

AGREEMENT

This Agreement is entered into this _____ day of _____, 199__, among the Classical Chinese Garden Society ("SOCIETY"), an Oregon nonprofit corporation, the Classical Chinese Garden Trust ("TRUST"), an Oregon nonprofit corporation, and the City of Portland, ("CITY"), a municipal corporation duly organized and existing under the laws of the State of Oregon. The purpose of this agreement is to provide for the establishment in the City of Portland of a classical Chinese garden for the benefit and use of the general public.

RECITALS:

1. The SOCIETY is a public charity under Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code; the SOCIETY's ultimate goal is to build and operate an authentic classical Chinese garden in Portland.
2. The TRUST has been organized and incorporated for the purpose of raising funds necessary to build an authentic classical Chinese garden in Portland.
3. The CITY desires to have established within the City of Portland an authentic classical Chinese garden with the cooperation of the SOCIETY, the TRUST, and Portland's sister cities of Suzhou and Kaohsiung.
4. The CITY has obtained an option to lease for a term of 99 years land suitable for the establishment of the garden.

AGREEMENT:

1. THE PROJECT EXECUTIVE COMMITTEE

1.1. The parties agree to cooperate in planning, fundraising, construction and all other activities necessary to the establishment of the garden. To that end, there shall be established a Classical Chinese Garden Project Executive Committee ("COMMITTEE"). The COMMITTEE shall consist of the Mayor of the City of Portland, two persons appointed by the SOCIETY, and two persons appointed by the TRUST. In addition, the Mayor may appoint to the COMMITTEE one person nominated by the Northwest China Council, one person nominated by the Portland-Suzhou Sister City Association, one person nominated by the Portland-Kaohsiung Sister City Association, and one person representing the Portland Development Commission. The Mayor also may appoint additional members of the COMMITTEE from among the large-scale donors to the project and to ensure community representation.

1.2. The COMMITTEE shall coordinate fundraising for the project. The CITY will be the fiscal agent for the COMMITTEE, and will hold the money raised in a trust fund for the project. The CITY shall disburse funds from the trust fund to the TRUST, the SOCIETY and

contractors, for project expenses, including design, construction, marketing, promotion and fundraising (including development staff costs), once such disbursement has been authorized in writing by the COMMITTEE. If, after the garden has been completed and accepted, there is money left in the trust fund, after all of the expenses of construction have been paid, the CITY shall use any such remaining funds for the purposes of operating and maintaining the garden.

1.3. The COMMITTEE shall construct the garden in accordance with plans and specifications approved by the CITY. The COMMITTEE may approve or disapprove any change orders affecting the design or materials used in construction, subject to the final approval of the Mayor.

1.4. The COMMITTEE shall require its contractors and subcontractors to hold harmless, defend, and indemnify the CITY, the SOCIETY, the COMMITTEE and their respective officers, agents and employees against all claims, demands, actions, and suits (including attorney fees and costs) brought against any of them arising from the contractors' or subcontractors' work on the project.

1.5. The COMMITTEE shall require its contractors and subcontractors to maintain public liability and property damage insurance, and shall require its design professionals to carry professional liability insurance, that protects the CITY, the SOCIETY, the COMMITTEE, and their respective officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from work done on this project. The insurance shall provide coverage for not less than \$200,000 for personal injury to each person, \$500,000 for each occurrence, and \$500,000 for each occurrence involving property damage; or a single limit policy of not less than \$500,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the project. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the CITY, the SOCIETY, the COMMITTEE, and their respective officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of the term of the project, the COMMITTEE shall require its contractors and subcontractors to provide a new policy with the same terms. The COMMITTEE's contractors and subcontractors shall maintain continuous, uninterrupted coverage for the duration of the project. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the COMMITTEE's contractors or subcontractors.

1.6. The COMMITTEE shall require its contractors and subcontractors to obtain workers' compensation insurance for all of their workers and employees either as a carrier-insured employer or as a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before commencing work on this project. If such contractors or subcontractors or their employees either are defined under that Chapter as nonsubject workers or are not defined under that Chapter as subject workers, the contractors and subcontractors shall elect and obtain workers' compensation insurance under ORS 656.039 before commencing work on this project. A certification of insurance, or copy thereof, shall be on file with the City Auditor. The COMMITTEE's contractors and subcontractors shall further agree to maintain this workers' compensation insurance coverage throughout the duration of the work on this project.

1.7. The COMMITTEE and its contractors and subcontractors shall pay timely all suppliers, lessors, and contractors providing them services, materials or equipment for carrying out work on this project. The COMMITTEE and its contractors and subcontractors shall not, by their acts or omissions, cause the City or any materials that the COMMITTEE or its contractors or subcontractors provide on the project to be subject to any claims or liens of any person without the prior written consent of the Mayor.

1.8. In connection with its activities on this project, the COMMITTEE shall require its contractors and subcontractors to comply with all applicable federal, state and local laws and regulations, including, but not limited to, the requirements of ORS 279.312, ORS 279.314, ORS 279.316, ORS 279.318 and ORS 279.320.

2. THE CITY

2.1. The CITY shall serve as the fiscal agent for the project. All funds raised for the construction of the garden shall be placed in a special City trust fund for the project, in an account identified as for the classical Chinese garden. The CITY shall promptly process payment, to the extent money is available in the trust fund, for work done or materials supplied on the project, including the balance remaining on the current Suzhou design contract, upon receipt of written authorization from the COMMITTEE for such payment.

2.2. As soon as sufficient funds have been raised for the construction of the garden, the CITY shall exercise its option for a lease on the property upon which the garden is to be built.

2.3. The garden and improvements will be owned by the CITY once they are completed and accepted by the Mayor.

2.4. If, after the garden and improvements have been completed and accepted, there is money left in the trust fund, after all of the expenses of construction have been paid, the CITY shall use any such remaining funds for the purposes of maintaining and operating the garden.

2.5. After the garden and improvements have been completed and accepted, the CITY will negotiate with the SOCIETY for an Agreement under which the SOCIETY will manage the operation of the garden for the CITY.

2.6. The CITY's project manager shall be the Mayor of the City of Portland, or such other person designated in writing by the Mayor. The CITY's project manager is authorized to approve work and billings hereunder, to give notices referred to herein, to terminate this Agreement as provided herein and to carry out any other CITY actions referred to herein.

3. THE SOCIETY

3.1. The SOCIETY will appoint two members of the COMMITTEE.

3.2. The SOCIETY will contribute money it has raised for the design and construction of the garden. Upon the execution of this Agreement, the SOCIETY shall transfer all monies in its Design and Construction Fund and in its Building Fund to the CITY, to be placed in the CITY's trust fund for the classical Chinese garden. If thereafter the SOCIETY receives any funds designated for the design and construction of the garden, the SOCIETY shall transfer all such funds to the CITY, to be placed in the CITY's trust fund for the classical Chinese garden. The SOCIETY may, in its sole discretion, transfer any other of its funds to the CITY, to be placed in the CITY's trust fund for the classical Chinese garden. All donors to the project, who contribute \$250 or more, whether contributing to the SOCIETY, the TRUST or the CITY, will be recognized as members of the SOCIETY for a period of one year.

3.3. The SOCIETY will assign to the TRUST its rights and responsibilities under its contract with its development director, The Blacher Group.

3.4. During the fundraising and construction period, the SOCIETY will provide advice, support and assistance to the COMMITTEE and to the TRUST, and will strengthen and enhance its Board and will update its budget and business plan, to be in a position to operate the garden and to complete funding of an endowment for the maintenance and operation of the garden.

3.5. Once the garden has been completed and accepted by the CITY, the SOCIETY will negotiate with the CITY for an Agreement under which the SOCIETY will manage, maintain and operate the garden for the CITY. The SOCIETY will provide additional funds for maintenance and operation of the garden through SOCIETY membership, gate fees and other SOCIETY activities.

4. THE TRUST

4.1. The TRUST will appoint two members of the COMMITTEE.

4.2. The TRUST will engage in a major fundraising campaign to raise the money necessary for the construction of the garden. The TRUST will request that all checks or other instruments evidencing donations to the project be made payable to "CLASSICAL CHINESE GARDEN." The TRUST will accept assignment of the SOCIETY's rights and responsibilities under its contract with its development director, The Blacher Group. The TRUST will further endeavor to raise additional money toward an endowment to maintain and operate the completed garden.

4.3. The TRUST will arrange to have all money donated to it placed into the CITY's trust fund for this project.

5. GENERAL PROVISIONS

5.1. This Agreement shall be effective as of February 1, 1997, and shall terminate as of January 31, 2000, unless the parties by mutual written agreement extend the term.

5.2. (a) The parties, by mutual written agreement, may terminate this Agreement at any time.

(b) The CITY, on thirty (30) days written notice to the SOCIETY and the TRUST, may terminate this Agreement for any reason deemed appropriate in its sole discretion.

(c) Any party may terminate this Agreement in the event of a breach of the Agreement by the any other party. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

5.3 In the event of termination under subsection 5.2 hereof, the CITY shall pay from the trust fund, to the extent funds are available, for work performed and approved by the COMMITTEE in accordance with the Agreement prior to the termination date. If there are funds remaining in the trust fund after such payments, the CITY, in its sole discretion, may use them for the purposes of establishing, maintaining and operating a classical Chinese garden in the City of Portland, or may distribute the funds to the TRUST and/or to the SOCIETY for such purposes.

5.4. (a) This Agreement shall be construed according to the laws of the State of Oregon.

(b) Any litigation arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

5.5. Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the CITY:

Mayor Vera Katz
Room 303 City Hall
1220 SW Fifth Ave.
Portland, Oregon 97204

If to the SOCIETY:

Donald Jenkins, Chair
Portland Art Museum
1219 SW Park Avenue
Portland, Oregon 97205

Bruce Wong, President
Wong's Engineers
30 SE Tenth Avenue
Portland, Oregon 97214

If to the TRUST:

W. Robert Naito
H. Naito Properties
5 NW Fifth Avenue
Portland, Oregon 97208

5.6. If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.

5.7. This Agreement contains the entire agreement among the parties and supersedes all prior written or oral discussions or agreements.

5.8. (a) The CITY, the SOCIETY or the TRUST shall breach this Agreement if it fails to perform any substantial obligation under the Agreement, except as provided in subsection (b) of this section.

(b) No party shall have breached this Agreement by reason of any failure to perform a substantial obligation under the Agreement if the failure arises out of causes beyond its control and without its fault or negligence. Such causes may include, without limitation, acts of God or the public enemy, acts of the federal, state or local governments, fires, floods, epidemics, volcanic eruptions, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

5.9. The parties may amend this Agreement at any time only by written amendment executed by all of the parties. The Mayor may agree to and execute any other amendment on behalf of the CITY.

5.10. No party shall be deemed to have waived any breach of this Agreement by any other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

CLASSICAL CHINESE GARDEN SOCIETY

CLASSICAL CHINESE GARDEN TRUST

By: Bruce Wong
Its: President

By: W. Robert Naito
Its: Incorporator

By: Donald Jenkins
Its: Chairman of the Board of Directors

APPROVED AS TO FORM:

CITY OF PORTLAND

Harry Auerbach
Deputy City Attorney

By: Vera Katz
Its: Mayor

17 0895

ORDINANCE NO.

*Agreement with Classical Chinese Garden Society and Classical Chinese Garden Trust for cooperation in the development and construction of a Classical Chinese Garden in the City of Portland (Ordinance).

The City of Portland ordains:

Section 1. The Council finds:

1. The Classical Chinese Garden Society is an Oregon non-profit corporation, whose ultimate goal is to build and operate an authentic classical Chinese garden in the City of Portland.
2. The Classical Chinese Garden Trust is an Oregon non-profit corporation, which has been organized and incorporated for the purpose of raising funds necessary to build an authentic classical Chinese garden in Portland.
3. The City of Portland desires to have established within Portland an authentic classical Chinese garden with the cooperation of the Society, the Trust, Portland's Sister Cities of Suzhou and Kaohsiung and the local community.
4. The City has obtained an option to lease for a term of 99 years land suitable for the establishment of the garden.
5. In order to promote cooperation among all the interested parties and to delineate their respective roles and responsibilities, the City, the Society and the Trust should enter into an Agreement, substantially in the form attached to this Ordinance.

NOW, THEREFORE, the Council directs:

- a. The Mayor is authorized to execute on behalf of the City of Portland the Agreement, substantially in the form attached to this Ordinance, with the Classical Chinese Garden Society and the Classical Chinese Garden Trust.

Section 2. The Council declares that an emergency exists in order to avoid undue delay, which could jeopardize the project, and to allow the fundraising process to continue; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by Council: FEB 05 1997
MAYOR KATZ
Hauerbach
January 29, 1997

BARBARA CLARK
Auditor of the City of Portland
By: *Betta Olson* Deputy

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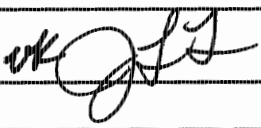
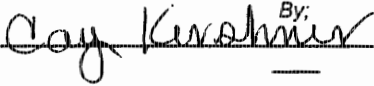
Agenda No.

ORDINANCE NO.

170895

Title

*Agreement with Classical Chinese Garden Society and Classical Chinese Garden Trust for cooperation in the development and construction of a Classical Chinese Garden in the City of Portland (Ordinance).

INTRODUCED BY	Filed: JAN 30 1997
Mayor Katz	Barbara Clark Auditor of the City of Portland
NOTED BY COMMISSIONER	
Affairs	
Finance and Administration 	By: 
Safety	
Utilities	
Works	
BUREAU APPROVAL	of: _____ For Meeting
Bureau:	ACTION TAKEN
Prepared by Date	
HAuerbach January 29, 1997	
Budget Impact Review:	
___ Completed ___X___ Not Required	
Bureau Head:	

Agenda	Four Fifths Agenda	Commissioners voted as follows		
			YEAS	NAYS
NOTED BY	Francesconi	Francesconi	✓	
City Attorney	Hales	Hales	✓	
City Auditor	Kafoury	Kafoury		
City Engineer	Sten	Sten	✓	
	Katz	Katz	✓	