

CITY OF OAKLAND

AGENDA REPORT

2007 APR 24 PM 7:24

TO: Office of the City Administrator
ATTN: Deborah A. Edgerly
FROM: Office of Parks and Recreation
DATE: April 24, 2007

RE: **Resolution Authorizing the City Administrator to Execute a License Agreement Between the City of Oakland and Golden State Bonsai Federation for Nonexclusive Use of the Bonsai Garden and Adjacent Nursery Area Located within the Demonstration Garden Area of Lakeside Park, Oakland, California for One Dollar Per Year for a Ten Year Term with Two Consecutive Ten-Year Options to Renew**

SUMMARY

Staff have prepared a resolution authorizing the City Administrator to execute a License Agreement between the City of Oakland and Golden State Bonsai Federation (GSBF) for nonexclusive use of the Bonsai Garden and adjacent nursery area located within the Demonstration Garden area of Lakeside Park, Oakland, California, for one dollar (\$1) per year for a ten year term with two consecutive ten-year options to renew. Adoption of the proposed resolution will provide for the continued operation of the Bonsai and Suiseki Display Garden, Collection and Education Center (Bonsai Garden) as a unique, beautiful, and important Oakland destination.

Established in 1997, the Bonsai Garden at Lakeside Park, located at 666 Bellevue Avenue, draws close to 6,500 visitors each year and is home to more than 60 museum-quality bonsai trees – several of which are more than 1,000 years old. A dedicated group of volunteers has been responsible for raising funds, building the facilities, staffing the Bonsai Garden, and maintaining the collection and the surrounding garden area. GSBF pays for its electricity and phone lines. The City pays for water service to the site. Under the terms of the proposed agreement, GSBF will be working with the Office of Parks and Recreation (OPR) to extend its cultural and educational programs to more school groups and OPR participants.

The Office of Parks and Recreation (OPR) recommends that City Council adopt the Resolution authorizing the proposed license agreement with GSBF.

FISCAL IMPACT

Adoption of the proposed Resolution to execute a License Agreement with GSBF for the use of the Bonsai Garden will incur a small cost to the General Purpose Fund for the cost of providing water to the site.

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East Bay Municipal Utilities District expense for water for the Bonsai Garden area of Lakeside Park is estimated to be \$1,200 annually. The water to the Bonsai Garden is not separately metered; the cost estimate provided by staff is based on the three-year average water costs for irrigating a similar sized pocket park in the City.

Staff in the City's Real Estate Division estimated the Fair Market Value for rent of the undeveloped land to be \$192.00 monthly or \$2,304.00 annually.

Services provided to Oakland by the Golden State Bonsai Federation Collection-North from their Lakeside Park location are valued at \$161,350.00 annually and include operational expenses, facilities and garden maintenance, volunteer docents, and Bonsai Curator services.

After comparison of the fair market rent and calculations of the in-kind services and benefits, the value of the programs as provided to the citizens of the City exceeds the fair market rental value of the Property.

Service / Real Estate	Annual Value of GSBF-Provided Services	Annual Value of City- Provided Facility Use
Fair Market Rent Value	-	\$2,304
License Fee	\$ 1	-
Water Service	-	1,200
Volunteer Garden & Facilities Maintenance (Calculated at 1,590 hrs. x \$15/hr)	23,850	-
Educational Programs and operating expenses (includes volunteer docents)	100,000	-
Bonsai Curator services (Calculated at 750 hrs. x \$50/hr)	37,500	-
Total Estimated Value	\$161,350	\$3,504

BACKGROUND

The Golden State Bonsai Federation is a California nonprofit, 501(c)(3) organization whose mission is to provide services and activities promoting the art of bonsai throughout California. The Bonsai Garden at Lakeside Park is operated by one of its member groups – the Golden State Bonsai Federation-Collection North.

In 1996, members of GSBF approached the City of Oakland to see if it might be possible to build a dedicated garden and establish a permanent home for a northern California collection of

museum-quality bonsai trees. The vision included a decorative fence, secluded garden, and an education center. They had raised \$50,000 and had a group of dedicated volunteers who were willing to make a commitment to build a world-class Bonsai and Suiseki Display Garden, Collection and Education Center for the benefit of Oakland residents and visitors as well as local and visiting bonsai enthusiasts. In October 1996, the City entered into an agreement with GSBF and soon after, the work of building Oakland's Bonsai Garden began.

In the ten years since they broke ground, GSBF has raised and spent nearly \$1,000,000 improving the site, over 19,000 volunteer hours have been recorded, and more than 65,000 patrons have visited the garden. They have provided weekly bonsai instruction; free specialized tours for schools, garden clubs, retirement homes, and citizen groups; curator-led instruction for bonsai enthusiasts; sick bonsai clinics; and participation in community events like the Oakland/Fukuoka Sister City Moon Viewing event.

Oakland's Bonsai and Suiseki Display Garden, Collection and Education Center is a worldwide ambassador for northern California to the bonsai community. Visitors come from as close as Grand Avenue apartments and from as far away as Europe to see the remarkable collection and to enjoy the peace of the garden. On staff is curator Kathy Shaner: the only Japanese-certified bonsai master in the United States. Dedicated and knowledgeable docent volunteers are always present when the garden is open to share their enthusiasm for the collection and to answer questions.

KEY ISSUES AND IMPACTS

By granting a license to Golden State Bonsai Federation for use of the Bonsai Garden at Lakeside Park, the Oakland community receives benefit in the form of an important cultural asset.

The proposed license agreement allows GSBF to use the Bonsai Garden and adjacent nursery area for activities related to its mission to provide services and activities promoting the art of bonsai.

After comparison of the fair market rent and calculations of the in-kind services and benefits, the value of the programs as provided to the citizens of the City is equal to or exceeds the fair market rental value of the property. The City will calculate the Fair Market Rent upon execution of any option period within the proposed license agreement. The Fair Market Rent for that option period will be compared to the value of the In Kind Services provided to calculate the license fee for that option period. Fair Market Rent Value for the space occupied by GSBF is currently valued at \$192.00 per month (\$2,304 per year).

Under the terms of the license agreement, GSBF will provide custodial service and maintenance to the Bonsai Garden and the adjacent nursery at no cost to the City.

GSBF agrees to the City's requirements for insurance, indemnification, records retention, and non-discrimination. GSBF agrees to provide liability insurance as described within the license agreement, and cannot make any improvements or alterations to the Property without first obtaining the written consent from the City.

GSBF further agrees, under the proposed license agreement, to submit its accounting records annually in keeping with the City Auditor's Table of Contract Clauses Related to Financial Responsibilities. Such records shall include an operating budget for the current year as well as certified statements confirming the number of participants and number of activities undertaken.

The license agreement provides for two consecutive options for a ten-year extension provided sufficient notice is given and other terms and conditions are met to the satisfaction of the City.

Either party may terminate the license at any time with 90 days written notice.

SUSTAINABLE OPPORTUNITIES

Economic: The continued operation of the Bonsai and Suiseki Display Garden, Collection and Education Center provides a free, culturally rich opportunity for Oakland residents and visitors.

Environmental: The plants and trees in the Bonsai Garden contribute to the overall beauty of the City.

Social Equity: The Bonsai Garden services are free, conveniently located, and readily available to all Oakland residents and visitors.

DISABILITY AND SENIOR CITIZEN ACCESS

The Bonsai Garden is accessible to disabled and senior patrons and complies with the Americans with Disabilities Act (ADA), Older Americans Act and other non-discrimination laws and regulations.

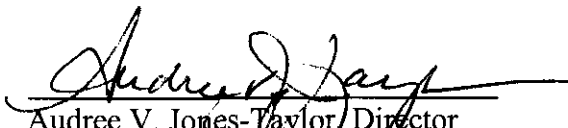
RECOMMENDATION(S) AND RATIONALE

Staff recommends that Council adopt a resolution authorizing the City Administrator to execute a License Agreement between the City of Oakland and Golden State Bonsai Federation (GSBF) for nonexclusive use of the Bonsai Garden and adjacent nursery area located within the Demonstration Garden area of Lakeside Park, Oakland, California, for one dollar (\$1) per year for a ten year term with two consecutive ten-year options to renew.

ACTION REQUESTED OF THE CITY COUNCIL

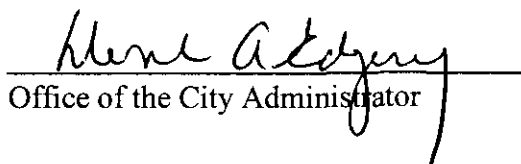
Staff requests that Council adopt a resolution authorizing the City Administrator to execute a License Agreement between the City of Oakland and Golden State Bonsai Federation for nonexclusive use of the Bonsai Garden and adjacent nursery area located within the Demonstration Garden area of Lakeside Park, Oakland, California, for one dollar (\$1) per year for a ten year term with two consecutive ten-year options to renew.

Respectfully submitted,


Audree V. Jones-Taylor, Director
Office of Parks and Recreation

Prepared by:
Kip Walsh, Assistant to the Director
Office of Parks and Recreation

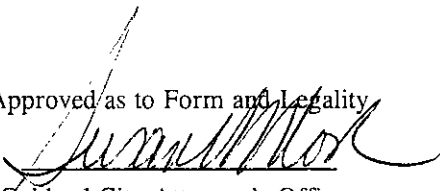
APPROVED AND FORWARDED TO THE
LIFE ENRICHMENT COMMITTEE:


Office of the City Administrator

OFFICE OF THE CLERK

2007 APR 12 PM 7:21

Approved as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A LICENSE AGREEMENT BETWEEN THE CITY OF OAKLAND AND GOLDEN STATE BONSAI FEDERATION FOR NONEXCLUSIVE USE OF THE BONSAI GARDEN AND ADJACENT NURSERY AREA LOCATED WITHIN THE DEMONSTRATION GARDEN AREA OF LAKESIDE PARK, OAKLAND, CALIFORNIA FOR ONE DOLLAR PER YEAR FOR A TEN YEAR TERM WITH TWO CONSECUTIVE TEN-YEAR OPTIONS TO RENEW

WHEREAS, since November 1996, and at no cost to the City, the Golden State Bonsai Federation (GSBF) built and established a Bonsai and Suiseki Display Garden, Collection and Education Center (Bonsai Garden) consisting of a landscaped Japanese dry stream garden, an ornate Japanese security fence and the Mas Imazumi Memorial Gate, several buildings, Bonsai benches, and museum-quality Bonsai; and

WHEREAS, GSBF desires to continue to operate a Bonsai Garden for the purpose of displaying museum quality Bonsai and Suiseki so that residents of and visitors to the city of Oakland may continue to enjoy this unique art form; and

WHEREAS, GSBF also desires to provide outreach programs for the benefit of the residents of Oakland to provide education in the art of Bonsai; and

WHEREAS, the City of Oakland is the fee simple owner and the Office of Parks and Recreation is the custodial agency of the real property commonly known as Lakeside Park Demonstration Gardens, located at 666 Bellevue Avenue, Oakland, California; and

WHEREAS, the City is willing to grant to GSBF a revocable nonexclusive license for the use of the Bonsai Garden and the adjoining nursery area subject to the terms and conditions of a License Agreement; and

WHEREAS, after analyzing the fair market rent and calculations of the in-kind services and benefits, the value of the programs as provided to the citizens of the City is equal to or exceeds the fair market rental value of the property; and

WHEREAS, GSBF agrees to pay an annual license fee of one dollar (\$1), to the City on the first day of each and every year of the license period; and

WHEREAS, GSBF agrees to provide adequate liability insurance as set forth in the license agreement; and

WHEREAS, the license will leverage existing City resources for additional services to the community with no increased costs to the City's budget; now, therefore, be it

RESOLVED: that City Council hereby authorizes the City Administrator to execute a License Agreement between the City of Oakland and Golden State Bonsai Federation for nonexclusive use of the Bonsai Garden and adjacent nursery area located within the Demonstration Garden area of Lakeside Park, Oakland, California, for one dollar (\$1) per year for a ten year term with two consecutive ten-year options to renew; and be it

FUTHER RESOLVED: That the Office of the City Attorney has approved this resolution as to form and legality and a copy will be on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, MAY 1, 2007

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

**LICENSE AGREEMENT
BETWEEN THE CITY OF OAKLAND, CALIFORNIA
AND THE GOLDEN STATE BONSAI FEDERATION**

This License Agreement ("License") is made as of this 1st day of _____, 2007 by and between the City of Oakland, California ("City"), Office of Parks and Recreation ("OPR") jointly and severally called "Licensor", located at 250 Frank H. Ogawa Plaza, Oakland, CA 94612, and The Golden State Bonsai Federation ("GSBF"), a California 501(c)(3) public benefit corporation, jointly and severally called "Licensee", located within the Demonstration Garden section of Lakeside Park on Bellevue Avenue in Oakland, California.

RECITALS

1. City is the fee simple owner and OPR is the custodial agency of the real property shown on Property Map attached hereto and incorporated herein as Exhibit A, commonly known as Lakeside Park Bonsai Garden, located at 566 Bellevue Avenue, Oakland, CA ("Property").
2. GSBF, in the period between November 1996 and November 2006 and at no cost to City, built and established a Bonsai and Suiseki Display Garden, Collection and Education Center ("Bonsai Garden") consisting of a landscaped Japanese dry stream garden, an ornate Japanese security fence and the Mas Imazumi Memorial Gate, several buildings, Bonsai benches, and museum-quality Bonsai. GSBF staffed the Bonsai Garden with docents and offered educational programs and tours open to the public, all with volunteer support, private donations and GSBF support for the benefit of residents of and visitors to Oakland.
3. , Licensee desires to continue using the Property for the purpose of operating a Bonsai Garden for the purpose of displaying museum quality Bonsai and Suiseki so that residents of and visitors to the city of Oakland, California may continue to enjoy this unique art form. Licensee also desires to provide outreach programs for the benefit of the residents of Oakland to provide education in the art of Bonsai.
4. Licensee is a tax exempt public benefit corporation as defined in the United States Internal Revenue Code section 501(c)(3).
5. Licensor is willing to grant to Licensee a revocable, nonexclusive license for the use of the Property subject to the terms and conditions of this License.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Grant of Revocable License.** Licensor grants to Licensee, its agents, employees, guests and invitees, heirs and assigns, a revocable nonexclusive license to use the Property for the term of this License (including the Initial License Period plus any Extended License Period) subject to

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the terms and conditions of this Agreement.

2. **Initial License Period.** The Initial License Period shall be for ten (10) years commencing on _____ (date) _____ and ending on _____ (date) _____, unless terminated sooner by either party in accordance with this License.

3. **Extended License Period.** Licensee shall have two (2) consecutive options to extend the License for an Extended License Period of ten (10) years per Extended License Period on the same terms and conditions described in this License provided that the following conditions are satisfied:

3.1 Licensee shall not be in default under any provision of this License,

3.2 Licensee shall provide Licensor with advance irrevocable written notice at least sixty (60) days prior to the termination of the Initial License Period or any Extended License Period.

If Licensee fails to exercise the first option to extend the License Period, the second option to extend shall have no force and effect, and Licensee shall have no other subsequent options to extend the License Period.

4. **Annual License Fee.** Licensee agrees to pay Licensor in advance and without any right of offset or deduction, an Annual License Fee of one dollar (\$1), payable on the first day of each year, commencing _____ (date) _____ and thereafter on the same day of each and every year for the term of the License.

All License Fees shall be payable to the City of Oakland and remitted to the Office of Parks and Recreation, Attention: **Fiscal Manager, Office of Parks and Recreation, 250 Frank H. Ogawa Plaza, Suite 3330, Oakland, CA 94612.**

5. **Use.** Licensee shall have no other use of the Property except for the restricted use of operating and maintaining a Bonsai Garden, however, the use of Property shall at all times be subject to the approval of the Director of the Office of Parks and Recreation and such approval shall not be reasonably withheld, and use of Property shall further be subject to all limitations of the Charter of the City of Oakland.

Notwithstanding anything to the contrary, the City reserves the right to use Property to the exclusion of the Licensee on those occasions when the City requires such use in the event of an emergency or disaster; or as set forth in paragraph 7 herein. With the exception of the City's right to the use of the Property as set forth in paragraph 7 herein, Licensor grants to Licensee the exclusive use of the Property at all other times. For the purpose of this Agreement, the term "emergency" is defined as a sudden and unforeseen event that calls for immediate measures to minimize its adverse consequences and occurs after a disaster when an immediate response is required and local capacity is insufficient to address and manage traumatic events such as, but

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not limited to deaths, injuries, displacement of people, disease, disability, food insecurity, damage or loss of infrastructure, weakened or destroyed public administration and reduced public safety and security.

6. Bonsai Garden Operations.

6.1 Licensee shall, at no cost to City except as expressly provided for herein, operate a Bonsai Garden, open to the general public.

6.2 Licensee shall be solely responsible for marketing and outreach to recruit customers.

6.3 Licensee shall staff the Bonsai Garden with docents during regularly scheduled hours of operation to provide the public with a superior educational experience. The Bonsai Garden shall be open to the public for a minimum of twenty-two (22) hours per week in the first year of this License. Hours of operation shall be increased by four (4) hours during the second year of this license to twenty-six (26) hours per week, and at least four (4) hours during the third year of this license to thirty (30) hours per week, and four (4) hours during the fourth year of this license such that public viewing hours are at least thirty-four (34) hours per week during the fourth and all subsequent years of this license. Hours of operation shall be posted outside the gate of the Bonsai Garden.

6.4 Licensee will keep and maintain a collection of Bonsai and Suiseki for display in the Bonsai Garden.

7. Special Use by City: Licensee agrees to allow City the use of the Bonsai Garden for ten (10) City-related events annually at no charge to the City. City-related events shall be for a maximum of twelve (12) hours per event. Special services such as custodial or staffing for City events shall be the sole responsibility of City and will not be provided by Licensee. City may utilize its own caterer for events without additional charge. Such uses shall be requested in writing by the Director of OPR or Director's designee at least sixty (60) days in advance of the day requested. OPR agrees to allow any security deemed necessary by GSBF to be present for the event at no cost to City.

8. Improvements and/or Alterations. Licensee shall not make any improvements or alterations to the Property without first obtaining the written consent of Licensor. If Licensee makes any non-approved improvements or alterations to the Property, Licensor shall have the option to require Licensee to remove any such improvements or alterations made by Licensee prior to the end of this License at no cost to Licensor. If any improvements or alterations are not removed, such improvements or alterations shall become part of the Property and Licensee shall not have any claim or interest in such improvements or alterations. Licensee may, at the expiration of this license, or upon revocation or termination of this License by either party, take legal title to and remove any or all of the items set forth in Exhibit D. Said items are improvements made to Property by Licensee during the time period of 1996 through 2006, and

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upon such removal Licensor grants legal title of said items to Licensee provided that the removal does not cause irreparable damage to the Property.

- 8.1 **Improvements required by law.** Licensee shall, at no cost to Licensor, make all improvements or alterations to the Property required by law due to Licensee's use of the Property or Licensee's application for any governmental permit. If Licensor is required by any governmental agency to make any improvements or alterations to the Property, Licensee agrees to pay the cost incurred by Licensor to complete such improvements or alterations. After receiving notice from Licensor, Licensee shall make monthly payments to Licensor equal to the amount required to evenly amortize such cost (including 10% per annum interest) over the useful life of such improvements or alterations beginning with the next Monthly License Fee due to Licensor.
- 8.2 **Improvements Affixed to Property.** Licensee may, at no cost to Licensor, remove fixtures installed by Licensee including but not limited to trees, benches, fences, and buildings provided that the removal of fixtures is performed by duly licensed or certified expert vendors, i.e. trees may only be removed by an arborist certified by the International Society of Arborists, buildings may only be removed by a contractor licensed by the California State License Board, etc.; and that the removal of such fixtures does not cause irreparable harm to the Property. Licensee must notify Licensor, in writing, at least ninety (90) days in advance of its intention to remove fixtures. Licensor reserves the right to verify vendor certification or licensure before fixtures are removed by Licensee.
- 8.3 **Liens.** Licensee shall keep the Property free and clear of any liens and shall pay when due all bills arising out of any work performed, materials, furnished, or obligations incurred by Licensee, its agents, employees, or contractors relating to the Property.
9. **Maintenance and Repair.** Licensee at its sole cost and expense shall maintain in good order and repair the interior, the exterior, and the fence surrounding the garden and all other portions of the Property, including without limitation, structural supports, pavement, windows, doors, plate glass, fences, signs, sidewalks, utility lines, electrical, heating and air conditioning units. Licensee is responsible for the replacement of the heating system, sewer lines or any other utilities, equipment, furniture or fixtures on the Property.
- 9.1 Licensee shall be required to provide custodial services to the property at no cost to Licensor for the term of the License Agreement.

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- 9.2 Licensee shall provide for maintenance and upkeep of Property to a standard that is commensurate with the surrounding gardens within the Trial and Show Gardens area of Lakeside Park. Failure to maintain the site in a satisfactory manner may result in revocation of this License. In the case of unsatisfactory routine maintenance, OPR staff will notify GSBF in writing of any performance deficiencies and allow for a sixty-day period to correct those deficiencies. If maintenance standards are not met within that period, this license agreement will be terminated. In the case of non-routine or major maintenance deficiencies, the GSBF will be notified in writing, and be given a suitable time period to correct the problem.
- 9.3 Licensee shall be solely responsible for the watering, pruning, weeding, fertilizing, styling and health of the Bonsai and Suiseki in the Bonsai Garden.
- 9.4 Licensee will be solely responsible for the watering, pruning, weeding, fertilizing, styling and health of the Japanese Dry Creek Garden that is part of the Bonsai Garden.
- 9.5 Licensee agrees to pay for the costs of electricity, fence repairs, graffiti removal, and an alarm system with response by a private security firm, in order to adequately maintain and protect the collection.
10. **Utilities.** Licensee shall be responsible for all charges of utilities that are separately metered and supplied to the Property, including without limitation, electrical, gas, telephone and cable television.
11. **Hazardous & Toxic Materials.** Licensee shall not use, create, store or allow any hazardous and toxic materials on the Property except for those materials and supplies that are considered safe and that are normally and customarily used for housekeeping, maintenance or cleaning or in operation of a Bonsai Garden. Licensee shall not cause or allow the deposit or disposal of any hazardous and toxic materials on the Property.
- 11.1 Licensee will adhere to and be in compliance with all local, State and Federal laws governing the use of pesticides and other toxins. Use of pesticides, fungicides, and fertilizers by Licensee shall be consistent with standard and usual practices in the upkeep and maintenance of Bonsai and Suiseki collections. Licensee will exercise appropriate safety precautions in the use of pesticides, fungicides or other toxic materials.
12. **Insurance.** Licensee shall purchase and maintain for the term of the License a comprehensive or commercial form general liability insurance with minimum coverage subject to the annual adjustments required under Schedule Q, attached hereto as Exhibit B. A copy of the certificate of insurance evidencing that such insurance coverage and in form acceptable to

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Licensee shall be attached as part of Exhibit C of this License. Such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to the Licensor. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed shall be delivered to Licensor. If such coverage is canceled or reduced, Licensee shall, within fifteen (15) days after receipt of written notice from Licensor, deliver to Licensor, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies in accordance with Schedule Q.

12. **Indemnification.** Licensee shall unconditionally indemnify, save, protect, defend and hold harmless the City, its Council members, officers, employees, agents, and contractors from and against any and all loss, injury, liability, expense, claims, costs, suits and damages, including attorney's fees and court costs, relating in any way to the use of the Property by Licensee, (including without any limitations, its employees, contractors, agents, and invitees), or resulting from conditions caused by Licensee's use of the Property. Licensee shall be solely responsible for all charges or claims from Licensee's employees and contractors with respect to any improvements or alterations to the Property. Licensee shall keep the Property free and clear of any claims for mechanics lien and Licensor shall not be responsible for any debts incurred by Licensee.

12.1 Irrespective of any insurance carried by GSBF, City agrees to protect, defend (including any third party lawsuits), indemnify, and hold harmless GSBF, its officers, agents, and employees from any and all claims, demands, actions or damages arising out of the operation of City events, except for those claims, demands, actions or damages resulting from the sole negligence or willful misconduct of GSBF, its officers, agents, and employees

13. **Compliance with Laws/Nondiscrimination.** For the term of this License, at no cost to Licensor, Licensee shall at all times comply with all applicable laws and regulations from municipal, county, state, federal, and other applicable governmental authorities relating to this License and the Property.

Licensee shall not unlawfully discriminate or permit any discrimination against any person or any groups of persons, including but not limited to members of the public, employees, or applicants for employment, in connection with the operation of the Bonsai Garden because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, gender, sexual preference or Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related complex (ARC) or disability.

14. **Relocation.** Licensee understands and agrees: (1) that Licensee shall not be eligible for any relocation benefits (including any advisory services) when this License terminates, (2) that this License shall not create any rights or interests in Licensee to receive any relocation benefits

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and (3) that Licensee shall not make any claims against Licensor for any relocation benefits. As a material inducement for Licensor to enter into this License, Licensee waives all rights to any relocation benefits under any applicable law or regulation and releases Licensor from any obligation to provide any relocation benefits.

14.1 Licensor recognizes that the relocation of a Bonsai and Suiseki collection of this size and type may require more time than would be usual and therefore, in the event of revocation of this License by either party, Licensor grants Licensee a period of ninety (90) days from the termination of the license for Licensee to remove improvements to the property as set forth in Paragraph 8 above, and its collection, as set forth in Exhibit D. Upon expiration of the ninety-day period, the collection and improvements shall be deemed abandoned and become the property of City.

15. **Possessory Interest Taxes.** If Licensee's interest under this License is subject to any possessory interest tax or other property tax, Licensee shall be responsible for the payment of such taxes or assessments.

16. **Right of Entry.** After providing advance 24-hour notice to Licensee, Licensor may enter the Property to inspect the Property and to maintain, repair, install, or construct any additional improvements to the Property. In the event of any emergency, Licensor shall not be required to provide any advance notice. To the extent that Licensor exercises its right to enter the Property, Licensee shall not be entitled to any abatement in the payment of the License Fee to Licensor.

17. **Condition of Property.** Licensee accepts the Property "as is", without any warranty expressed or implied. When the License terminates, at Licensee's own cost, Licensee shall clean and restore the Property to a condition acceptable to both parties. Licensee is under no obligation to remove any plants, buildings or improvements made to the Property, but has the option to do so as set forth in this License.

18. **Assignment or Subletting.** This License is personal to Licensee. Licensee shall not transfer, pledge, assign or sublet this License or any rights under the License. Any attempted transfer, pledge, or assignment of this License shall be null and void resulting in a default under this License. In addition, Licensee shall not sublease or sublicense any part of the property. Any attempt to sublease or sublicense shall constitute a default under this License.

19. **Termination.** Notwithstanding any other provisions in this License, either party may terminate this License at any time upon providing the other party 60 days prior written notice.

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20. **Notices.** Any notice required or desired from any party under this License shall be in writing and shall be personally served or may be given by depositing such notice in the United State mail, registered or certified, postage prepaid, addressed to the other party as follows:

Licensors: Director
Office of Parks and Recreation
250 Frank H. Ogawa Plaza, Ste. 3330
Oakland, CA 94612

Licensee: President, Board of Directors
Golden State Bonsai Federation
3201 Newtown Road
Placerville, CA 95337-7970

Copy to: Dr. Seiji Shiba, Chairman, Collection North
Golden State Bonsai Federation
18350 Lexington Drive
Monte Sereno, CA 95030

Any notice given by registered mail shall be deemed to given on the third business day of its deposit in the United States mail. Any notice given by certified mail shall be deemed given on the date receipt was acknowledged to the postal authorities. Any notice by mail other than registered or certified mail shall be deemed given only received by the other party, then on the date of receipt. Licensor and Licensee may, during this License, change their respective addresses for the purpose of receiving notices hereunder by so notifying the other party in writing of such change of address.

21. **Default.** The occurrence of any of the following events shall constitute a default under this License:

21.1 Failure to pay the License Fee or any other sums of money due under this License when such failure to comply continues for ten (10) days after Licensee shall have received such notice from Licensor.

21.2 Failure to perform any other provision of this License if the failure to perform is not cured after ten (10) days after Licensee shall have received such notice from Licensor. If the default cannot be reasonably cured within thirty (30) days, Licensee shall not be in default if Licensee commences to cure the default within such thirty (30) day period and exercises due diligence and best efforts to cure the default.

21.3 Licensee shall have abandoned the Property.

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22. **Licensor's Remedies.** In the event of any default by Licensee, Licensor shall have the following remedies in addition to all other rights and remedies provided by law or otherwise provided in this License which Licensor may enforce cumulatively or in the alternative:

22.1 Licensor shall have the option to keep this License in force and effect and to enforce by an action at law or in equity the right to: (1) recover the License Fee and other sums of money becoming due under this License, (2) make payments required by Licensee or perform Licensee's obligations and be reimbursed by Licensee for such cost with interest at the then maximum rate of interest permitted by law from the time when Licensor payment is made until Licensor is reimbursed, and (3) remedies of injunctive relief and specific performance to prevent Licensee from violating the terms of this License and to compel Licensee to perform its obligations under this License.

22.2 Licensor shall have the option to terminate this License by providing written notice to Licensee to be effective on the date set forth in such termination notice. Any such termination shall not relieve Licensee from its obligation to make any payments due under this License.

22.3 In the event that Licensee abandons the Property, Licensor may terminate this License provided that Licensor shall first provide written notice to Licensee with expressed notice of such termination.

23. **Damage or Destruction.** If all or part of the Property is destroyed or damaged from any cause which frustrates, causes the use of Property to be unfit for the purpose or use described in this License or creates an unsafe or hazardous condition, either party shall have the option to terminate this License upon 30 days written notice to the other party. Licensor shall not have any obligation to Licensee under any circumstances to repair any damage to the Property or to rebuild any structure on the Property.

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24. **Annual Reporting.** On or before June 30th of each year of this License and any Extended License Period, Licensee shall deliver to Licensor current statements of the following:

24.1 End of year financial statements of the Bonsai Garden prepared in accordance with Generally Accepted Accounting Principles and prepared by a Certified Public Accountant acceptable to the City Auditor. This provision shall conform to the City of Oakland City Auditor's Table of Contract Clauses Related to Financial Responsibilities.

24.2 Certificate of Insurance (in compliance with Schedule Q)

24.3 Copy of Certified Articles of Incorporation.

24.4 Copy of current Bylaws.

24.5 Annual Reports including but not limited to an income and expense statement, a source and application of fund statement, balance sheet showing an all assets and liabilities, a budget for the current year, a roster showing the names and telephone numbers of the current President and Directors of GSBF, and other related reports.

24.6 Statement confirming the number of people served in that year with an estimation of age and zip code; and the fees charged if any.

25. **Record Retention.** Records are to be retained to the later of four years after the termination or two years after the closure of any disputed matter. Such shall be retained on the Property or at the site of local administration with convenient access to Licensor.

26. **Condemnation.** If all or part of the Property is taken under the power of eminent domain, or sold under the threat of condemnation, either party shall have the option to terminate the License upon 30 days written notice to the other party.

27. **Entire Agreement.** This License contains the entire agreement of the parties relating to this transaction and may not be amended except in writing signed by both parties. Any prior lease or agreement between the parties shall have no force and effect on this License.

28. **Legal Effect.** This License shall not be construed as a partnership between Licensor and Licensee and it is not intended to create a third party beneficiary contract.

29. **Time.** Time is of the essence as to each and every part of this License.

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In witness hereof, the parties have executed this License on the dates set forth below.

Golden State Bonsai Federation
(Licensee)

City of Oakland
(Licensor)

Date: _____

Date: _____

By: _____
Dolly Fassio
President, Board of Directors (2006)

By: _____
Deborah A. Edgerly
City Administrator

Office of Parks and Recreation
(Licensor)

Approved as to form and legality:

Date: _____

Date: _____

By: _____
Audree V. Jones-Taylor

Director

By: _____
Office of the City Attorney

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TABLE OF EXHIBITS

EXHIBIT	DESCRIPTION
A	Property Map
B	Schedule Q
C	Certificate of Insurance or copies of Insurance Policies
D	Items List

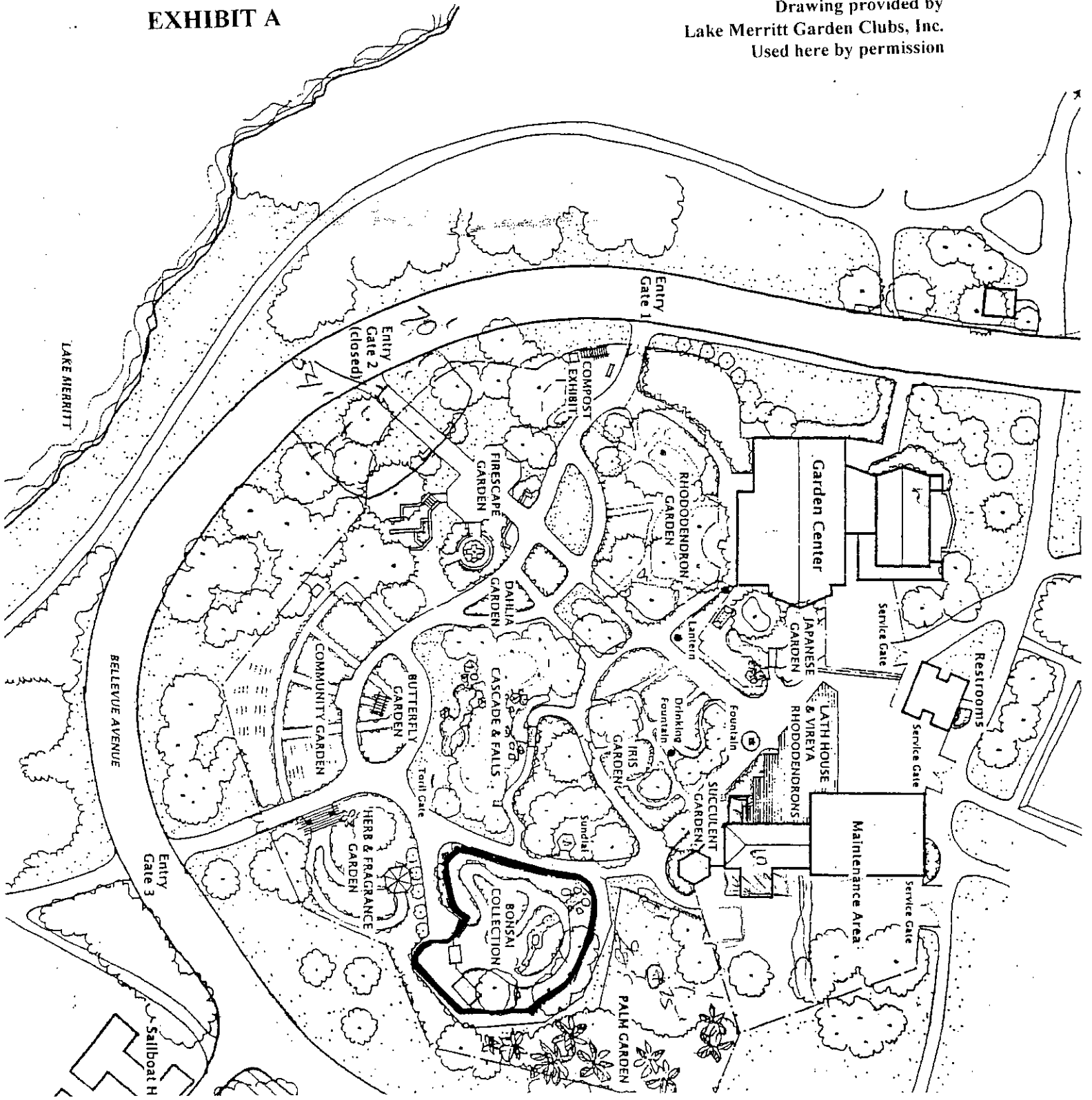
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EXHIBIT A

Drawing provided by
Lake Merritt Garden Clubs, Inc.
Used here by permission



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EXHIBIT B

Schedule Q

INSURANCE REQUIREMENTS PROFESSIONAL AND SPECIALIZED SERVICES AGREEMENTS

a. General Liability, Automobile, Worker's Compensation and Professional Liability

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Contractor shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

- i. Commercial General Liability insurance, including but not limited to, Bodily Injury, Broad Form Property Damage, Contractual Liability and if necessary, Products and Completed Operations or Owners and Contractor Protective Liability. The policy shall contain a severability of interest clause or cross liability clause or the equivalent thereof.
 - A. Coverage afforded on behalf of the City shall be primary insurance and any other insurance available to the City under any other policies shall be excess insurance (over the insurance required by this Agreement).
 - B. Limits of liability shall include the following:

Bodily Injury - \$1,000,000

Property Damage - \$1,000,000

Or, Combined Single Limit (C.S.L) for Bodily Injury and Property Damage - \$2,000,000
 - C. If the policy is a "claim made" type policy, the following should be included as endorsements:
 - 1) The retroactive date shall be the effective date of this Agreement or a prior date.

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- 2) The extended reporting or discovery period shall not be less than thirty-six (36) months.
 - ii. Automobile Liability insurance, including all owned, non-owned and hired automobiles used by the Contractor or its agents in the performance of this Agreement shall have the following minimum limits for Bodily Injury and Property Damage - \$1,000,000 Combined Single Limit.
 - iii. Worker's Compensation insurance as required by the laws of the State of California. Statutory coverage may include Employers Liability coverage with limits not less than \$1,000,000. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.
 - iv. Professional Liability/errors and omissions insurance in the amount of \$ n/a.
- b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. Additional Insured: Contractor shall name the City of Oakland, its Councilmembers, directors, officers, agents and employees as additional insureds in its Comprehensive Commercial General Liability and Automobile Liability policies. If Contractor submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG20 10 (or equivalent) and/or CA 20 48 - *Designated Insured Form (for business auto insurance)*. A STATEMENT OF ADDITIONAL INSURED ENDORSEMENT ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF THE ADDITIONAL INSURED REQUIREMENT; and
- ii. Cancellation Notice: 30-day prior written notice of cancellation, termination or material change in coverage; and
- iii. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and
- iv. Insurer shall carry a Best Rating of B+ or greater.

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EXEMPTION NOTE: Until further notice, the City will accept the State Compensation Insurance Fund (SCIF) as an acceptable insurer for the purposes of Workers' Compensation coverage.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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EXHIBIT C

**Certificate of Insurance
(to be provided at signing)**

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EXHIBIT D

List of Items

1. Mas Imazumi Memorial Gate
2. Fence surrounding the Bonsai Garden
3. Conifer trees ground planted inside the Bonsai Garden, including but not limited to pines, spruce and cedars.
4. Figure Stones
5. Bonsai stands inside and outside of The Bonsai Garden
6. Bonsai Pedestals inside and outside of the Bonsai Garden
7. Sitting Benches
8. Ceramic Water Basins
9. Lanterns
10. All Bonsai and Suiseki
11. Memorial plaques and signs
12. Chinese scholar stone in front of Bonsai garden
13. Tsukubai-wet waterfall just outside gate
14. Dry Water fall landscape materials-inside gate
15. Buildings and any items contained therein
16. Any items added by Licensee during the term of this License Agreement.

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