

Date August 29, 2011

APPROVAL OF SECOND AMENDMENT TO ROBERT D. RAY ASIAN GARDEN 28E AGREEMENT BY AND BETWEEN THE CITY OF DES MOINES AND CHINESE CULTURAL CENTER OF AMERICA

WHEREAS, on October 24, 2005, by Roll Cal No. 05-2601, the City Council approved the Robert D. Ray Asian Garden 28E Agreement By and Between the City of Des Moines, Iowa and Chinese Cultural Center of America, ("CCCA"), which provided that CCCA would be responsible for the design, construction, and maintenance, with its own privately raised funds, of certain improvements including a pavilion structure, plantings, paths, water features, and a character stone garden to be named the Robert D. Ray Asian Garden, ("Asian Garden"), to an area north of the Armory Building in the south end of the Jimmy Muto Recreation Area, owned by the City, and to make a charitable gift to the City of such Asian Garden improvements ("the 28E Agreement"); and

WHEREAS, such improvements have been completed and the City has accepted such improvements; and

WHEREAS, CCCA has advised the City that it will not be able to provide maintenance of the Asian Gardens per the 28E Agreement and the Des Moines River Front Development Authority ("RDA") has advised the City that it will agree to undertake such responsibilities; and

WHEREAS, City staff and the CCCA have negotiated a Second Amendment to the Agreement which deletes the maintenance requirements, a copy of which is on file in the City Clerk's Office; and

WHEREAS, the CCCA has executed said Amendment; and

WHEREAS, it is in the best interest of the City to approve and enter into said Amendment.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that the Second Amendment to Robert D. Ray Asian Garden 28E Agreement By and Between the City of Des Moines and the Chinese Cultural Center of America, which is on file in the City Clerk's Office, be and is hereby approved and the Mayor is authorized and directed to sign said Amendment on behalf of the City and the City Clerk is hereby directed to attest to said signature.

★ **Roll Call Number**

Agenda Item Number

73B

.....  
August 29, 2011

Date.....

Moved by \_\_\_\_\_ to adopt.

(Council Communication No. 11-~~581~~ ).

APPROVED AS TO FORM.

*Ann DiDonato*

Ann DiDonato  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

MOTION CARRIED

APPROVED

\_\_\_\_\_  
Mayor

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
City Clerk

SECOND AMENDMENT TO  
ROBERT D. RAY ASIAN GARDEN 28E AGREEMENT

BY AND BETWEEN THE  
CITY OF DES MOINES, IOWA  
AND  
CHINESE CULTURAL CENTER OF AMERICA

THIS SECOND AMENDMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the City of Des Moines, Iowa, hereinafter called the "CITY", and the Chinese Cultural Center of America, hereinafter called "CCCA", to the Robert D. Ray Asian Garden 28E Agreement By and Between the City of Des Moines, Iowa and Chinese Cultural Center of America, entered into on October 24, 2005 and as amended by Amendment dated June 11, 2007 (together, "the Agreement").

WHEREAS, on October 24, 2005 by Roll Cal No. 05-2601, the City Council of the City of Des Moines approved the Robert D. Ray Asian Garden 28E Agreement Between the City of Des Moines, Iowa and Chinese Cultural Center of America, which provided that CCCA would be responsible for the design, construction, and maintenance, with its own privately raised funds, of certain improvements to be named the Robert D. Ray Asian Garden, hereinafter called "the Asian Garden", to an area north of the Armory Building in the south end of the Jim Muto Recreation Area, owned by the CITY, and to make a charitable gift to the CITY of the Asian Garden; and

WHEREAS, on July 9, 2007 by Roll Call No. 07-1303, the City Council approved an Amendment to the Robert D. Ray Asian Garden 28E Agreement Between the City of Des Moines, Iowa and Chinese Cultural Center of America to change the completion date of the construction of the Asian Garden improvements from September 1, 2006 until November 1, 2007 and the completion date for installation of sod and completion of the Character Stone Garden and all landscaping until June 1, 2008; and

WHEREAS, the improvements have been completed but CCCA has not been able to raise sufficient funds to provide for maintenance of the improvements and desires to be relieved of its maintenance responsibilities maintenance of the improvements to the City.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants of the parties hereto, it is agreed as follows:

The following sections of the Agreement will be deleted:

1. Section II.F. Maintenance, Repair and Replacement of Asian Garden shall be deleted, except for the last sentence in section F.1.
2. Section IV.A shall be deleted and replaced with the following: The designation of the Asian Garden as the Robert D. Ray Asian Garden shall remain in effect until October 24, 2030.
3. The second sentence in section IV.B Naming and Signage of Asian Garden- Signs shall be deleted and replaced with the following: The CCCA shall have the right to designate naming rights for Diversity Circle stones, Character Boulders, and the Victory Pagoda, subject to such signage design and placement being in compliance with applicable laws and regulations, as determined by the CITY, and which do not detrimentally effect prior designations.
3. Section IV.C shall be deleted.
4. CCCA shall deliver to CITY all replacement materials/pieces in its possession and to provide information requested by CITY for the improvements upon execution of this Second Amendment.
5. CCCA affirms its gifting of the improvements to CITY and the transfer of all right title and interest in the improvements to CITY upon the City's City Council acceptance of the improvements.
6. Section V shall be deleted and replaced with the following:  
This Agreement shall commence on the date of execution and shall continue in full force and effect until October 24, 2030.
7. Section VIII shall be deleted.

Except as modified above, all other terms of the Agreement shall remain in effect.

IN WITNESS WHEREOF, we have hereunto set our hands on the day and year first written above.

CITY OF DES MOINES, IOWA

CHINESE CULTURAL CENTER OF AMERICA

By: \_\_\_\_\_  
T.M. Franklin Cownie, Mayor

By: *Mike Simonson*  
Mike Simonson, Vice President

APPROVED AS TO FORM:  
*Ann DiDonato*  
Ann DiDonato, Assistant City Attorney

ATTEST:  
\_\_\_\_\_  
Diane Rauh, City Clerk

STATE OF IOWA     )  
                                  ) ss:  
COUNTY OF POLK    )

On this 28th day of July, 2011, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared, to me MIKE SIMONSON personally known, who being by me duly sworn, did say that he is the Vice President of the CHINESE CULTURAL CENTER OF AMERICA, that the seal affixed to the foregoing instrument is the seal of the corporation; that the instrument was signed and sealed on behalf of the corporation, by authority of its Board of Directors; and that MIKE SIMONSON acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by her voluntarily executed.

*Nicol Roethler*  
Notary Public in the State of Iowa



STATE OF IOWA     )  
                                  ) ss.  
COUNTY OF POLK    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned, a Notary Public, personally appeared T. M. FRANKLIN COWNIE and DIANE RAUH, to me personally known, who, being by me duly sworn, did state that they are the MAYOR and CITY CLERK, respectively, of the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Resolution adopted under Roll Call 11-\_\_\_\_\_, dated \_\_\_\_\_ and that T. M. FRANKLIN COWNIE and DIANE RAUH acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

\_\_\_\_\_  
Notary Public in the State of Iowa