

The Chinese Classical Garden at the City Hall

Mayor Katz, city commissioners, ladies and gentlemen! Good morning! On behalf of the Steering Committee and the Chinese community, I would like to commend Mayor Katz on her commitment and leadership in building the Chinese Classical Garden in Portland. The idea of building such a garden in Portland began around the time Portland's Chinatown Gateway was built in 1986. In the spring of 1988, Portland officially established a Sister City relationship with two Chinese cities; Kaohsiung and Suzhou. In June 1989, the first Dragon Boat races began on the Willamette River and in October '94, Portland's Rose Garden opened its doors in Suzhou. The exchange with both Chinese cities has been phenomenal and brought tremendous benefits to the citizens of all three cities. In March 1989, commissioner Mike Lindberg appointed a task force which produced this wonderful fifty page documentary 6 months later. To this day this remains the best testimony of the first group of citizens who dream of the first full scale Chinese Classical Garden in the U.S., built on the soil of Portland. I recommend the people that are interested in this project to read this documentary in its entirety. In its mission statement the document stated that the garden be the joint effort of all Chinese Sister cities including Kaohsiung and Suzhou as well as the regional community at large. It further stated its objective to cultivate regional economic development by enhancing Portland's image and attractiveness as an international trade and commercial center with strategic ties to the Chinese world across the Pacific and in North America.

Today, this morning, with the approval of the city council to carry out the option with the Northwest Natural Gas company for the leasing of the land, together with the appointment by the mayor of a Steering committee will no doubt give the project of building this long overdue Chinese Classical Garden a jump start that would lead its successful completion in the not to distant future. I sincerely ask for your approval and blessing. I believe this will be one of the last major public citizen projects in Portland if not the last before the turn of the century. Thank you.

Eng Lock Khoo M.D.

Presented at the Portland City Council, March 8, 1995

OPTION TO LEASE REAL PROPERTY

DATED: _____ ("Effective Date")

FROM: Northwest Natural Gas Company
 One Pacific Square
 220 N.W. Second Avenue
 Portland, OR 97209 ("NWNG")

TO: THE CITY OF PORTLAND, a municipal
 corporation of the State of Oregon
 1220 S.W. Fifth Avenue
 Portland, OR 97204 ("City")

RECITALS

NWNG owns fee simple title to the real property described in Exhibit A attached hereto, together with all improvements situated on it. The real property and improvements, together with all other rights, hereditaments, and tenements appurtenant to the real property and improvements, are collectively referred to herein as the "Property."

City desires to acquire an option to lease the Property on the terms and conditions herein stated (the "Option").

NWNG has agreed to grant City an exclusive option to lease the Property and the parties desire to evidence their agreement regarding the Option.

The parties therefore agree as follows:

AGREEMENT

Section 1. Grant of Option.

NWNG, for and in consideration of the sum of \$1.00 paid to NWNG by City in cash, receipt of which is acknowledged by NWNG, grants to City the sole and exclusive option to lease the

Property in the manner and for the consideration stated in this Option.

Section 2. Option Terms.

2.1 Term. The initial term of the Option (the "Initial Term") shall commence on _____ (the "Effective Date") and shall continue for a period of three years. City shall have the right to extend the term of the Option for two additional periods of one year each. These extension periods (the "Extension Terms") will commence on the date the Initial Term (or the first Extension Term, if applicable) expires. The Initial Term and the Extension Terms may be referred to collectively in this Option as the "Term." City's payment of the first Option Money Payment due under Section 3 after the Initial Term expires (or after the first Extension Term expires, whichever is effective) shall be deemed to constitute an election to extend the Option for the Extension Term(s). If the last day of the Initial Term, or of the first Extension Term, falls on a Saturday, a Sunday, or a holiday recognized by the federal government or the State of Oregon, all of City's rights during either such time period shall extend through the next business day.

2.2 Exercise of Option. This Option shall be exercised, if at all, by written notice (the "Exercise Notice") given by City to NWNG at any time during the Initial Term or the Extended Term(s), which notice shall state that City has elected to exercise this Option. This Option may be exercised only with respect to the entirety of the Property, and nothing contained

herein shall be construed as permitting City to lease less than all of the Property pursuant to this Option. Upon exercise of this Option, City shall be obligated to lease the Property from NWNG, and NWNG shall be obligated to lease the Property to City, for the price and in the manner herein set forth.

2.3 Failure to Exercise Option. If City fails for any reason to exercise this Option in the manner set forth herein, City shall have no further claim against or interest in the Property or any of the Option Money Payments. In the event of the failure to exercise the Option, City shall provide NWNG with any instruments that NWNG reasonably may deem necessary for the purpose of removing from the public record any cloud on title to the Property which is attributable to the grant or existence of this Option.

2.4 Early Termination of Option. The City may terminate this Option at any time during the Term by giving written notice of termination to NWNG. The notice will be effective as of the date of mailing of the notice by the City, unless a different date for termination is specified in the notice.

Section 3. Option Money.

In payment for NWNG's grant of this Option, City has paid or will pay NWNG the following sums (the "Option Money Payments"): (1) contemporaneously with the execution of this Option, City has paid NWNG the cash sum of \$1.00 mentioned in Section 1 for the Initial Option Term; and (2) contemporaneously with City's election(s) to extend the Option term under

Section 2, City will pay NWNG the cash sum of \$50,000.00 for each extension period elected. If the Option is not exercised, the Option Money Payments shall belong to NWNG. If the Option is exercised, the Option Money Payments shall be deposited to partially fund the escrow to be established pursuant to Section 4.4 herein.

Section 4. Terms of Lease.

If City exercises this Option, City and NWNG will enter into a lease of the Property for a period of ninety-nine (99) years. The lease shall be a triple net lease, on terms mutually acceptable to NWNG and the City, and agreement upon such terms is an express condition precedent to the exercise of this Option. The lease shall include, together with such other terms as are acceptable, the following conditions:

4.1 The term of the lease shall be ninety-nine years from the date of commencement.

4.2 Rental for the lease term shall be \$1.00, so long as the Property is used, maintained and operated as a Chinese Classical Garden ("Garden") open to the public.

4.3 Lessor acknowledges that lessee may construct the Garden in phases. Lessee shall commence construction of the first phase of the Garden within two years after the execution of the lease and complete construction, and open that phase to the public, within four years after execution of the lease. Lessee shall pay as due all claims for work done or for services rendered or materials furnished to the Property, and shall keep the Property free from any liens. If lessee shall not have

commenced construction of the first phase within such two year time period, either party may terminate the lease by written notice to the other and lessor may retake possession of the Property. In such event, if lessee has deposited funds into the escrow described in Section 4.4 below, the escrowed funds shall be returned to the lessee together with any interest earned during their deposit. If lessee shall not have completed construction of the first phase and opened that phase to the public within such four year time period, lessor may terminate the lease by written notice to lessee and lessor may retake possession of the Property. In such event, lessee shall, at its expense, remove all improvements placed on the Property by lessee and level and grade the Property.

4.4 Prior to commencement of construction, lessee shall deposit the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) into an interest-bearing escrow account to be used exclusively for the remediation of any environmental contamination, if discovered during construction of the Garden. If contamination is discovered, the party performing such remediation shall be entitled to reimbursement from such escrow upon submission of paid invoices for such work. If the costs of remediation exceed the amount in the escrow, and after the escrow has been depleted, the costs of remediation shall be paid by such parties as are liable for remediation costs under applicable state or federal law. If no contamination is discovered before completion of construction of the Garden, amounts in the escrow shall be returned to lessee.

4.5 Lessee shall use the Property solely for maintenance and operation of a Garden, unless a different use is approved by lessor. If lessee or its successors or assigns terminates and abandons use of the Property as a Garden during the term of the lease, the lessor may terminate the lease and retake possession of the Property.

Section 5. Remedies.

5.1 City. Except as provided in Section 5.3 hereof, in the event NWNG breaches any term or provision of this Option, then City, as its exclusive remedy and in lieu of any other relief, may either (1) terminate this Option and obtain the return of all Option Money Payments previously paid to NWNG, or (2) tender performance of the obligations of City and specifically enforce all obligations of NWNG. Except as noted in Section 5.3 and any specific remedies reserved elsewhere in this Option, City waives the right to pursue any remedy in law or equity against NWNG other than the remedies specified above, including any action for damages, in the event of a default by NWNG.

5.2 NWNG. Except as provided in Section 5.3 hereof, in the event City breaches any term or provision of this Option, and regardless of whether the breach occurs before or after City notifies NWNG of the exercise of the Option, then NWNG, as its exclusive remedy and in lieu of any other relief, shall be entitled to terminate this Option by giving City written notice of termination and to retain all Option Money Payments paid by City. NWNG acknowledges (1) the adequacy of this exclusive

remedy and (2) that this limitation of remedies is an essential part of this Option from the perspective of City. Except as noted in Section 5.3 and any specific remedies reserved elsewhere in this Option, NWNG expressly waives the right to pursue any other right or remedy at law or in equity other than the remedy specified above, including the right of specific performance and the right to sue for damages, in the event of a default by City. City and NWNG have established the foregoing remedy in favor of NWNG because of the difficulty and inconvenience of ascertaining the actual damages NWNG may suffer as a result of a breach of this Option by City.

5.3 Other Remedies. The limitations on remedies set forth in Sections 5.1 and 5.2 shall not preclude either party from seeking or obtaining injunctive relief or from seeking recovery against the other under any contractual indemnity set forth herein or for causing physical damage or injury to persons or property.

Section 6. Conditions Precedent to Exercise of Option.

In addition to any other conditions contained in this Option, set forth below are certain conditions precedent to City's exercise of this Option (the "Conditions"). The Conditions set forth below are for the benefit of NWNG and may be waived in whole or in part by NWNG only, except that the conditions set forth in Section 6.1 and 6.6 below are conditions precedent to both City's and NWNG's obligation to perform, waivable only by both. In the event any condition is not satisfied or waived by the party who benefits from satisfaction

of the condition on or before the deadline for satisfaction specified herein, then the benefitted party shall have the right to terminate this Option, at its sole election, by giving the other party notice of termination. The Conditions specifically delineated in this section are the following:

6.1 On or before the date of exercise of this Option, NWNG and City shall have agreed to the terms of the lease contemplated by this Option, including the terms stated in Section 4 above.

6.2 Currently, there are 146 parking spaces on the Property and 30 spaces in the adjacent vacated streets. It is a condition of this Option that the City shall provide replacement parking for any of the parking spaces to be displaced by the construction of the Garden. All such replacement parking shall be at no cost to NWNG, with all necessary regulatory approvals, and with self-parking spaces satisfactory to NWNG. Some replacement parking may be possible on adjacent property owned by NWNG, if the necessary permits and approvals are obtained. City intends to work to find suitable replacement parking spaces for those that will be displaced by construction of the Garden. It is expressly understood by NWNG that the City makes no guarantees and gives no assurances that the conditions relating to parking replacement can or will be satisfied. NWNG also understands that the City is not obligated to take any specific actions relating to the satisfaction of this condition. City understands that the Option may not be exercised until NWNG is satisfied in its sole discretion with the proposed replacement parking. Replacement

parking shall be provided when the activity on the Property displaces parking spaces. If such activity is phased, provision of replacement parking may be similarly phased, provided that each parking space shall be replaced at the time it is eliminated.

6.3 Before exercise of the Option, NWNG shall be satisfied that nothing in this Option or the lease shall directly or indirectly affect NWNG's legal rights existing at the time of execution of the Option to maintain any parking spaces it then owns or has rights to in the downtown area, except to the extent that parking on the Property is replaced.

6.4 Before exercise of the Option, NWNG shall have obtained approval of the lease from the Oregon Public Utility Commission, if required. NWNG shall file for OPUC approval no later than ninety (90) days from the date of execution of this option.

6.5 Before execution of the lease, City, or its assignee, shall provide evidence of insurance coverage satisfactory in amounts and terms to NWNG.

6.6 City and NWNG acknowledge that the Property is presently encumbered by the lien of a Mortgage and Deed of Trust, given by NWNG, dated July 1, 1946, as such has been or may be supplemented or amended. NWNG shall use its good faith efforts to release the lien from the Property within one hundred twenty (120) days of the execution of the Option. The Option shall not be exercised until the Property has been released from the lien,

or the priority of the lease in relation to the lien has been resolved to the satisfaction of both parties.

Section 7. Lease Execution.

Within sixty (60) days of notice by the City to NWNG of its exercise of the Option, after satisfaction of the conditions precedent thereto, NWNG shall execute, acknowledge, and deliver to City the lease partially described in Section 4 hereof.

Section 8. Possession.

NWNG shall remain in possession of the Property during the Term and after exercise of the Option until construction activity on the Property precludes use of the Property for parking. During the Term neither NWNG nor City is required to remove any existing improvements to the Property. City shall be entitled to exclusive possession of the Property after execution of the lease, except that NWNG may continue its use of the Property for parking until construction on the Property precludes such use.

Section 9. Access to Property.

9.1 Access. NWNG grants to City and its assignees and agents the right to enter on the Property at any reasonable times before City gives the Exercise Notice for the purpose of conducting tests or studies that City may deem necessary or appropriate in connection with its acquisition of the Property. NWNG shall cooperate with City in making such tests and studies. Notwithstanding the general grant of access stated above, City shall not interfere with or disturb the rights of any tenants or licensees of NWNG in possession of any portion of the Property;

nor shall the City conduct any tests or studies which physically disturb the Property, including but not limited to, drilling or breaking any paved surface. To the extent permitted by Oregon law, City shall protect, defend, and hold NWNG harmless from any loss, liability, or damage to persons or property arising out of or related to City's activities on the Property. If City fails to exercise the Option and lease the Property, City shall fully compensate NWNG for any physical damage to the Property or any lien, encumbrance, or charge on it attributable to City's activities pursuant to this paragraph. In the event City fails to exercise the Option, City shall deliver to NWNG a legible copy of any reports, studies, and drawings owned by City that relate to the Property.

9.2 Approvals. City shall have the right to apply for and obtain any governmental approvals to use and develop the Property as City may desire. NWNG shall assist and cooperate with City in obtaining any such approvals. Such cooperation shall include, but not be limited to, signing all applications and other documents requested by City that may be reasonably related to such matters, provided that NWNG approves the form and substance of all of such documents. All costs and expenses incurred with respect to such approvals shall be paid for by City.

Section 10. Waiver.

Failure by NWNG or City to enforce any right under this Option shall not be deemed to be a waiver of that right or of any other right.

Section 11. Successors and Assigns.

The terms, covenants, and conditions herein contained shall be binding on and inure to the benefit of the heirs, successors, and assigns of NWNG and City. City may assign, and in fact, intends to assign, its interest in this Option and the Property to the Portland Development Commission or to a non-profit organization that has been officially designated by resolution or ordinance of the City Council as having the authority and responsibility to design, build and/or operate the Garden. In the event that an assignee assumes the obligations of City hereunder, then City shall have no further liability with respect to this Option.

Section 12. Notices.

All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service or deposit in the United States Mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To NWNG: Northwest Natural Gas Company
One Pacific Square
220 N.W. Second Avenue
Portland, OR 97209
Attn: _____

To City: City of Portland City Hall
1220 S.W. Fifth Avenue
Portland, OR 97204
Attn: Office of the Mayor

With a copy to:

Portland Development Commission
1120 S.W. Fifth Avenue, Suite 1100
Portland, OR 97204
Attn: Director of Development

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the party for whom it is intended.

Section 13. Risk of Loss.

Except as provided in Section 9.1, NWNG shall bear the risk of all loss or damage to the Property from all causes, through the date of execution of the lease. If, before the date of execution of the lease, and regardless of whether the Exercise Notice has yet been given or is subsequently given, all or part of the Property is damaged by fire or by any other cause of any nature or if all or any portion of the Property is taken by condemnation, or if any such condemnation is threatened, NWNG shall give City written notice of such event. City may terminate this Option by giving written notice to NWNG within 15 days following receipt by City of written notice from NWNG of such casualty or condemnation and NWNG will return to City the Option Money Payments previously paid.

Section 14. Liability.

During the Term, the City shall not be liable for any claims, demands, actions or suits arising from the Property except by reason of any action of the City. NWNG makes no representations regarding the relationship between the City and any potential assignee, or regarding responsibility for claims, demands, actions or suits arising from the Property which may arise between them.

Section 15. Integration, Modification, or Amendments.

This Option contains the entire agreement of the parties with respect to the Property and supersedes all prior written and oral negotiations and agreements with respect to the Property. Any modifications, changes, additions, or deletions to this Option must be approved by NWNG and City, in writing.

Section 16. Representation.

NWNG and City have each been represented by separate legal counsel of choice with respect to this transaction. Each party shall be responsible for all attorneys' fees incurred by it with respect to this Option.

Section 17. Counterparts; Pronouns.

This Option may be executed in one or more counterparts, all of which shall be considered one and the same Option and shall be effective when one or more counterparts have been signed and delivered by NWNG and City. With respect to any pronouns used, each gender used shall include the other gender and the singular and the plural, as the context may require.

Section 18. Governing Law; Interpretation.

This Option shall be governed by the laws of Oregon. In the event a court of competent jurisdiction holds any portion of this Option to be void or unenforceable as written, NWNG and City intend that (1) that portion of this Option be enforced to the extent permitted by law, and (2) the balance of this Option remain in full force and effect.

Section 19. Time Is of the Essence.

Time is of the essence of this Option.


Section 20. Authority to Execute.

Each person executing this Option on behalf of NWNG and City, respectively, warrants his or her authority to do so.

Executed on the day and year first above written.

NWNG:

Northwest Natural Gas Company

By: 
Name: BRUCE B. SAMSON
Title: SR. V.P.

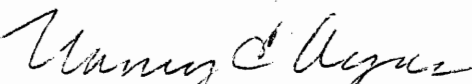
CITY:

THE CITY OF PORTLAND, a municipal corporation of the State of Oregon

By: _____
Name: Vera Katz
Title: Mayor

By: _____
Name: Barbara Clark
Title: City Auditor

APPROVED AS TO FORM:


Deputy City Attorney

Attachment:

Exhibit A - Property

EXHIBIT A

Lots 1-8, Block 24, COUCH'S ADDITION TO THE CITY OF PORTLAND,
County of Multnomah, State of Oregon.

ORDINANCE No.

168588

***Execute Option to Lease Real Property with Northwest Natural Gas Co. (NWNG) for Classical Chinese Garden. (Ordinance)**

The City of Portland ordains:

Section 1. The Council finds:

1. The City wants to acquire an option to lease property from NWNG for the purpose of a Classical Chinese Garden.
2. NWNG has agreed to grant City an exclusive option to lease the property and the Option to Lease Real Property attached hereto as Exhibit A is evidence of that agreement.

NOW, THEREFORE, the Council directs:

- a. The Mayor and the Auditor are authorized to execute the Option to Lease Real Property in a form substantially similar to that attached hereto as Exhibit A.
- b. The Auditor shall send one completed copy of the Option to NWNG.

Section 2. The Council declares that an emergency exists because delay in execution of the Option will delay the City's plans to commence the Classical Chinese Garden project; therefore, this Ordinance shall be in force and effect from and after its passage by Council.

Passed by the Council,
Mayor Vera Katz
NEA/bf
February 22, 1995

MAR 0 8 1995

BARBARA CLARK
Auditor of the City of Portland
By *Britta Olson* Deputy

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TIME CERTAIN

Agenda No.

ORDINANCE NO. 168588

Title

*Execute Option to Lease Real Property with Northwest Natural Gas Co.
for Classical Chinese Garden. (Ordinance).

INTRODUCED BY	DATE FILED: MAR 3 1995
Mayor Vera Katz	Barbara Clark Auditor of the City of Portland
NOTED BY COMMISSIONER	
Affairs	By: <u>Cory Kershner</u> Deputy
Finance and Administration <i>Vera Katz/gem</i>	For Meeting of: _____
Safety	
Utilities	
Works	
BUREAU APPROVAL	
Bureau: Mayor's Office	
Prepared by Date Nancy E. Ayres 2/22/95	
Budget Impact Review: <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not Required	
Bureau Head: <i>Jeff Z. Rogers</i>	
ACTION TAKEN:	

AGENDA		FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
Consent	Regular			YEAS	NAYS
		Blumenauer	Blumenauer	✓	
		Hales	Hales	✓	
		Kafoury	Kafoury	✓	
		Lindberg	Lindberg	✓	
		Katz	Katz	✓	
NOTED BY					
City Attorney	<i>LEA</i>				
City Auditor					
City Engineer					