

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: August 29, 2011
	Agenda Item No. 73B & C Roll Call No. <u>11-1527</u> Communication No. <u>11-581</u> Submitted by: Donald M. Tripp, Director of Park and Recreation

AGENDA HEADING:

Approval of a Second Amendment to Robert D. Ray Asian Garden 28E Agreement between the City of Des Moines and Chinese Cultural Center of America; and approval of an Agreement between the City of Des Moines and the Des Moines River Front Development Authority for maintenance and repair of Robert D. Ray Asian Garden.

SYNOPSIS:

Staff recommends approving a Second Amendment to the existing Robert D. Ray Asian Garden 28E Agreement between the City of Des Moines and the Chinese Cultural Center and approval of an Agreement between the City of Des Moines and the Des Moines River Front Development Authority for maintenance and repair of the Robert D. Ray Asian Garden.

FISCAL IMPACT: NONE

Amount: N/A

Funding Source: N/A

ADDITIONAL INFORMATION:

On October 24, 2005, by Roll Call No. 05-2601, City Council approved a 28E Agreement with the Chinese Culture Center of America (CCCA) for the Robert D. Ray Asian Garden (Asian Garden). This agreement provided for the construction, maintenance, operation, and programming of the facility with both the City and CCCA responsibilities defined and a charitable gift of \$25,000 from the City for the Asian Garden improvements. The Asian Garden is located north of the Argonne Armory along the Des Moines River. The garden includes: a pavilion structure, water features, paths, a small pagoda statue, a character stone garden, gardens and plantings.

On July 9, 2007, by Roll Call No. 07-1302, City Council approved a First Amendment to the 28E Agreement that provided CCCA additional time to complete fundraising and construction of the Asian Garden and modified the City's \$25,000 contribution to redirect it toward maintenance to be performed by CCCA or mutually-agreed-upon in-kind plant maintenance and mowing services to be performed by the City, the choice to be at the City's discretion, rather than to construction as the 28E Agreement had originally outlined. In addition, the City was responsible for mowing of the levee.

The CCCA has now advised the City that it will not be able to provide maintenance of the Asian Garden as outlined in the 28E Agreement and that the Des Moines River Front Development Authority (RDA) has agreed to undertake those responsibilities for them. This change necessitates the Second Amendment to the original 28E Agreement as well as a new agreement that the City has negotiated with the RDA to redirect the same maintenance responsibilities formerly held by the CCCS. Those responsibilities and provisions now to be assumed by the RDA through the new Agreement include:

- Maintenance of the gardens in a manner consistent with other downtown City parks;
- Annual structural/architectural inspection of the pavilion structure, sealant application every 20 years and repainting of the pavilion every 8-10 years;
- With the City's approval, hiring of service providers by the RDA, if they desire, to fulfill their obligations; and
- Responsibility for the operation and maintenance of the existing security system.

The City is responsible for:

- Operation, management and programming of the Asian Garden;
- Snow removal; and
- Graffiti removal.

Included within the heading of operation, management and programming are duties such as scheduling for use of the shelter, establishment of hours of operation, rule-setting, review and approval of park uses, and possibly the coordination of special events. The City's responsibilities listed above can be absorbed by existing Park and Recreation Department staff and do not require additional financial resources.

The term of the agreement with RDA is set to coincide with the term of the CCCA 28E Agreement (until October 24, 2025), except that it may be terminated upon 10 days' notice in the event that the City enters into an agreement for the operation of downtown parks, including the Asian Garden.

PREVIOUS COUNCIL ACTION(S):

Date: July 9, 2007

Roll Call Number: 07-1302

Action: [Amendment](#) to Intergovernmental 28E Agreement with Chinese Cultural Center of America to extend the project construction completion date to November 1, 2007 and modify the City's contribution to be used for maintenance rather than construction. ([Council Communication No. 07-402](#)) Moved by Hensley to adopt. Motion Carried 7-0.

Date: June 19, 2006

Roll Call Number: 06-1182

Action: [Approving](#) Private Construction Contract between Regency Commercial Services, LLC and Chinese Cultural Center of America for building improvements in Robert D. Ray Asian Garden. Moved by Vlassis to adopt. Motion Carried 7-0.

Date: October 24, 2005

Roll Call Number: 05-2602

Action: Approving private construction contract between Regency Commercial Services, LLC and Chinese Cultural Center of America for building improvements for the Robert D. Ray Asian Garden. Moved by Kiernan to adopt. Motion Carried 7-0.

Date: October 24, 2005

Roll Call Number: 05-2601

Action: 28E Agreement with Chinese Cultural Center of America for construction and maintenance of the Robert D. Ray Asian Garden (located north of the Armory Building along the Des Moines River). (Council Communication No. 05-595) Moved by Kiernan to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S):

Board: Urban Design Review Board

Date: October 4, 2005

Action: Urban Design Review Board approved Robert D. Ray Asian Garden project submit to revised pathway design and Council approval of 28E Agreement for continued operations and maintenance.

Board: Access Advisory Board

Date: September 21, 2005

Action: Access Advisory Board approved Robert D. Ray Asian Gardens

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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