



CITY OF KIRKLAND
Department of Parks & Community Services
505 Market Street, Suite A, Kirkland, WA 98033 425.587.3300
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Jennifer Schroder, Director

Date: November 7, 2014

Subject: Agreement between Seattle Tilth and the City of Kirkland to provide education and agricultural resources to the public and an urban agriculture center at McAuliffe Park

Recommendation:

That the City Council authorizes the City Manager to sign the attached Agreement with Seattle Tilth for Use of McAuliffe Park to operate an urban agriculture and education center.

Background:

McAuliffe Park is an extraordinary landscape that has evolved from Kirkland's pioneer days to the present under the stewardship of the Langdon/Johnson & McAuliffe families, and now the City of Kirkland Parks and Community Services Department.

The City first purchased a small portion of the property in the 1990's, and the remainder in 2001, for a total of 11.6 acres. In 2005, the City retained Barker Landscape Architects to help master plan the park. The intent of the master plan (the Plan) is to preserve and enhance the heritage farmstead, gardens and overall unique character of the property. Development of the site is envisioned to support programming such as community gardening and education, forest restoration (native plant nursery), sustainability and other related activities. The Plan also focuses on enterprise opportunities, such as weddings, events and business meetings as a means of generating revenue to offset operating costs.

The site is currently used by the public primarily for informal picnicking and walking. Operationally, the site is used to store park maintenance equipment and supplies as well as support a neighborhood pea-patch program and a native plant nursery for plant stock used in natural area restoration projects within the Kirkland park system. In addition, the department's recreation division offers a limited number of classes on site.

A Request for Proposal (RFP) was advertised on December 20, 2013 for overall development, renovation, management and operation of McAuliffe Park as a public resource and urban agriculture center. Seattle Tilth was the only respondent but provided a detailed and exciting plan for an educational and agricultural center at McAuliffe entitled the Urban Farm Project.

In the introduction to their plan, Seattle Tilth provided the following description:

"Seattle Tilth's vision for McAuliffe Park includes a vibrant, accessible and multi-faceted urban agriculture and learning center that engages and involves the community in a broad range of gardening and nutrition education programs, as well as expanded opportunities to grow, harvest and access healthy, fresh produce. This vision is built upon a commitment to develop and manage the site using organic and sustainable practices throughout, and where possible, to incorporate a social enterprise business model in order to operate successful programs.

Central to our vision is our commitment to working closely with the City of Kirkland and to foster effective partnerships with community groups and residents and to establish a spirit of openness, inclusion and capacity building."

The complete 43 page response may be viewed by this link to [Seattle Tilth's proposal](#). Staff, along with Park Board Members, reviewed the proposal and conducted an interview with Seattle Tilth Executive Director Andrea Dwyer. The Parks, Public Works and Human Services Committee received an overview of the proposal on July 2, 2014.

Seattle Tilth

The mission of Seattle Tilth is "to inspire and educate people to safeguard our natural resources while building an equitable and sustainable local food system."

Since 1977, Seattle Tilth has been a trusted source for organic gardening education in the region and has taught thousands of adults and children in hands-on educational programs. They have substantial experience in community garden projects, examples include developing and operating the Rainier Beach Urban Farm and Wetland Project, a City of Seattle partnership, as well as the Pickering Garden, a City of Issaquah partnership.

The Agreement

The term of the agreement is for 10 years with option for two additional consecutive terms of 10 years.

Seattle Tilth submitted a proposal in response to the City's RFP. It outlines a long term strategy to develop and fund McAuliffe Park as a vibrant, accessible and multi-faceted urban agriculture and learning center that engages and involves the community in a broad range of gardening and nutrition education programs, as well as expand opportunities to grow, harvest and access healthy, fresh produce. The initial scope of work is summarized here:

- Establishing Master Recycler Composter Eastside trainings and outreach programs
- Introducing adult education organic gardening courses
- Introducing cooking and nutrition programming
- Community outreach to establish programming interest with Edible Kirkland, Kirkland Nourishing Networks, local schools, gardening groups, churches and other stakeholders
- Continue role as the convener and facilitator of Edible Kirkland Nourishing Network monthly meetings. Current Edible Kirkland projects under consideration include creating GIS mapping tool of potential private and public land for production of fruits and vegetables, Explore integrating edible landscapes into Kirkland Parks and Open Spaces and a project to revitalize a Historic Orchard in Kirkland.

Tier One Improvements

The scope of work would be accomplished through the following "Tier One" improvements within the first one-to-three years of operation. According to the proposal, making these Tier One improvements relies upon considerable in-kind contributions and volunteer labor.

Community Learning and Demonstration Garden—This would be a small garden site, built in proximity to the P-patch garden. This space would include various garden elements including garden beds, organic vegetables, rain garden, compost area, edible perennials, cistern, native ornamentals and fruit trees. The community garden would also include irrigation, fencing, signage, pathways and potentially a greenhouse and other amenities.

Children's Learning Garden—Modeled after Seattle Tilth's Children's Gardens at Good Shepherd Center, this would be an engaging, fun and interactive garden area and could include annual and perennial vegetables, a sensory garden, an animal trail and wildlife tunnel, giant kiwi vines, fruit trees, a container garden demonstration, worm bins, compost area and a gathering area/play area. The initial plan would be to build the children's garden in the West play area, but Seattle Tilth would work closely with parks staff and community groups in determining the best location for this garden.

Production Farm—Seattle Tilth's site improvement plan includes a one- to two-acre production farm directly west of the P-patch in the large meadow area. The farm space would include fencing and irrigation as well as pathways for vehicle access.

Wash/Pack Station—Seattle Tilth would seek to create a modest outdoor station for preparing produce for distribution and sales at local farmers markets. The plan is to locate the station in proximity to the production farm as well as the P-patch and community learning garden areas.

Market Stand—The Tier One site plan would include a modest market stand for on-site produce sales. Tilth initially believes the garage area could be a good location for the market stand but would work with parks officials and other community members in determining the most advantageous placement.

Garage Area Tenant Improvements—Seattle Tilth's site improvement plan is to make modest tenant improvements to the garage area, thereby making it possible to convene garden classes during inclement weather. Tilth also proposes to utilize the garage structure for office space for the on-site staff and would make the additional tenant improvements necessary for this space to accommodate these functional purposes.

Arboretum—The Tier One plan contains many of the enhancements to the arboretum as outlined in the McAuliffe Park Master Plan including tree labeling, planting new trees and walking paths.

Other Farm and Garden Improvements—Seattle Tilth would plan to maintain flexibility and openness to hear from, and respond to, ideas and input from community members regarding additional site improvements that relate to food production, garden education, natural habitat and enhanced community participation and stewardship.

Seattle Tilth offices and certain programming will be located in the lower level of the building referred to as the office/car storage building. Currently, the upper floor is used for meetings

and City of Kirkland recreation and education classes for youth. City programs will continue to be offered and staff will coordinate use of the upper section of the building with Seattle Tilth.

Utilities and tenant improvements specific to the needs of Seattle Tilth will be at its sole expense, unless otherwise mutually agreed to by the City.

Attachments:

- Request for Proposal
- Resolution
- Agreement between Seattle Tilth and City of Kirkland

REQUEST FOR PROPOSAL (RFP)

McAULIFFE PARK URBAN FARM DEVELOPMENT AND OPERATION

Job Number 06-14-PK

Proposal Due Date –February 14, 2014, no later than 3:00 pm PST



PARKS AND COMMUNITY SERVICES DEPARTMENT
JENNIFER SCHRODER, DIRECTOR

MAILING ADDRESS AND CONTACT INFORMATION:

KIRKLAND PARKS AND COMMUNITY SERVICES
505 MARKET STREET SUITE A
KIRKLAND, WA 98033
PHONE: (425) 587-3301 EMAIL: *JSchroder@Kirklandwa.gov*

DESCRIPTION OF PROJECT, RFP INSTRUCTIONS & EXPECTATIONS

A. BACKGROUND

McAuliffe Park is an extraordinary landscape that has evolved from Kirkland's pioneer days to the present under the stewardship of the Langdon/Johnson & McAuliffe families, and now the City of Kirkland Parks & Community Services Department.

The City first purchased a small portion of the property in the 1990's and the remainder in 2001 for a total of 11.6 acres. In 2005, the City retained Barker Landscape Architects to help master plan the park. The intent of the master plan (the Plan) is to preserve and enhance the heritage farmstead, gardens and overall unique character of the property. Development of the site is envisioned to support programming such as community gardening and education, forest restoration (native plant nursery), sustainability and other related activities. The plan also focused on enterprise opportunities, such as weddings, events and business meetings as a means of generating revenue to offset operating costs. The McAuliffe Park Master Plan is available on the City of Kirkland website: http://www.kirklandwa.gov/depart/parks/Park_Planning/Park_Planning_Development/McAuliffe_Park_Master_Plan.htm

The site is currently used by the public primarily for informal picnicking and walking. Operationally, the site is used to store Park Maintenance equipment and supplies as well as supporting a pea-patch program and a native plant nursery. Nursery stock is used in natural area restoration projects within the Kirkland Park system. In addition, Kirkland Recreation offers a limited number of classes on site.

B. DESCRIPTION OF PROJECT

The City of Kirkland Parks and Community Services Department (the Department) is seeking Proposals for overall development, renovation, management and operation of McAuliffe Park as a public resource and urban agriculture center.

1. Site Description

The property, encompassing 13 separate parcels, is located primarily on the northeast corner of NE 116th Street and 108th Avenue NE in Kirkland's South Juanita neighborhood.

McAuliffe Park contains the following important elements within its nearly 12 acres:

- A large forested area/native conifer grove dominated by maturing second growth Douglas fir trees with a range of deciduous tree species. A network of trails leads through this dense forest canopy on the northern portion of the site.
- Community garden containing 36 individual plots
- Native plant nursery managed by volunteers within the Green Kirkland Program.
- Well-groomed lawn areas are interspersed with trees and shrubs of remarkable quality and variety.

- Several residences and outbuildings, including:
 - Residences (Exhibit A)
 - Former McAuliffe Residence - Daylight rambler, about 4,290 sq. ft., constructed in 1969 (currently functioning as a home rental).
 - The Johnson Homestead, which includes a 1,490 sq. ft. rambler built in 1905 (currently functioning as a home rental), a detached 400 sq. ft. garage, and an historic barn (about 800 sq. ft.), built in the early 1900's.
 - The "Carriage House", a 1,660 sq. ft. brick house built in 1928 (currently functioning as a home rental).
 - The "Blair House", a 1,120 sq. ft. house built in 1955 (currently functioning as a home rental).
 - A 2-story combination Office/Car Storage Building, about 2,300 sq. ft. **(currently used for meetings and recreation/education classes for youth with a focus on cooking – Exhibit B)**
 - Expansive Carport Storage Structure, about 1,800 sq. ft., (currently used to store park maintenance equipment and materials)
 - Plus several other smaller outbuildings, storage sheds, and garden structures.

2. Urban Agriculture

The site currently supports a 36 plot community garden and a small native plant nursery. Mature apple trees of the past provide a reminder of the property's history. The site can be used for growing plants, harvesting food or ornamental crops. These agricultural outputs can be either donated or sold on or off the Site. Elements of Urban Agriculture shall be established in the long-term development and operation of the Site.

3. Public Benefit

Interested parties are asked to provide a written proposal for the development and operation of this site. In addition, the proposal must specify how the community at-large will benefit from the proposed development and operation. This may include free and reduced-price activities, existing facilities that are made accessible to the public, new facilities and programs that are created for general public benefit. Programming shall be consistent with the agreed upon use, and only after consultation between the Department and the Operator. In addition, it is expected that the Operator will accommodate the Department's programs at times when the Operator does not have programs scheduled.

Current programming is described in Exhibit B

B. DEFINITIONS

AGREEMENT – As defined, includes the RFP, the Operator’s written submittals and the Contract(s) entered into with the City.

CITY - Means The City of Kirkland, a municipal corporation.

DEPARTMENT - shall mean the City of Kirkland Parks and Community Services Department.

EFFECTIVE DATE - Shall mean the date the Agreement is executed by both parties.

OPERATOR – The term “Operator” shall be the person(s), firm(s) or organization(s) selected by the RFP process to develop and operate the proposed site.

PUBLIC BENEFIT – The positive aspects available to the general public resulting from a site, project, program or other use.

QUALIFICATIONS – Shall mean demonstrated experience and success as a developer and/or Operator in the critical areas as identified which includes, but is not limited to: client references, business references, a demonstrable successful history of Urban Agriculture, natural area restoration and/or other related programs and property operation experience, the ability to insure operations and bond performance and other criteria set forth in the RFP.

RFP – Means the City of Kirkland Parks and Community Services Request For Proposals.

SITE – Also referred to as “Property” and or “Premises” shall mean the real property upon which the buildings are located and the property to be used by the Operator.

URBAN AGRICULTURE – Shall mean an area in the City that is used to grow plants, harvest food or ornamental crops either for donation or sale or for use by those cultivating the land and their households, or sold at the lot where they are grown or off-site, or both, and in which no other items are sold. Examples may include flower and vegetable raising, orchards and vineyards.

C. CAPITAL IMPROVEMENTS

To implement the potential uses approved by the City in the Plan, the City seeks to enter into an Agreement with a qualified Operator(s) who can help meet the community’s needs for Urban Agriculture and wetland enhancement by planning, constructing and operating the Site. The successful Operator will demonstrate experience in planning, design, permitting, construction, and operation and maintenance.

The proposed facilities should enhance programming opportunities and may include other accessory/related activities that ensure creation of a self-sustaining business model and enhances the use of the Site. The City expects the Site to be developed at the Operator’s sole cost and expense from the current condition to fully operational as described in the

Operator's Proposal. Notwithstanding, the City may elect to partner for certain improvements to expand or add a public benefit. Improvements to the property by the City would be coordinated with the operator.

The proposal should clearly show the Operator's schedule for completing the Site and facility improvements for the proposed range of Urban Agriculture and wetland preservation and enhancement.

Planned capital improvements by the City are described in the Master Plan.

D. THE PROPOSAL GUIDELINES

Proposals submitted shall follow these guidelines:

1. Program and Operations Plan shall include the Operator's vision for the Site, including Urban Agriculture related programming. The Program and Operations Plan shall address the detailed Public Benefit, site programming, public outreach and engagement, and public access. All planning shall be consistent with the Plan.
2. Design, Planning & Construction Management Capability shall include the capital improvements plan which shall take into account the Plan.
3. Financial Plan shall include the detailed financial feasibility and business model to accomplish the Operator's vision. In addition, an operations and maintenance plan for the Site shall be presented to be consistent with the Operator's vision.
4. Corporate Organization shall include information about the Operator's organization, including subsequent partnerships. The proposal shall include the outline of how the Operator will be organized to operate and manage the Site.

All pieces of the proposal shall identify experience and organization of the Operator.

E. FINANCIAL SUBMITTAL INSTRUCTIONS AND EXPECTATIONS

Explain the funding for (1) the development and (2) subsequent operations. Clearly explain the timing and contingencies of your funding plan. The identity of any third party that will provide financing for the project and the nature and timing of their commitment should be clear. The City has no funds currently available for development or expanded operation of the facilities. Proposals that generate revenue to the City will be favored.

F. OPERATIONS EXPECTATIONS

The City expects that the Operator might, (1) coordinate marketing, (2) recruit, select and train personnel, (3) install point of sales, ticketing, and accounting systems, (4) complete and implement a system of operating policies and procedures and (5) test and certify the safety of all equipment and customer accessible fixtures. The Operator shall operate the Site (a) in a financially self-sustaining manner without subsidy from the City, (b) shall

operate the Site consistent with the Contract between the City and the developer and (c) shall operate the facilities for the benefit of the community and users of the Site. The primary purpose of the Site is to provide Public Benefit; the primary purpose is not to advance the business of the Operator at the expense of the City and users of the Site.

G. PROPOSAL SUBMITTAL STANDARDS AND PROCESS

1. Submittal Format:

Preferred:

Proposals titled "**Proposal McAuliffe Park Urban Farm Project**" should be submitted as an e-mail attachment in PDF or MS Word format to:

purchasing@kirklandwa.gov.

Or:

One (1) unbound original and two (2) digital storage devices (CD or USB Flash Drive) in PDF or MS Word format mailed or delivered to:

City of Kirkland
Attn: Barry Scott, Purchasing Agent
Job # 06-14-PK
123 5th Avenue, Kirkland, WA 98033

Note that faxed proposals or electronic proposals submitted as compressed files will not be accepted.

Submittal Deadline: February 14, 2014, by no later than 3:00 p.m. Pacific Standard Time.

Those who intend to submit proposals are encouraged to provide contact information to Barry Scott, Purchasing Agent, by email to bscott@kirklandwa.gov. Those who provide contact information will be automatically notified of any issued addenda or the cancellation of the RFP. It is the sole responsibility of those who do not submit contact information to monitor the City's "Doing Business with the City" webpage for any addenda or a notice of cancellation.

2. In order for the City to accept and evaluate a Proposal, the submittal must be signed by an individual legally empowered to bind the Operator and must have been fully completed, along with any other attachments or supporting documentation required. Late or incomplete Proposals will not be considered.

3. The Operator shall rely on only this Request for Proposals document and any written supplement issued by the City for guidance on preparation of the qualification submittal. Operators shall not rely on any other written or any oral statements of the City or its officers, directors, employees or agents regarding the overall project or the Proposal in preparing and submitting the Proposal.

4. Any questions must be submitted in writing by **5:00 pm on February 5th**. Questions are to be directed to Jennifer Schroder, Kirkland Parks and Community Services Director via email at JSchroder@Kirklandwa.gov.
5. Each Operator should be aware the City must comply with the provisions of the Washington State Public Records Act, RCW 42.56, which applies to the release of public information. The information which an Operator submits to the City shall be available for public disclosure.
6. Operators will be responsible for all costs associated with development of their proposal, whether selected or not.
7. The City reserves the right to reject any and all submittals at any time with no penalty, or to waive immaterial defects and minor irregularities in any submittal.
8. All material submitted in response to this RFP shall become the property of the City upon delivery to the City's Purchasing Agent and will not be returned.

H. RFP ANTICIPATED SCHEDULE:

December 20, 2013	Advertisement begins
January 14, 2014	On-site tour of park (10:30 am)
February 5, 2014	Written questions submitted by 5:00 pm
February 7, 2014	Q&A document posted
February 14, 2014	Proposals due by 3:00 pm
February 21, 2014	RFP Evaluation
February 28, 2014	Operator Selection
March 28, 2014	Finalize Agreement Scope
April 9, 2014	Park Board Recommendation to Council
April 15, 2014	City Council Approval

-- END RFP --

RESOLUTION R-5084

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE, USE AND OCCUPANCY AGREEMENT WITH SEATTLE TILTH FOR PROPERTY COMMONLY KNOWN AS McAULIFFE PARK LOCATED AT 10824 NE 116th STREET, KIRKLAND, WASHINGTON.

WHEREAS, the City of Kirkland ("City") owns property commonly known as McAuliffe Park located at 10824 NE 116th Street, Kirkland, Washington ("Property"); and

WHEREAS, the City and Seattle Tilth cooperated in a request for qualifications and evaluation of qualifications process to operate portions of the Property; and

WHEREAS, the parties agree that Seattle Tilth's use of the Property will provide an essential venue for positive and life-enriching programs and activities for the community, and thereby fulfill an important public purpose.

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is authorized and directed to execute on behalf of the City of Kirkland an Agreement substantially similar to that attached as Exhibit "A", which is entitled "Agreement Between City of Kirkland and Seattle Tilth Regarding the Lease, Use and Occupancy of McAuliffe Park."

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2014.

Signed in authentication thereof this ____ day of _____, 2014.

MAYOR

Attest:

City Clerk

**AGREEMENT
BETWEEN
THE CITY OF KIRKLAND
AND
SEATTLE TILTH
REGARDING THE
LEASE, USE AND OCCUPANCY OF
McAuliffe Park**

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**AGREEMENT
BETWEEN
CITY OF KIRKLAND
AND
SEATTLE TILTH
REGARDING THE
LEASE, USE AND OCCUPANCY
OF McAULIFFE PARK**

THIS LEASE, USE AND OCCUPANCY AGREEMENT (“**Agreement**”) is dated as of _____, 2014 (the “**Effective Date**”), and entered into by and between CITY OF KIRKLAND (hereinafter referred to as “**City**”), a Washington municipal corporation, and SEATTLE TILTH ASSOCIATION (hereinafter referred to as “SEATTLE TILTH”), a Washington non-profit corporation.

RECITALS:

- A. City is interested in the health and welfare of its residents;
- B. Seattle Tilth is organized for purposes which include educating and inspiring people to garden organically, conserve natural resources and support local food systems in order to cultivate a healthy urban environment and community.
- C. The McAuliffe Park site is owned by City, is located at 10824 NE 116th Street, Kirkland, Washington 98033, and is situated upon its real property in King County, Washington, legally described in Exhibit A to this Agreement (the “**Facility**”);
- D. City and SEATTLE TILTH cooperated in a request for qualifications and evaluation of qualifications process to operate portions of the Facility;
- E. Both parties agree that the SEATTLE TILTH’s use of the Facility will provide an essential venue for positive and life-enriching programs and activities for the community, and thereby fulfill an important public purpose;
- F. Both parties agree that it would be in the best interests of City, as Landlord, and SEATTLE TILTH as Tenant, for SEATTLE TILTH to lease and have exclusive operational control of certain areas within the Facility, and subject to the terms of this Agreement, reserving the right of City to use the Facility;
- G. Both parties intend that SEATTLE TILTH operate the Facility in a manner consistent with the important public purpose of providing positive and healthful programs for the community; and
- H. The parties hereto desire to document the terms and conditions they have agreed upon with respect to the lease, use and occupancy of portions of the Facility by SEATTLE TILTH;

NOW, THEREFORE, in consideration of the mutual undertakings and promises

contained herein, and as a direct benefit to City, the parties agree as follows:

1. DEFINITIONS.

All words in this Agreement bearing initial capitals, other than proper nouns, section headings or words required to be capitalized for proper usage, are defined terms and shall have the meanings specifically assigned to them in the Agreement as set forth below. Unless otherwise expressly provided, use of the singular includes the plural and vice versa.

1.1 **“Agreement”** means this Lease, Use and Occupancy Agreement, as from time to time amended in accordance with the terms hereof.

1.2 **“Approval”** means the prior written consent of a party hereto or designated representatives thereof.

1.3 **“City”** means City of Kirkland.

1.4 **“City Manager”** means the City Manager of City of Kirkland, or his or her designee.

1.5 **“Facility”** means the buildings and areas within the park, located at 10824 NE 116th Street Kirkland, Washington, pursuant to this Agreement and described in Exhibit B.

1.6 **“Tenant Improvements”** means all property installed by SEATTLE TILTH (such as equipment, fixtures and furnishings, whether the property is physically affixed to the Facility or not) which is used in the programming, operations, rentals, and administration of the Facility. Tenant Improvements does not mean the structure and core of the buildings on the Facility; HVAC, plumbing, electrical and mechanical systems.

2. LEASE DESCRIPTION.

City, as Landlord, hereby leases to SEATTLE TILTH, and SEATTLE TILTH, as Tenant, hereby leases from City the Facility, subject to the terms and conditions of this Agreement.

3. TERM OF AGREEMENT.

3.1 Commencement Date of Lease. The commencement date of SEATTLE TILTH leasehold interest shall be December 1, 2014 (the **“Commencement Date”**).

3.2 Term. The Term of this Agreement shall expire ten (10) years after the Commencement Date, unless terminated earlier pursuant to the provisions hereof.

3.3 Option for Extension of Term. SEATTLE TILTH may extend the term of this Agreement for two (2) additional consecutive terms of ten (10) years each; provided that, for the five-year periods starting December 1, 2019, December 1, 2024, December 1,

2029, and December 1, 2034, the parties have the option to renegotiate the terms and conditions of this Agreement and to thereby seek to amend this Agreement. If the parties fail to agree on the terms and conditions of the amendment of this Agreement, the parties agree to engage in non-binding mediation to resolve their differences. If the parties fail to agree on the terms and conditions of the amendment of this Agreement, City may terminate this Agreement after the failure to agree upon 90 days' prior written notice.

Not later than January 1, 2019, January 1, 2024, January 1, 2029 and January 1, 2034 before the expiration of this Agreement, City shall notify SEATTLE TILTH of City's exercise of its option to renegotiate the terms and conditions of this Agreement.

Not later than one (1) year before the expiration of this Agreement, SEATTLE TILTH shall notify City of SEATTLE TILTH's election to exercise its option to extend the initial term of this Agreement and any extension term. Notwithstanding any other provision of this Agreement, the option to extend the term of this Agreement shall not be assignable or exercisable by any person or entity other than SEATTLE TILTH.

3.4 Termination of Agreement. Upon the occurrence of any event of default described in this Agreement, the non-defaulting party may terminate this Agreement provided it has delivered to the defaulting party a notice of default providing at least a 60-day cure period thereafter and the default has not been cured within such period. Upon no less than one (1) year's written notice to City, SEATTLE TILTH may terminate this Agreement without cause. Upon no less than one (1) year's written notice to SEATTLE TILTH, City may terminate this Agreement without cause. In the event that this Agreement is terminated, SEATTLE TILTH shall surrender the Facility to City.

4. AUTHORIZED USE OF FACILITY.

4.1. SEATTLE TILTH shall have exclusive possession and operational control of the portions of the Facility under its control, subject to the terms of this Agreement and reserving the right of City to use the Facility after prior consultation with SEATTLE TILTH. Initially, SEATTLE TILTH will occupy the lower floor of the Atrium, the address of which is 11718 108th Ave NE ("Atrium"). The City will continue to use the upper floor of the Atrium.

4.2. The City and SEATTLE TILTH acknowledge that SEATTLE TILTH'S use of the Facility will expand over time, as generally described in Exhibit B, Proposal: McAuliffe Park Urban Farm Project, which is incorporated into this Agreement. The first year of SEATTLE TILTH's use of the Facility shall be governed by the Year One Scope of Work, a copy of which is attached hereto as Exhibit C and incorporated into this Agreement. The long-term use of the Facility by SEATTLE TILTH shall be governed by the Long Term Use Plan set forth in Exhibit B and incorporated into this Agreement. SEATTLE TILTH and the City shall coordinate any proposed expansion of SEATTLE TILTH's use of the Facilities.

4.3. SEATTLE TILTH shall use the portions of the Facility under its control for the provision of services, programs, and activities as described in Exhibits B and C, as well

as for meetings of SEATTLE TILTH Board members, staff, and other personnel directly associated with SEATTLE TILTH, other SEATTLE educational programs, presentations, SEATTLE TILTH fund-raising endeavors, SEATTLE TILTH offices, and such other activities as are related to or incidental to the foregoing. SEATTLE TILTH may use the Facility for community meetings and activities; provided that, such meetings and activities shall not unduly interfere with the primary use of the Facility as described in this Agreement. SEATTLE TILTH may use the Facility to engage in concession and catering activities only as provided in this Agreement. SEATTLE TILTH may use the Facility for additional purposes with the prior written approval of the City Manager, which shall not be unreasonably withheld, conditioned or delayed.

5. CITY USE.

5.1 City reserves the right to use the public program areas of the Facility for various programs on a space available basis. Scheduling and use procedures shall be coordinated by the respective facility managers of City and SEATTLE TILTH. In any event, Facility space for SEATTLE TILTH programs will be the first priority where scheduling of City's programs and SEATTLE TILTH's programs conflict.

5.2 City shall be allowed to use the Facility without rental charge, but shall pay operational expenses arising from its use of the Facility including extra staffing and janitorial services and expenses to repair any damage to the Facility or the Tenant Improvements caused by the City's use.

6. RENT.

In consideration of the value and public benefit of SEATTLE TILTH's contribution to development of the Facility, the value of SEATTLE TILTH's tenant improvements to the Facility, the value of SEATTLE TILTH's maintenance and operation of the Facility, and subject to the terms and conditions of this Agreement, SEATTLE TILTH hereby covenants to and shall pay no monetary rent for the Facility during the initial term of this Agreement. The amount of the annual rent during additional terms shall be established in accordance with Section 3.3 of this Agreement.

7. RECORD KEEPING AND REPORTING.

7.1 City shall appoint a liaison between City and SEATTLE TILTH who will ensure compliance with all record keeping and reporting requirements set forth in this Section 7.

7.2 SEATTLE TILTH shall maintain books, records, documents and other accounting procedures and practices in accordance with Generally Accepted Accounting Principles ("**GAAP**") consistently applied (e.g., a unitary, internally consistent system of accounts and records) that sufficiently and properly reflect all receipts and direct and indirect costs of any nature associated with the exercise of rights and the performance of obligations by SEATTLE TILTH under this Agreement.

7.3 SEATTLE TILTH shall provide monthly reports in the first twelve (12) months of operation and quarterly reports thereafter, on a schedule and in a form acceptable to both parties. The reports shall include, at a minimum, program assessment reports, which will include the number of programs offered and the number of unduplicated participants insofar as practical involved in drop-in activities and programs. Reports shall include measurement of progress towards meeting or exceeding mutually agreed upon program outcomes, established on an annual basis and included herewith in Exhibit C for the first year of operation. SEATTLE TILTH will draft statements of such outcomes and approval by City will not be unreasonably withheld.

8. IMPROVEMENTS, ALTERATIONS AND ADDITIONS TO THE FACILITY

Improvements, Alterations and Additions. SEATTLE TILTH shall not alter any structural features of the Facility without City approval. SEATTLE TILTH, at its sole expense, may redecorate any interior surface of walls, ceilings, windows and doors of the Atrium. SEATTLE TILTH may install its own furnishings and equipment on or about the Facility without City's consent, provided SEATTLE TILTH shall not install trade fixtures or other items which are physically attached to the Facility without City's consent, which shall not be unreasonably withheld, conditioned or delayed. Any improvements will be made in accordance with all licenses, permits, and/or other authorizations required by law.

9. ACCEPTANCE OF FACILITY.

Prior to entering into and occupying the Facility, SEATTLE TILTH shall have an opportunity to inspect the Facility to confirm the general maintenance and upkeep of the Facility. Thereafter, by entering into and occupying the Facility, or any portion thereof, SEATTLE TILTH accepts the same in their condition as of the Commencement Date. SEATTLE TILTH covenants that no representation, statement or warranty, express or implied, has been made by or on behalf of City with respect to the condition of the Facility or the use that may be made of the Facility, except as may be contained in this Agreement.

10. QUIET ENJOYMENT.

City covenants that it holds legal title to the Facility, free and clear of all liens and encumbrances, excepting only the lien for current taxes not yet due, if any, such mortgage or mortgages as are permitted by the terms of this Agreement, zoning ordinances and other building and fire ordinances and government regulations relating to the use of such property, and easements, restrictions and other conditions of record. City represents and warrants that it has full right and authority to enter into this Agreement, that the contemplated use of the Facility is permitted under applicable law, and that SEATTLE TILTH, upon performing its other covenants and agreements set forth in this Agreement and all extensions thereof, shall peaceably and quietly have, hold and enjoy the agreed-upon portions of the Facility for the term of this Agreement, including, but not limited to, the scheduling of SEATTLE TILTH activities and events, management of operations, or selection of employees and agents without hindrance or interference from City, subject to

the terms and provisions of this Agreement.

11. HAZARDOUS SUBSTANCES.

SEATTLE TILTH shall not cause or permit the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as defined below) on, under, in, above, to, or from the Facility, the building, or the common areas, other than in strict compliance with all applicable federal, state and local laws, regulations and orders. The term “**Hazardous Materials**” refers to any substances, materials, and wastes that are or become regulated as hazardous or toxic substances under any applicable local, state or federal law, regulation or order. SEATTLE TILTH shall indemnify, defend and hold City harmless from and against (a) any loss, cost, expense (including attorneys’ fees and court costs), claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work or remedial work required by, or incurred by City or any nongovernmental entity or person in reasonable belief that such work is required by any applicable federal, state or local law, governmental agency, or political subdivision, and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release, continuing release or discharge of any Hazardous Materials on, under, in, above, to, or from the Facility that occurred or originated during the term of this Agreement. City shall indemnify, defend and hold SEATTLE TILTH harmless from and against (a) any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work (“**remedial work**”) required by, or incurred by SEATTLE TILTH or any nongovernmental entity or person in a reasonable belief that such work is required by any applicable federal, state or local law, governmental agency, or political subdivision, and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release, continuing release or discharge of any Hazardous Materials on, under, in, above, to, or from the Facility that occurred or originated during a time other than the term of this Agreement. If any remedial work is so required under any applicable federal, state or local law during the term of this Agreement, City shall perform or cause to be performed the remedial work in compliance with such law, regulation or order. All remedial work shall be performed by one or more contractors under the supervision of a consulting engineer, each selected by City and approved in advance in writing by SEATTLE TILTH. If City does not commence the remedial work in a timely fashion or does not diligently prosecute the remedial work to completion, SEATTLE TILTH may, but shall not be required to, cause the remedial work to be performed, subject fully to the indemnification of this paragraph. The foregoing indemnification obligation shall survive termination of this Agreement.

12. MAINTENANCE; CLEANING; REPAIR; AND UTILITIES.

12.1 City. City is responsible for maintenance and repair of the structural components of the Atrium which shall include the roof, the exterior walls, the foundation, and the HVAC system. City is also responsible for maintenance which is necessary for the structural integrity of the Atrium, including maintenance of load-bearing members, and of main lines of mechanical, electrical, and plumbing systems to the point of entry. City is responsible for the portions of the Facility that are currently being rented to others. City

is responsible for and will pay for landscaping and landscape maintenance that meet City standards; provided that, if SEATTLE TILTH wants special plantings or landscaping and landscape maintenance that exceed City standards, SEATTLE TILTH will be responsible for and will pay for and maintain such plantings or features. SEATTLE TILTH shall be responsible for maintenance and repair of any areas that are under its control, such as gardens and pea-patches. City is responsible for and will pay for maintenance of the parking lot and all exterior lighting that meets City standards. City will maintain and provide confidence testing of the fire alarm and sprinkler systems. Before entering the Facility to undertake maintenance and repair work, City shall give SEATTLE TILTH at least twenty-four (24) hours notice; provided that, such maintenance and repair work shall not unduly interfere with the use of the Facility for any programming. In the event of an emergency, however, no such notice shall be required. City shall timely pay the charges for the following services to the Facility: city water, storm sewer, sewer and garbage; provided, however, that SEATTLE TILTH shall reimburse the City for water utility charges significantly above the base charges attributable to SEATTLE TILTH activities. For the purposes of this Agreement, the base water utility charges are the amounts paid by the City for water at the Facility during the 2014 calendar year. In the event the City determines that SEATTLE TILTH's water consumption is significantly above the base charges, it will notify SEATTLE TILTH and the parties will negotiate a fair and equitable method for allocating water charges, taking into account all of the water usage at the Facility. As SEATTLE TILTH's use of the Facility expands, SEATTLE TILTH and the City will explore the option of obtaining separate meters for utilities. City shall not pay for any other services or utilities for the Facility.

12.2 SEATTLE TILTH. SEATTLE TILTH is responsible for maintenance and repair of the interior of the portions of the Atrium under its control, which shall include Tenant Improvements and any of SEATTLE TILTH's property. SEATTLE TILTH's responsibility for tenant improvements and its property extends through fixture drain and trap down to the junction with the line into wall or floor, and includes attempting to clear clogs by means of plunger and toilet auger. SEATTLE TILTH's janitorial and routine maintenance responsibilities include, but are not limited to: timely repair or replacement of light fixtures or bulbs, electrical switches or controls; cleaning of seating, curtains, carpets, flooring, and faucets; cleaning of interior and exterior windows; cleaning of the kitchen and restroom facilities and drinking fountain; and cleaning of external patio, entryways, and external back door area. Except as otherwise specified, SEATTLE TILTH shall timely pay all charges for utilities and other services for which it is responsible to the Facility. Utility charges to be paid by SEATTLE TILTH, include, but are not limited to, electricity, telephone, internet, security alarm monitoring, permits, and false alarm charges.

13. INDEMNIFICATION.

SEATTLE TILTH shall defend, indemnify, and hold harmless the City, its officers, officials, employees and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages, arising out of SEATTLE TILTH's negligent acts or omissions in the performance of this agreement. The City shall defend, indemnify and hold harmless SEATTLE TILTH, its officers,

officials, employees and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages, arising out of the City's negligent acts or omissions in the performance of this agreement. Each Party agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. This indemnification shall survive the termination of this Agreement.

14. INSURANCE.

14.1 City shall maintain all risk property insurance covering the Facility in an amount equal to its replacement cost, insuring against the perils of Fire, Lightning, Extended Coverage, Vandalism and Malicious Mischief, extended by Special Extended Coverage Endorsement to insure against all other Risks of Direct Physical Loss, such coverage and endorsements to be as defined, provided and limited in the standard bureau forms prescribed by the insurance regulatory authority for the State of Washington for use by insurance companies admitted in such state for the writing of such insurance on risks located within such state or such coverage as provided to the City through the Washington Cities Insurance Authority. Subject to the terms of this Agreement, such insurance shall be for the benefit of City and under its sole control.

14.2 City shall notify SEATTLE TILTH immediately after a casualty occurs to the Facility if the City determines that (1) the Facility is totally destroyed by fire or other casualty, (2) the casualty is not insured, (3) the cost of restoration would exceed the total City's Insurance proceeds and SEATTLE TILTH's available funds, or (4) rebuilding or repairs cannot in City's estimation be completed within three hundred sixty-five (365) days after the date upon which City has notified SEATTLE TILTH of such damage. In such event, this Agreement shall terminate effective upon the date of the occurrence of such damage. City shall give notice to SEATTLE TILTH in writing of its determination within ninety (90) days following the date of the occurrence of such damage.

14.3 If the Facility is damaged by any peril covered by the City's Insurance to be provided by City, but only to such extent that rebuilding or repairs can in City's estimation be completed within three hundred sixty-five (365) days after the date upon which SEATTLE TILTH is notified by City of such damage and within the amount covered and paid by the City's insurance, this Agreement shall not terminate, and City shall at its sole cost and expense thereupon proceed with reasonable diligence to rebuild and repair such building to substantially the condition in which it existed prior to such damage, except that City shall not be required to rebuild, repair or replace any part of the partition, fixtures, additions and other improvements which may have been placed in, or about the Facility by SEATTLE TILTH and which is owned by SEATTLE TILTH. If the building is subsequently damaged while City is rebuilding and repairing the building, City shall estimate whether rebuilding or repairs can be completed within three hundred sixty-five (365) days after the date upon which City is notified by SEATTLE TILTH of such subsequent damage. If the Facility is untenable in whole or in part following such

damage, the rent payable during the period in which it is untenable shall be reduced to such extent as may be fair and reasonable under all of the circumstances. If City does not complete such repairs and rebuilding within three hundred sixty-five (365) days after the date upon which SEATTLE TILTH is notified by City of such damage or such subsequent damage, as appropriate, SEATTLE TILTH may at its option terminate this Agreement by delivering written notice of termination to City within three hundred ninety-five (395) days after the date of the notice of the damage or the subsequent damage, as appropriate, as SEATTLE TILTH's exclusive remedy, whereupon all rights and obligations hereunder shall cease and terminate.

14.4 Notwithstanding anything in this Agreement to the contrary, if the holder of any indebtedness secured by a mortgage or deed of trust covering the Facility requires that the City's Insurance proceeds be applied to such indebtedness, then City shall have the right to terminate this Agreement by delivering written notice of termination to SEATTLE TILTH within fifteen (15) days after such requirement is made by such holder, whereupon all rights and obligations under this Agreement shall cease and terminate.

14.5 SEATTLE TILTH shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with SEATTLE TILTH's operation and use of the Facility.

14.6 Waiver of Subrogation. SEATTLE TILTH and the City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by insurance on or in connection with the Facility. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

14.7 No Limitation. SEATTLE TILTH's maintenance of insurance as required by the agreement shall not be construed to limit the liability of SEATTLE TILTH to the coverage provided by such insurance, or otherwise limit City's recourse to any remedy available at law or in equity.

14.8 Minimum Scope of Insurance.

SEATTLE TILTH shall obtain insurance of the types described below:

14.8.1 Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover Facility and contractual liability. City shall be named as an insured on SEATTLE TILTH's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Facility Form CG 20 11 or a substitute endorsement providing equivalent coverage.

14.8.2 Property insurance shall be written on an all risk basis.

14.9 Minimum Amounts of Insurance.

SEATTLE TILTH shall maintain the following insurance limits:

14.9.1 Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$5,000,000 general aggregate.

14.9.2 Property insurance shall be written covering the full value of SEATTLE TILTH's property and improvements with no coinsurance provisions.

14.10 Other Insurance Provisions.

The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:

14.10.1 SEATTLE TILTH's Commercial General Liability insurance coverage shall be primary insurance as to the City, provided that the City's Insurance shall be primary as to SEATTLE TILTH in regard to damage to the Facility structure and areas for which The City is responsible under this Agreement and not caused by SEATTLE TILTH. Any Insurance maintained by the City shall be excess of SEATTLE TILTH's insurance and shall not contribute with it.

14.10.2 SEATTLE TILTH's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to City.

14.11 Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

14.12 Verification of Coverage.

SEATTLE TILTH shall furnish City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of SEATTLE TILTH.

15. SIGNS.

SEATTLE TILTH may install signs on the exterior of the Facility, identifying the building as the offices of SEATTLE TILTH or other mutually agreed upon name, and containing other information related to SEATTLE TILTH, including without limitation, program information, fundraising information and special SEATTLE TILTH announcements. The design, installation and location of said signs shall comply with applicable provisions of the Kirkland Municipal Code, including but not limited to zoning provisions and building regulations, and shall be subject to the written approval of the City Manager, which approval shall not be unreasonably withheld.

16. ASSIGNMENT, SUBLEASE OR TRANSFER.

Obligations or rights of SEATTLE TILTH under this Agreement may not be assigned, subleased, or otherwise transferred by SEATTLE TILTH, without the prior written consent of City, which consent may be withheld at the sole discretion of City. The assignment, sublease, or transfer of this Agreement without such consent shall constitute an Event of Default. Any such assignment, sublease, or transfer shall be specifically subject to all the terms and conditions of this Agreement. In the event of any proposed assignment, sublease, or transfer of this Agreement, SEATTLE TILTH shall cause to be delivered to City simultaneously with such proposed assignment, sublease, or transfer, an instrument in writing, executed by the assignee, in which the assignee shall assume and agree to accept all the terms and conditions of this Agreement.

17. CONCESSIONS AND CATERING ACTIVITY.

17.1 Definitions. As used in this section, unless the context clearly requires a different meaning,

17.1.1 **“Concession and catering activity”** means and includes the preparation, service, free distribution, or sale of food or any beverage, or the free distribution or sale of any concession merchandise or service; and

17.1.2 **“Concession merchandise or services”** means and includes inedible goods and services such as souvenirs, novelties and tickets to events at other venues.

17.2 Grant of Right. City grants to SEATTLE TILTH the exclusive right to engage in concession and catering activity and to enter into agreements authorizing one or more concessionaires to engage in such activity for and on the behalf of, or under the auspices of, SEATTLE TILTH, at the Facility, subject to the terms of this Agreement. If SEATTLE TILTH decides to retain any such concessionaire(s), SEATTLE TILTH shall select such concessionaire(s). If SEATTLE TILTH enters into any such agreement(s), SEATTLE TILTH shall remain ultimately responsible for compliance with terms and conditions, and performance of obligations under this Agreement. Any such agreement shall incorporate terms and conditions related to concessions and catering activity under this Agreement.

17.3 Food Service Establishment Permit Required. SEATTLE TILTH, or any such concessionaire(s), shall ensure that all food offered for sale on or from the Facility has been prepared, transported, served and otherwise provided only by a person or entity issued a current valid Food Service Establishment permit by the Seattle King County Department of Public Health or its successor.

17.4 Licenses and Permits Required; Contingent Expiration of Right. SEATTLE TILTH, or any such concessionaire(s), shall be responsible for obtaining and maintaining, at no cost to City, all licenses, permits and other authorization required in order to legally conduct the concession and catering activity contemplated herein. City shall have no obligation to issue such licenses, permits, or other authorization. City shall issue such licenses, permits, or other authorization in accordance with applicable City rules and regulations. The inability of SEATTLE TILTH, or any such concessionaire(s), to secure

or to maintain any such license, permit or other authorization shall not invalidate the concession and catering right granted herein, provided that SEATTLE TILTH shall not engage in concession and catering activity until the necessary license, permit or authorization has been obtained.

18. COMPLIANCE WITH LAW.

18.1 Lawful Use. SEATTLE TILTH and City each agree to abide by, conform and comply with all applicable federal, state and local laws, and obtain all required licenses, permits, and authorizations. Whenever either party or its authorized representative is informed of any violation of any such law, ordinance, rule, regulation, license, permit, or authorization committed by it, it shall immediately desist from such violation. The final judgment of any court or administrative body of competent jurisdiction or the admission by a party in any action against it, whether the other party is a party thereto or otherwise, that it or its invitees has violated any law, ordinance, rule, or regulation shall be conclusive of that fact as between City and SEATTLE TILTH.

18.2 Licenses and Similar Authorizations. SEATTLE TILTH, at no expense to City, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits and similar legal authorizations, and comply with all requirements thereof. City shall have no obligation to issue such licenses, permits, or authorizations. City shall issue such licenses, permits, or authorizations in accordance with applicable City rules and regulations.

18.3 Taxes. SEATTLE TILTH shall pay, before delinquency, all taxes, levies, and assessments of whatever kind or nature are imposed or become due during the term of this Agreement and arise from any activity on or use and occupancy of the Facility pursuant to this Agreement, including but not limited to taxes arising out of the activity or business conducted on the Facility; taxes levied on SEATTLE TILTH property, equipment, and improvements on the Facility; taxes on SEATTLE TILTH's interest in this Agreement and any leasehold interest created thereby under RCW 82.29A, if applicable; and any assessment levied for any local improvement, utility local improvement, or any similar undertaking. In the event the State of Washington makes any demand upon City for payment of any tax resulting from SEATTLE TILTH's use or occupancy of the Facility or the conduct of any activity subject to tax, or the State withholds funds due to City to enforce collection of leasehold excise or any other tax, SEATTLE TILTH, at its sole expense, shall contest such action and indemnify City for all sums expended by or withheld by the State from City in connection with such taxation; provided, that SEATTLE TILTH may pay any such tax in lieu of contesting it or indemnifying City. City shall pay and shall indemnify and hold SEATTLE TILTH harmless for all taxes imposed, that relate to City sponsored events at the Facility (except for taxes imposed on concession sales by SEATTLE TILTH or for SEATTLE TILTH's benefit), and for all taxes that may be imposed on SEATTLE TILTH or SEATTLE TILTH's use of the Facility resulting from any City use under this Agreement.

18.4 Attendance and Safety Standards. The Kirkland Fire Chief or his/her designee shall have the authority to determine, in the reasonable exercise of his/her

discretion, the number of persons that may be admitted to, and safely and freely move about in the Facility. SEATTLE TILTH shall not sell or issue tickets or credentials for admission to the Facility in an aggregate number that exceeds the Kirkland Fire Chief's determined number. SEATTLE TILTH shall not admit to the Facility more people than the number so determined by the Kirkland Fire Chief. SEATTLE TILTH shall not permit any chair or movable seat or other obstruction to be erected or placed in any passageway or fire exit. Sidewalks, grounds, entries, passages, vestibules, halls, elevators, abutting streets and all ways of access to the Facility shall not be obstructed by SEATTLE TILTH or used for any purpose other than for ingress and egress to the Facility for persons or property. City shall be responsible for assuring compliance with each of the foregoing requirements during periods of City use of the Facility under this Agreement.

18.5 Nondiscrimination. SEATTLE TILTH shall, in employment made possible or resulting from this Agreement, ensure that there shall be no unlawful discrimination against any employee or applicant for employment in violation of RCW 49.60.180, as currently written or hereafter amended, or other applicable law prohibiting discrimination, unless based upon a bona fide occupational qualification as provided in RCW 49.60.180 or as otherwise permitted by other applicable law. Further, no person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement in violation of RCW 49.60.215 or other applicable law prohibiting discrimination.

18.6 Americans with Disabilities Act. SEATTLE TILTH shall comply with all governmental laws, ordinances and regulations applicable to the use of the Facility, including without limitation Title III of the Americans with Disabilities Act.

18.7 Applicable Law and Venue. This Agreement shall be construed under the laws of the State of Washington. The venue for any litigation relating to this Agreement shall be in the Superior Court of the State of Washington for King County.

19. ROYALTIES, LICENSE FEES, AND SIMILAR PAYMENTS.

SEATTLE TILTH shall pay, before delinquency, all royalties, license fees, and other charges due and payable to any person or entity as the consequence of any public performance(s) or display(s) of copyrighted work(s) during its use of the Facility. City shall be responsible for all similar royalties, license fees and other charges in connection with City's use of the Facility.

20. LIENS AND ENCUMBRANCES.

SEATTLE TILTH shall keep the Facility, SEATTLE TILTH's interest in this Agreement, and the Tenant Improvements free and clear of any liens and encumbrances caused by the actions of SEATTLE TILTH, its employees, agents or contractors.

21. DEFAULT.

21.1 Default. The following events shall constitute a default and material breach of this Agreement:

21.1.1 The failure to comply with any of the terms of this Agreement regarding insurance;

21.1.2 The material violation of any law, ordinance, rule, or regulation which, after notice and reasonable time to cure, remains uncured;

21.1.3 The abandonment or vacating of the Facility for a period of thirty (30) days or more;

21.1.4 The absence of any SEATTLE TILTH-scheduled program for a period of ninety (90) days or more, when not due to repair problems or maintenance work for which City is responsible;

21.1.5 The dissolution of SEATTLE TILTH or the merger of SEATTLE TILTH with another entity without the prior written approval of City;

21.1.6 The assignment or transfer of this Agreement without the prior written consent of City as described in Section 16 of this Agreement; and The failure to perform any other condition or covenant of this Agreement where such failure in performance is not remedied within the time allowed by this Agreement, or such other period for remedial action as is expressly otherwise provided for in this Agreement, or agreed upon by both parties.

21.2 Extension of Period to Remedy Default. Neither City nor SEATTLE TILTH shall be in default unless such party fails to perform an obligation required of it within a minimum of thirty (30) days after written notice from the aggrieved party has been sent by the other, specifying the particular obligation that the other has failed to perform; provided, that if the nature of the other party's obligation is such that more than thirty (30) days are reasonably required for performance, then the other party shall not be in default if it commences performance within such thirty (30) day period, and thereafter diligently prosecutes the same to completion within one hundred eighty (180) days.

22. REMEDIES UPON DEFAULT AND MATERIAL BREACH.

Upon the occurrence of any Event of Default by SEATTLE TILTH, City shall have the option to pursue any one or more of the following remedies without notice or demand.

22.1 Terminate this Agreement, in which event SEATTLE TILTH shall immediately surrender the Facility to City, and if SEATTLE TILTH fails to do so, City may enter upon and take possession of the Facility and expel or remove SEATTLE TILTH and any other person who may be occupying such Facility or any part thereof, and SEATTLE TILTH agrees to pay to City on demand the amount of all loss and damage City may suffer by reason of such termination, whether through inability to relet the Facility on satisfactory terms or otherwise.

22.2 Enter upon and take possession of the Facility and expel or remove SEATTLE TILTH and any other person who may be occupying such Facility or any part thereof, and relet the Facility for such terms ending before, on or after the expiration date

of the term of this Agreement, at such rentals and upon such other conditions (including concessions and prior occupancy periods) as City in its sole discretion may determine.

22.3 Enter upon the Facility, and do whatever SEATTLE TILTH is obligated to do under the terms of this Agreement. SEATTLE TILTH agrees to reimburse City on demand for any expenses which City may incur in thus effecting compliance with SEATTLE TILTH's obligations under this Agreement, and SEATTLE TILTH further agrees that City shall not be liable for any damages resulting to SEATTLE TILTH from such action, whether caused by the negligence of City or otherwise.

22.4 Pursuit of one remedy shall not preclude pursuit of any other remedies, such remedies being cumulative and non-exclusive, nor shall pursuit of any remedy constitute a forfeiture or waiver of any rent due City or of any damages accruing to City by reason of SEATTLE TILTH's breach of this Agreement. No act or thing done by City or its agents during the term of this Agreement shall be deemed a termination of this Agreement or an acceptance of the surrender of the Facility. No agreement to terminate this Agreement or accept a surrender of said Facility shall be valid unless in writing signed by City. No waiver by City of any violation or breach of this Agreement shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms of this Agreement. City's acceptance of the payment of rental or other payments after the occurrence of an event of default shall not be deemed or construed as a waiver of such default, or as an accord and satisfaction. Forbearance by City to enforce one or more of the remedies upon an event of default shall not be deemed or construed to constitute a waiver of such default or of City's right to enforce any remedies with respect to such default or any subsequent default.

22.5 If either party employs the services of an attorney in connection with an event of default by the other party under this Agreement, or if either party brings an action or proceeding against the other party arising out of or concerning performance or interpretation of this Agreement, the prevailing party shall be entitled to recover from the other party its attorney's fees and costs.

23. SURRENDER OF FACILITY AND REMOVAL OF PROPERTY.

23.1 Surrender of Facility. Upon termination or expiration of this Agreement, SEATTLE TILTH shall surrender the Facility and all keys thereof to City.

23.2 Conditions of Facility upon Surrender. The Facility to be surrendered to City shall be surrendered in as good a condition as on the date of their acceptance by SEATTLE TILTH, except for: the effects of improvements, additions, alterations, and repairs made with the approval of City; property damage by fire and other perils insured in contracts or policies of fire, extended coverage, and vandalism; reasonable wear and tear; and acts of God.

23.3 Removal of Property. Prior to the expiration of this Agreement, or within sixty (60) days after termination in the event of an earlier termination of this Agreement, SEATTLE TILTH shall remove from the Facility, at no cost or expense to City, all personal

or agency property owned and placed in or on the Facility by SEATTLE TILTH, its agents, invitees, employees, contractors or successors. In removing such personal property, SEATTLE TILTH shall take due care to not damage or injure the Facility, and any such damage or injury shall be immediately repaired by SEATTLE TILTH to the City's reasonable satisfaction, at SEATTLE TILTH's sole cost and expense. Structural alterations, additions, and Tenant Improvements shall not be removed. In no event shall either party make any claim or demand upon the other, nor shall either party be liable for any inconvenience, annoyance, disturbance, or loss of business arising out of such removal operation during such sixty (60) day period, so long as SEATTLE TILTH uses reasonable diligence in removing its personal property from the Facility.

24. NO WAIVERS.

No action other than a written document by the City Manager or SEATTLE TILTH Executive Director specifically so stating shall constitute a waiver by a party of any particular breach or default by the other. No such document shall waive a failure to fully comply with any term or condition of this Agreement not specifically referenced therein, irrespective of any knowledge any officer or employee of a party may have of such breach, default, or noncompliance. A party's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future.

25. REMEDIES CUMULATIVE.

The rights under this Agreement are cumulative; the failure to exercise promptly any right recognized hereunder shall not operate to forfeit any such right. The use of one remedy shall not be taken to exclude or waive the right to use another.

26. OBLIGATION OF SEATTLE TILTH LIMITED TO CORPORATION.

Any and all obligations of SEATTLE TILTH under this Agreement are enforceable only against SEATTLE TILTH, a nonprofit corporation, and are not enforceable against nor do they impose any liability upon SEATTLE TILTH's officers, directors, trustees, members, employees, or agents.

27. ADDRESSES.

Unless otherwise directed in writing, all notices and reports shall be in writing, and together with any payments, shall be delivered to City at the following address:

Linda Murphy, Recreation Manager
Kirkland Parks and Community Services
City of Kirkland
505 Market Street
Kirkland, Washington 98033-6189

And to SEATTLE TILTH at the following address:

Andrea Platt Dwyer, Executive Director
SEATTLE TILTH
4649 Sunnyside Ave N., Suite 100
Seattle, Washington 98103

Either party may change its address for receipt of reports, notices or payments without the formal amendment of this Agreement by giving the other party written notice of such change not less than fifteen (15) days prior to the effective date thereof.

28. TITLES OF SECTIONS.

The titles of sections and subsections set forth herein are for convenience only, and do not in any way define, limit or construe the contents of any section.

29. AMENDMENTS.

No change, alteration, modification, or addition to this Agreement shall be effective unless it is in writing and properly signed by both parties hereto.

30. DISPUTE RESOLUTION.

In the event a dispute arises as to whether the parties are complying with the terms of this Agreement, the parties agree to use the following dispute resolution procedure before pursuing any other remedy. First, either party may give notice to the other of the dispute and the City Manager and SEATTLE TILTH President or their designees will meet within three (3) City business days to attempt to resolve the dispute. If the dispute continues, either party may give written notice to the other and a Resolution Panel will be formed consisting of one member selected by the City Manager, one member selected by SEATTLE TILTH President, and a third member selected by the first two. City shall pay any costs or fees associated with the member it selects. SEATTLE TILTH shall pay any costs or fees associated with the member it selects. City and SEATTLE TILTH shall each pay one-half of any costs or fees required for the third member. The parties agree to present the dispute to the Resolution Panel within twenty (20) calendar days after the written notice for an advisory opinion. The opinion of the Resolution Panel will be announced within ten (10) City business days and it will advise the parties as to whether or not the complained of commission or omission, if continued, would constitute breach of the terms of this Agreement. Nothing herein shall restrict either party from commencing litigation to resolve a dispute following receipt of the Resolution Panel's advisory opinion.

31. MEMORANDUM OF LEASE.

EXHIBITS

Exhibit A	Legal Description: McAuliffe Park
Exhibit B	Proposal: McAuliffe Park Urban Farm Project
Exhibit C	Year One Scope of Work

EXHIBIT A

Legal Description: McAuliffe Park

PARCEL 1:

The east half of Tract 3, Harris' Juanita Acres, according to the plat thereof recorded in Volume 20 of Plats, page 59, in King County, Washington.

PARCEL 2:

Beginning 884.64 feet north of the southwest corner of the southwest quarter of the southeast quarter of Section 29, Township 26 North, Range 5 East, W.M., in King County, Washington;
Thence south 89°11'50" east 160 feet to the TRUE POINT OF BEGINNING;
Thence continuing south 89°11'50" east 38 feet;
Thence south 01°35'30" west 160 feet;
Thence north 89°11'50" west 38 feet;
Thence north to the TRUE POINT OF BEGINNING.

PARCEL 3:

The north 100 feet of the south 724.64 feet of the west 198 feet of the southwest quarter of the southeast quarter of Section 29, Township 26 North, Range 5 East, W.M., in King County, Washington.

PARCEL 4:

The north 134.64 feet of the south 624.64 feet of the west 198 feet of the southwest quarter of the southeast quarter of Section 29, Township 26 North, Range 5 East, W.M., in King County, Washington.

PARCEL 5:

The north 162.5 feet of the south 490 feet of the west 198 feet of the southwest quarter of the southeast quarter of Section 29, Township 26 North, Range 5 East, W.M., in King County, Washington.

PARCEL 6:

The north 112.5 feet of the south 327.5 feet of the west 198 feet of the southwest quarter of the southeast quarter of Section 29, Township 26 North, Range 7 East, W.M., in King County, Washington.

PARCEL 7:

The south 215 feet of the west 198 feet of the southwest quarter of the southeast quarter of Section 29, Township 26 North, Range 5 East, W.M., in King County, Washington; EXCEPT the south 30 feet thereof, for road.

PARCEL 8:

The east 247.11 feet of the west 445.11 feet of the southwest quarter of the southeast quarter of Section 29, Township 26 North, Range 5 East, W.M., in King County, Washington;
EXCEPT the north 390 feet thereof;
AND EXCEPT the south 30 feet thereof for road;
AND EXCEPT the south 280 feet of the east 115 feet.

PARCEL 9:

The north 280 feet of the south 310 feet of the east 115 feet of the west 445.11 feet of the southwest quarter of the southeast quarter of Section 29, Township 26 North, Range 5 East, W.M., in King County, Washington.

EXHIBIT B

McAuliffe Park Urban Farm Project [Proposal](#)

EXHIBIT C

Year One Scope of Work

1. Deliverables

SEATTLE TILTH will provide the following:

Year One scope of work

McAuliffe Park is a unique location that is an excellent area to provide and expand further education and opportunity around growing, cooking, composting, and environmental programming. The existing physical attributes, such as a pea patch community garden and several outdoor, indoor, and semi-covered classroom areas, lend itself well in introducing Seattle Tilth programming. There are several areas that can potentially be developed into future farm and demonstration gardens. Initial scope of services for year one include:

1. **Establishing Master Recycler Composter (MRC) Eastside trainings and outreach programs**, targeting existing pea patch gardeners to educate about resource conservation and composting and expand the pea patch composting systems.
 - a. Kirkland Parks staff responsible for pea patches indicated this is an area that all pea patch gardeners could benefit from immediately. Some pea patches have struggled with creating successful compost systems.
 - b. MRC Eastside trainings could also extend to members of the public, where McAuliffe Park would be used as the training site.
 - c. Existing composting space in the pea patch area would be used, along with possible development of additional composting systems.
2. **Introducing adult education organic gardening courses**
 - a. Pea patch gardeners and community members could be surveyed to learn what topics would be most successful.
 - b. Seattle Tilth would ideally need a demonstration garden area in which to use for classes and passive signage that highlight organic gardening techniques.
 - i. Seattle Tilth staff observed potential areas in the pea patch that appeared to be unused, which could be used for a demonstration garden.
 - ii. Another possible edible demonstration garden could be developed along the split rail fence adjacent to the pea patch. The installation could be done as a hands-on class/teaching project. The edible demonstration garden area could be used by Seattle Tilth and others to teach and encourage residents to dedicate some of their lawn space into native or edible growing areas. It could feature perennial edibles and herbs for use by Seattle Tilth programs and pea patch gardeners with educational signage.

3. Introducing Cooking and Nutrition programming

- a. Conduct outreach to community partners and residents about what their interest is in learning about cooking and nutrition with a Farm to Table focus.
 - b. From feedback collected, determine which cooking and nutrition programs best fit this audience: family cooking classes, after school cooking directed towards high school students, monthly community dinners, workshops including specific Farm to Table principles like herbs, leafy greens, root vegetables.
 - c. Provide Community Kitchen Leader trainings for interested community leaders to begin new community kitchen sites on the Eastside.
4. Prior to implementing any programming, Seattle Tilth will work conduct outreach with the following groups to assess interest areas:
- a. McAuliffe Park staff and Kirkland Parks and Recreation Staff
 - b. Pea patch gardeners at:
 - i. McAuliffe Park – 35 plots
 - ii. Ohde pea patch gardeners – 33 plots
 - iii. Tot Lot pea patch gardeners – 20 plots
 - c. Edible Kirkland
 - d. Kirkland Nourishing Network
 - e. Community stakeholders
 - i. Community centers
 - ii. Local schools
 1. Alexander Graham Bell Elementary School
 2. Eastside Preparatory School
 - iii. Local gardening groups
 1. Unofficial pea patch gardens around Kirkland
 - iv. Local churches
 1. Trinity Lutheran
 2. Holy Spirit Lutheran
 - f. Local retail outlets
 - i. PCC
 - ii. Metropolitan Market
 - iii. Local nurseries and garden stores