shall also cause a complete and certified copy of the requested policy to be timely furnished to the City of Seattle. A copy of the insurance ACORD shall be provided to SPR no later than 30 days following mutual execution of this permit.

6. AMENDMENT

Both parties agree any proposed changes concerning the terms and conditions of this Agreement must be requested in writing, negotiated in good faith, and memorialized and approved by both parties in writing. Assignment to a successor organization shall be permitted only by approval of both parties in writing.

7. DISPUTE RESOLUTION

Any disputes or misunderstandings that may arise under the Agreement shall first be resolved through amicable negotiations, if possible, between the Superintendent or SPR representative and the Foundation Executive Director. If such parties do not agree upon a decision within a reasonable period of time, the parties may pursue other legal means to resolve such disputes, including but not limited to alternative dispute resolution processes. Any and all such dispute resolution proceedings shall take place in the State of Washington.

8. COMPLIANCE WITH LAW: VENUE

Both parties shall comply with all applicable laws of the United States and the state of Washington; the Charter, Municipal Code and ordinances of The City of Seattle, and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.

9. ANNUAL REVIEW

Annual reviews will be conducted during or before the month of January by SPR and the Foundation. Both parties will assess compliance with the financial arrangement, review annual revenues, attendance and membership, programming and fundraising and levels of donor participation. Both parties reserve the right to agree on reasonable adjustments of this Agreement to ensure a successful base of support for the Japanese Garden. SPR and the Foundation will develop performance measures for the next year based on information gathered in the annual review.

10. TERMINATION

A. Breach. SPR may terminate this Agreement if Foundation is in material breach of any of the terms of this Agreement, and such breach has not been corrected to SPR's reasonable satisfaction within 60 days following notice of the breach.

B. SPR' Breach. Foundation may terminate this Agreement if SPR is in material breach of any of the terms of this Agreement, and such breach has not been corrected to Foundation's reasonable satisfaction within 60 days following notice of the breach.

For Reasons Beyond Control of Parties or Performance Substantially Below Expectations: Either party may terminate this Permit where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control such as but not limited to an act of nature; war or warlike operation; civil commotion; riot; labor dispute including strike, walkout, or lockout; sabotage; or superior governmental regulation or control or where performance has been substantially below expectations as determined by the annual performance review. The performance measures would include the financial expectations of both parties, membership and attendance goals for the Japanese Garden, days Japanese Garden open to the public, reasonable fees and charges, and donor and volunteer participation. Sixty (60) day notice of termination will be provided within four weeks of the annual review.

In the event of the Agreement being terminated before the expiration term, SPR shall remit to Foundation the portion (if any) of any payments earned.

11. ENTIRE AGREEMENT

This agreement and the exhibits and addenda attached hereto and forming a part hereof (if any), are all of the covenants, promises, agreements and conditions between the parties. No verbal agreements between officers, employees or associates of the parties shall affect or modify any of the terms or obligations contained in this Agreement.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Permit by having their representatives affix their signatures below.

For Arboretum Foundation:

For the City of Seattle:

Jane Stonecipher, Executive Director
Arboretum Foundation
2300 Arboretum Drive
Seattle, WA 98112

Anthony Paul Diaz, Superintendent
Seattle Parks and Recreation
100 Dexter Ave. N.
Seattle, WA 98109

Date: _____

Date: _____

City of Seattle Business License Number:
Washington State Unified Business Identifier Number (UBI):

EXHIBITS:

- Exhibit A: Public Benefit Created Through the Operating Partnership Between SPR and the Arboretum Foundation
- Exhibit B: Site Maps of Japanese Garden
- Exhibit C: Annual Revenue Sharing Summary
- Exhibit D: Invoicing Template

EXHIBIT A

PUBLIC BENEFIT CREATED THROUGH THE OPERATING PARTNERSHIP BETWEEN SEATTLE PARKS AND RECREATION AND THE ARBORETUM FOUNDATION AT THE JAPANESE GARDEN

Summary of Public Benefits

Services to be Provided	Public Benefit Requirement as Outlined above	Annual Goal Metrics/ #’s to be provided	Cost/ Volunteer Time Value
Public Access	Provide promotional support for Garden free days through social media, marketing and strategic outreach.	Social media audience of 10,000+, Coverage in 3-5 publications or displays	Approximately \$10,000 in marketing expense
Programs	Create and implement cultural programs at the Garden, offering arts-focused First Thursday programs and child-focused Family Saturday activities in conjunction with Garden free days. Create school field trip curriculum for use at Garden and in classrooms. Recruit and schedule docent tours multiple times per week. Partner with local tea practitioners to offer traditional tea ceremony though the season. Facilitate ongoing relationships between the Japanese Garden and members of underserved communities.	12+ cultural programs 80+ docent-led tours	Approximately \$110,000 in staff time and related expenses
Community Outreach Events	Represent the Japanese Garden with offsite community outreach at events such as the Cherry Blossom Festival, Japan Fair, NW Flower and Garden Festival and public events at the Washington Park Arboretum. Support SPR outreach events at facilities throughout the city.	2-5 events annually	N/A
Volunteer Service Events	Coordinate a range of opportunities for volunteer involvement, including the Garden docent and merchandise programs, event volunteers and Niwashi garden stewards.	900-1500 hours annually	\$27,000-\$45,000*
Capital Improvements	Privately fund capital improvements to City facilities. Previous example includes \$150,000 in support for Pond Renovation project. Annual support will be determined	# annual projects (TBD) funded with private \$\$	\$15,000-\$850,000 annually, based on projects

	by capital improvements planned for contract period.		
Specific Services to City	Conduct community survey on Garden visitation; advocacy: maintain key relationships with entities such as Japanese Consulate; facilitate community involvement in Japanese Garden Steering Committee; represent Garden in Japan-America Society and industry association NAJGA (North American Japanese Garden Association).	Varies	N/A
Total Public Benefit planned annually			To average at least \$200,000 annually

- Current volunteer hourly rate value here: <https://independentsector.org/resource/value-of-volunteer-time/>

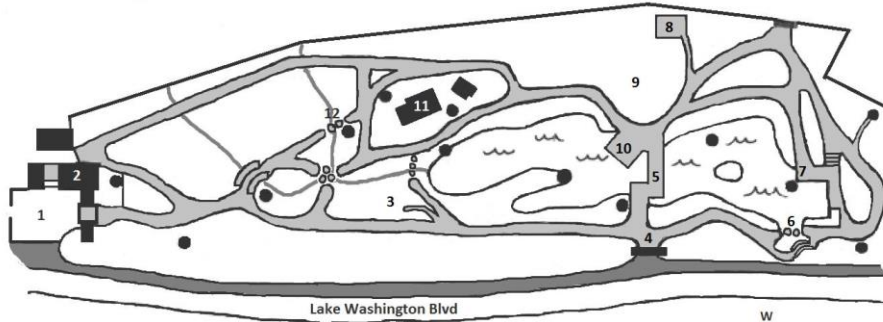
Reporting

A plan for Public Benefit provided by the Arboretum Foundation shall be reflected in the draft events calendar provided to SPR and the Steering Committee each fall for the coming year. A reporting of Public Benefit from the previous year shall be included in the Annual Report submitted to SPR by January 31st.

EXHIBIT B

SITE MAPS OF THE SEATTLE JAPANESE GARDEN

Seattle Japanese Garden



- | | | |
|---------------------|------------------|--------------------------|
| 1 Courtyard | 5 Zig-Zag Bridge | 9 Meadow |
| 2 Tateuchi Room | 6 Wisteria Arbor | 10 Moon-Viewing Platform |
| 3 Rhododendron Glen | 7 Harbor | 11 Teahouse |
| 4 East Gate | 8 Azumaya | 12 Waterfall |



EXHIBIT C – ANNUAL REVENUE SHARING SUMMARY*

	SPR	Foundation	Total
Base Revenue	\$425,000	\$75,000	\$500,000
Revenue split after base (50%/50%)	\$125,000	\$125,000	\$250,000
Total Projected Revenue Total	\$550,000	\$200,000	\$750,000
Revenue % split beyond \$750,000	40%	60%	
% share of total \$750,000 revenue base	73%	27%	

Invoicing details listed in the Revenue Sharing Category of the Agreement. SPR Base Revenue includes \$3600 event support allowance for SPR support of Foundation fundraising events.

*Amounts are based on an estimated \$750,000 annual revenue collection; actual annual revenue amount may be different.

EXHIBIT D – INVOICE TEMPLATE

Japanese Garden Revenue Summary	
Mid-year invoice	
Revenue January 1 thru June 30th	Enter Year here
Gate Revenue (Admissions, Passes, Teas)	
Merchandise	
Donations	
Total Revenue January - June	\$ -
Less: Merchandise & Donations (AF Revenue)	\$ -
Gate Revenue (Revenue less Merchandise & Donations)	\$ -
Arboretum Foundation Mid-Year Invoice and Payment	
Annual SPR Support Payment	\$ 75,000.00
Merchandise Gross Sales (January - June)	\$ -
Donations (January - June)	\$ -
Subtotal	\$ -
Less 2022 Sales Tax on Merchandise (10.25%)	\$ -
Less State B&O Tax on Merchandise (0.471%)	\$ -
Less City Retail B&O Tax on Merchandise (2.22%)	\$ -
Less 10% of Merchandise payment to SPR (for Admin expenses)	\$ -
Total Mid-year payment to Arboretum Foundation	\$ -
<p>Accounting Coding: PRN04/PRN0801/10200/347050 (Exhibit Admission Charges) PRN04/PRN0801/10200/341090 (Sales Of Merchandise) PRN04/PRN0801/10200/337080 (Other Private Contrib & Dons) PRN04/PRN0801/10200/347040 (Recreation Admission Fees)</p>	

Exhibit D continued- Invoice Template

Japanese Garden Revenue Summary	
Yearend Invoice	Enter Year here
Revenue January 1 thru June 30:	
Gate Revenue (Admissions, Passes, Teas)	
Merchandise	
Donations	
Total Revenue January -June	\$ -
Revenue July 1 thru December:	
Gate Revenue (Admissions, Passes, Teas)	
Merchandise	
Donations	
Total Revenue July 1 thru December	\$ -
Calculation for Yearend Revenue Split	
Total Annual Revenue	\$ -
Less: Total Annual Merchandise (AF Revenue)	\$ -
Less: Total Annual Donations (AF Revenue)	\$ -
Gate Revenue (Revenue less Merchandise & Donations)	\$ -
Less Base Revenue (\$425k SPR/\$75k AF)	\$ (500,000.00)
Net Gate Revenue for 50% Split (\$500,001 to \$750,000)	\$ -
Net Gate Revenue for 60% Split (over \$750,000)	\$ -
Arboretum Foundation Yearend Invoice and Payment	
Merchandise Gross Sales (July - December)	\$ -
Donations (July - December)	\$ -
50% Revenue share (\$500,001 - \$750,000)	\$ -
60% Revenue share (over \$750,000)	\$ -
Subtotal	\$ -
Less Sales Tax on Merchandise (10.25%)	\$ -
Less State B&O Tax on Merchandise (0.471%)	\$ -
Less City Retail B&O Tax on Merchandise (2.22%)	\$ -
Less 10% of Merchandise payment to SPR (for Admin expenses)	\$ -
Total Yearend payment to Arboretum Foundation	\$ -
Accounting Coding:	
PRN04/PRN0801/10200/347050 (Exhibit Admission Charges)	
PRN04/PRN0801/10200/341090 (Sales Of Merchandise)	
PRN04/PRN0801/10200/337080 (Other Private Contrib & Dons)	
PRN04/PRN0801/10200/347040 (Recreation Admission Fees)	