

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

<b>AGENDA TITLE:</b>	Authorize the City Manager to Terminate the Existing Kruckeberg Botanic Garden Service Agreement and Execute a New Service Agreement Between the Kruckeberg Botanic Garden Foundation and the City of Shoreline
<b>DEPARTMENT:</b>	Parks, Recreation and Cultural Services
<b>PRESENTED BY:</b>	Eric Friedli, Director
<b>ACTION:</b>	<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

**PROBLEM/ISSUE STATEMENT:**

A Service Agreement was adopted by the City Council on November 26, 2007 that created a partnership between the City and the Kruckeberg Botanic Garden Foundation (KBGF) to achieve the goal of preserving Kruckeberg Botanic Garden. The Agreement includes provisions for maintenance, preservation and enhancement of the plant collection, and ensures the Garden remains an environmental and educational resource for citizens of all ages. The term of the existing agreement is 30 years, expiring in 2037.

The 2007 Service Agreement was amended in August 2011 to recognize the City Council approval of the Kruckeberg Botanic Garden Master Plan in 2010, clarify the partnership between the City and the Foundation regarding the timing of payments to the Foundation, marketing of program offerings and activities, and other minor updates.

The relationship between the City and KBGF warrants periodic review to ensure it meets the changing needs of the Foundation and the City. The KBGF and City staff entered into an extensive review of the existing Agreement in late-2014 into early-2015. That review resulted in a new Service Agreement proposal (Attachment A) that most accurately reflects current needs of the KGBF and requirements of the City. The existing agreement will have to be terminated before the proposed agreement is executed.

**RESOURCE/FINANCIAL IMPACT:**

The financial obligation of the City to the Foundation continues to be subject to annual budget review and City Council approval. City funding provides resources to the Foundation to provide program and maintenance support for the Garden.

**RECOMMENDATION**

Staff recommends that Council authorize the City Manager to terminate the existing Botanic Garden Service Agreement and simultaneously execute the proposed Service Agreement between the Kruckeberg Garden Foundation and the City of Shoreline.

Approved By:        City Manager ***DT***    City Attorney ***MK***

## **BACKGROUND**

The Kruckeberg Botanic Garden was first begun in 1958 by Professor Arthur (Art) Rice Kruckeberg and his wife Mareen from a 4-acre plot and farmhouse in Richmond Beach. Art and Mareen grew nearly every plant for seed or cutting. They took an informal, naturalistic approach to design, combining northwest native plants with unusual and rarely cultivated species collected from the West coast of the country and around the world. The result is a unique Puget Sound Basin woodland garden. The garden contains more than 2,000 plant species and several of the trees on the property are the largest or rarest in the state.

In 1998 the KBGF was founded with the objective of conserving the garden. The KBGF was created to assist with the management of the plant collection, garden maintenance, and conduct tours and workshops. The KBGF is a designated tax-exempt 501(c) (3) organization that is governed by a Board of Directors.

In an effort to preserve the botanic garden for future generations to enjoy, Dr. Kruckeberg signed a conservation easement in 2003 that protects the property in perpetuity from development. The easement is held by the Dunn Historic Garden Trust's Board of Directors and the Cascade Land Conservancy.

In 2007, KBGF contacted the City and expressed interest in managing and operating the Garden and continuing the stewardship of this unique plant collection for the community to enjoy. This prompted the development of a Service Agreement adopted by the City Council on November 26, 2007 (Attachment C) that created a partnership between the City and Foundation to achieve the goal of preserving the Garden. The Agreement includes provisions for maintenance, preservation and enhancement of the plant collection and ensuring the Garden remains an environmental and educational resource for citizens of all ages.

The Service Agreement was amended in August 2011 (Attachment B) to recognize the City Council approval of the Master Plan in 2010, clarify the partnership between the City and the Foundation regarding the timing of payments to the Foundation, marketing of program offerings and activities, and other minor updates.

## **DISCUSSION**

The relationship between the City and KBGF warrants periodic review to ensure it meets the changing needs of the Foundation and the City. The KBGF and City staff entered into an extensive review of the Agreement in 2014 that resulted in this new Service Agreement proposal that most accurately reflects current needs of the Foundation and requirements of the City.

Changes to the proposed agreement include the following:

- Section 2.4 - A work plan for the operation and maintenance of the Garden including a proposed schedule of activities and budget requests that will be due annually in July prior to the City's budget process (rather than in September as originally required in the 2007 Agreement).

- Section 3 - Clarification of services to be provided by the City. These include major maintenance to the new parking lot, major maintenance of the irrigation system, a more accurate accounting of current utility payment practices, free use of City Hall for public meetings, and additional updates that are minor.
- Section 4 - Clarification of services to be provided by the Foundation that include payment of prevailing wages to Foundation employees, maintenance of permanent artwork, routine maintenance of the irrigation system and new parking lot, and additional updates that are minor.
- Section 7.1 - A reduction in the length of contract term from 30 years to 5 years with five 5-year options to extend.

While some of the terms of the Agreement have been updated to keep pace with growth and development of the Garden, the financial obligation of the City to the Foundation continues to be subject to annual budget review and City Council approval. City funding provides resources to the Foundation to provide program and maintenance support for the Garden.

The KBGF Board of Directors has reviewed and adopted the agreement.

### **RESOURCE/FINANCIAL IMPACT**

The financial obligation of the City to the Foundation continues to be subject to annual budget review and City Council approval. City funding provides resources to the Foundation to provide program and maintenance support for the Garden.

### **RECOMMENDATION**

Staff recommends that Council authorize the City Manager to terminate the existing Botanic Garden Service Agreement and simultaneously execute the proposed Service Agreement between the Kruckeberg Garden Foundation and the City of Shoreline.

### **ATTACHMENTS**

Attachment A: Proposed Kruckeberg Botanic Garden Service Agreement (replaces and supersedes #4570)

Attachment B: 2011 First Amendment to the Service Agreement (#6460)

Attachment C: 2007 Service Agreement (#4570)



## **KRUCKEBERG BOTANIC GARDEN SERVICE AGREEMENT**

This BOTANIC GARDEN SERVICE AGREEMENT (“Agreement”) is made and entered into by and between KRUCKEBERG BOTANIC GARDEN FOUNDATION, a Washington nonprofit corporation, having an address of P.O. Box 60035, Shoreline, WA 98160-0035 (“Foundation”), and the City of Shoreline (“City”) (collectively “Parties”), on the date provided below.

### **1. Recitals**

- 1.1 The City is the owner of that certain real property located at 20312 15<sup>th</sup> Avenue N.W., Shoreline, King County, Washington, which is more particularly described as follows (“Property”):

PARCEL 1 - S ½ OF THE NW 1/4 OF THE NW 1/4 OF THE NW 1/4, LESS THE W 270 FEET THEREOF, SITUATED IN SEC. 1, TOWNSHIP 26 N, RANGE 3 E, W.M.

PARCEL 2 - W 270 FEET OF S ½ OF NW 1/4 OF THE NW 1/4 OF THE NW 1/4, LESS N 176.47 FEET THEREOF, AND LESS COUNTY ROAD, SITUATED IN SEC. 1, TOWNSHIP 26 N, RANGE 3 E.W.M.

- 1.2 The Property is subject to that certain perpetual conservation easement, granted by Arthur R. Kruckeberg to the E.B. Dunn Historic Garden Trust (“Dunn Garden Trust”) on October 14, 2003 and recorded on October 17, 2003 at King County AF # 20031017000833, which, among other things, restricts the uses and activities on the Property (“Conservation Easement”).
- 1.3 The Property contains a unique, natural, Northwest garden created and maintained by Arthur R. Kruckeberg and his deceased spouse, Mareen Kruckeberg, by preserving and enhancing the native plant collection and introducing rare plant species, which unique collections of plants have been sustained in an undeveloped natural area (“Garden”).
- 1.4 The Foundation’s goal is to ensure the Kruckeberg Botanic Garden is dedicated to fostering and providing educational, cultural and aesthetic enrichment to the community and all who visit.
- 1.5 The Foundation is a publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended (“Code”), and the regulations promulgated thereunder, and also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and 84.34.250. Foundation is included in the “Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code” published by the Internal Revenue Service.
- 1.6 The Parties have common goals of ensuring the perpetual maintenance of the Garden,

protecting the Property from uses contrary to preservation of its botanic collections, and providing to the general public passive aesthetic and educational opportunities relating to the Garden (hereafter “Goals”).

- 1.7 The Foundation was formed specifically for the purpose of advancing the Goals. The terms and conditions of this Agreement are intended by the Parties to ensure fulfillment of the Goals and the Foundation is willing to maintain and operate the Garden for the City in exchange for certain benefits and payments.
- 1.8 In addition to the Garden, the Property contains: residences which include a single-family home (the “Home”) and adjacent living quarters (the “Cottage”), collectively referred to as the “Buildings”; a greenhouse currently used for propagation and maintained by the Foundation (the “Greenhouse”); sheds for tool and equipment storage and benches for display of plants and nursery work (“the Structures); and a parking lot.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and in order to maintain the Garden at its current condition or better, and to ensure the public receives access to the benefits and aesthetic values inherent in botanic gardens, the Parties agree as follows:

## 2. Foundation’s Performance

- 2.1 General Maintenance Standards. The Foundation agrees to operate, maintain and improve the Garden so as to maintain and enhance a regionally significant botanic garden and collection of species native to lowland forests of the Puget Sound Basin, as well as non-native species compatible with the region, based on the botanic diversity, woodland setting, and naturalistic design of the Garden existing on the effective date of the City’s Master Site Plan that was approved on September 13, 2010. The Garden shall be maintained based on the Master Site Plan and the Guiding Principles in Attachment A. The Foundation shall conduct its services, including any Foundation plant propagation, in a manner that ensures public access consistent with the Conservation Easement and the Master Site Plan.
- 2.2 Plant Collections. The Foundation shall maintain, enhance and develop the plant collections and nursery displays, and where appropriate add new specimens. Computer and other records pertaining to the botanic collection, including mapping plant locations shall be maintained and updated as necessary.
- 2.3 Public Outreach and Education. The Foundation shall provide staff for supervision of volunteers, docent/steward training programs, garden tours, horticultural programs, lectures and other educational programs.
- 2.4 Work Plan. The Foundation shall prepare on or before July 15 of each year an annual work plan for the operation and maintenance of the Garden outlining a proposed schedule of activities, planned events, anticipated volume of visitors, and budget for the upcoming year. This plan shall include budget recommendations for City expenditures to enhance the Garden and include sustainability practices. The budget may include a line item request for funding



- for one-time equipment expenditures necessary to fulfill the responsibilities outlined in this Agreement.
- 2.5 Irrigation. The Foundation shall perform routine maintenance and repair of the irrigation system.
- 2.6 Equipment Maintenance. The Foundation shall perform routine maintenance and repair of site equipment that is used by the Foundation to maintain the Garden.
- 2.7 Buildings, Greenhouse, and Parking Lot Use and Maintenance. The Foundation shall be responsible for routine maintenance of the spaces used by the Foundation within the Buildings (the basement office, bathroom, and storage areas within the Home), the Parking Lot, the Structures, and the Greenhouse. The Foundation shall be responsible for any maintenance or repair of the Greenhouse and Structures. For clarity, this obligation shall not extend to the maintenance or repair of the Buildings, utilities on the property, or the parking lot. The Foundation shall notify City representative of any major repair issues on the Property of which the Foundation becomes aware.
- 2.8 Maintenance of Artwork. The Foundation shall be responsible for the cleaning and required maintenance of temporary art installed as part of Foundation programming.

### 3. City's Performance

- 3.1 Waste Pickup. The City or the City's contractor shall haul garbage, yard debris and recyclables from the designated bins at the Garden. Upon request by the Foundation, the City may assist with annual spring and fall clean-up at the Garden by hauling away extra waste and debris upon written request to and approval by the Parks Director. The Foundation shall be allowed to haul extra non-hazardous waste and debris to the City's disposal facility at Hamlin Park without prior approval from the Parks Director.
- 3.2 City Support for Garden Maintenance. Upon request by the Foundation, City staff and equipment may be made available as resources allow. All requests shall be submitted in writing to the Parks Director.
- 3.3 Utilities for Garden Maintenance. The Foundation shall not be responsible for the payment of electrical, water, and sewer used for Garden maintenance.
- 3.4 Maintenance of Facilities. The City shall be responsible for non-routine maintenance and repairs to the buildings, parking lot, primary walkways, and fences. City staff may make modifications to the irrigation system and shall be responsible for major maintenance to the irrigation system. City staff shall be responsible for spring irrigation system activation and fall winterization of irrigation and well equipment.
- 3.5 Maintenance of Artwork. The City shall be responsible for the cleaning and required maintenance of City-owned permanent artwork installed on the property unless by an

amendment to this Agreement.

- 3.6 Printing. The City shall provide a printing allowance for marketing materials for the Garden, as determined by the annual budget. Additional printing requests may be submitted to the Parks Director.
- 3.7 Grant Writing / Other Fund Raising Assistance. The City may provide grant writing research and assistance to the Foundation, as resources are available.
- 3.8 Security. The City shall maintain signage stating the name of the Garden and the hours of operation. The City shall consult with the Foundation to provide a live-in caretaker to perform routine park closing duties and grounds patrol. The City shall maintain necessary fencing limiting public access per the Master Site Plan.
- 3.9 Use of Property for Fundraising. The Foundation may use the Property for Foundation-sponsored events and programs without prior approval of the City consistent with Attachment B and as long as the events and programs do not conflict with City sponsored activities or limit reasonable public access. The Foundation may use existing Garden plant stock for on-site plant propagation for exclusive fundraising by the Foundation as long as the propagation does not damage existing plant stock or interfere with Garden aesthetics or public access. The Foundation may conduct ongoing plant sales and a larger annual plant sale event on the Property and the parties shall identify areas of the Property that may be secured from public access by the Foundation for these retail sale activities.
- 3.10 Marketing: Promotion of Garden and Class Registration. The City may market Garden activities in the Recreation Guide and advertise activities in the City *Currents* publication as space is available. In addition, the City may include Garden information on the City website. The City cable Channel 21 may be available for Garden information and City sponsored events and programs. No fee shall be charged to the Foundation for marketing Garden-related activities such as activities aimed at increasing Garden awareness, use, or improvement. No fee shall be charged to the Foundation for processing registration for activities and classes published in the Recreation Guide or for online registration for Foundation classes and events.
- 3.11 Use of City Facilities for Foundation Meetings and Fundraising. Subject to prior scheduling approval from the City, the Foundation may use the City Hall facilities for monthly meetings, public workshops sponsored by the Foundation, and its annual fundraising event. No fee shall be charged for rental of the City Hall facilities. Use of City facilities must comply with the City's Rental Policies.

#### 4. Payments

- 4.1 Quarterly Allowance. The City shall pay to the Foundation a quarterly allowance for services for Garden maintenance and enhancement. A Request for Reimbursement form and supporting quarterly report shall be completed and submitted to the Parks Director within five working days of completion of the quarter for which reimbursement is sought. The City shall reimburse the Foundation within 21 calendar days of receiving the Request for





Reimbursement form. The quarterly reimbursement shall be 25% of the amount approved annually by the City Council in the annual budget.

- 4.2 Prevailing Wage. The Foundation shall pay its personnel the State prevailing wages for laborers. The minimum prevailing wage rate paid for each year shall be the rate in effect on January 1 of each year. The Foundation shall file annually the Intent to Pay Prevailing Wages form and an Affidavit of Wages Paid form with the Department of Labor and Industries. At the request of the City, the Foundation shall share its payroll information with the City.

## 5. Implementation of Agreement

- 5.1 Meetings. The parties shall meet once a quarter or more often if needed for progress/status reports and to manage issues as they arise.
- 5.2 Annual Report. An annual report shall be completed by the Foundation for presentation to the Parks, Recreation and Cultural Services Board and/or the City Council during the second quarter of the following year. This report shall include all revenues and expenditures for the year, annual Garden attendance figures, a listing of all classes and activities, and a listing of any Garden improvements.

## 6. Insurance and Indemnification

- 6.1 Property Insurance. The City shall provide property insurance covering the premises.
- 6.2 Liability Insurance. The Foundation shall obtain Commercial General Liability insurance covering premises, operations, independent contractor's liability and damages for personal injury and property damage with combined single limits not less than \$1,000,000. The City shall be named as an additional insured on this policy. The policy is to contain, or be endorsed to contain, provisions that (1) Foundation's insurance coverage shall be primary insurance with insurance or insurance pool coverage maintained by the City as excess of the Foundation's insurance; and (2) Foundation's insurance coverage shall not be cancelled except after thirty (30) days prior written notice to the City.
- 6.3 Indemnification.
- 6.3.1. The City shall defend, indemnify, and hold the Foundation, its directors, officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees resulting from the negligent, gross negligent and/or intentional acts, errors or omissions of the City, its agents or employees arising out of or in connection with the performance of this Agreement.
- 6.3.2. The Foundation shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees resulting from the negligent, gross negligent and/or

intentional acts, errors or omissions of the Foundation, its agents or employees arising out of or in connection with the performance of this Agreement.

6.3.3. It is further specifically and expressly understood that the indemnification provided herein constitutes the City and Foundation's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purpose of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

## 7. Service Agreement Term and Termination

- 7.1 Term. The term of this Agreement shall be five (5) years starting on the effective date, with five 5-year options to extend by mutual agreement, unless earlier terminated as provided herein ("Term").
- 7.2 Termination. The Parties may terminate this Agreement with cause only after compliance with the dispute resolution process under Sections 8.1 and 8.2. In the event of such termination, all finished or unfinished documents, data, studies, worksheets, models and reports, or other material prepared by the Foundation pursuant to this Agreement shall be submitted to the City.

## 8. Remedies

- 8.1 Notice and Opportunity to Cure. In the event either party fails to perform as required by this Agreement, written notice of the default shall be given and the defaulting party shall have thirty (30) days from the date of receipt of the notice to cure the default or longer if circumstances warrant.
- 8.2 Dispute Resolution. If the default is not cured after notice within the timeframe specified in Section 8.1, the parties shall enter into non-binding mediation with a mutually agreeable third party as the mediator. If such mediation is not successful, then the parties shall proceed to binding arbitration.
- 8.2.1. In the event this Agreement is terminated by the City, the Foundation shall be entitled to a prorated payment of the quarterly allowance and reimbursable expenses incurred to the effective date of termination, less all payments previously made. This provision shall not prevent either party from seeking any legal remedies it may have for the violation or nonperformance of any of the provisions of this Agreement and any such charges due the City shall be deducted from the final payment due the Foundation. No payment shall be made by the City for any expenses incurred or work done following the effective date of termination unless authorized in advance in writing by the City.
- 8.2.2. The Foundation reserves the right to terminate this Agreement with not less than one hundred eight (180) days written notice, or in the event the City fails to pay the Foundation's outstanding invoices within 30 days following notice of default.



8.2.3 If the Foundation dissolves, liquidates or is otherwise unavailable to perform the scope of services, the City may, at its option, after written notice cancel this Agreement.

## 9. Ownership of Documents

9.1 All documents, data, drawings, specifications, software applications and other products or materials produced by the Foundation in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products and materials prepared by the Foundation are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold the Foundation harmless for such use. All or portions of materials, products and documents produced under this Agreement may be used by the Foundation upon confirmation from the City that they are subject to disclosure under the Public Records Act.

9.2 The Foundation shall preserve the confidentiality of all City documents and data that the City identifies in writing as confidential at the time of disclosure and is accessed for use in Foundation's work product.

## 10. Independent Contractor Relationship

10.1 The Foundation is retained by the City only for the purposes and to the extent set forth in this Agreement. The nature of the relationship between the Foundation and the City during the period of the services shall be that of an independent contractor, not employee. The Foundation, not the City, shall have the power to control and direct the details, manner or means of services. Specifically, but not by means of limitation, the Foundation shall have no obligation to work any particular hours or particular schedule and shall retain the right to designate the means of performing the services covered by this Agreement, and the Foundation shall be entitled to employ other workers at such compensation and on such other conditions as it may deem proper, provided, however, that any contract so made by the Foundation is to be paid by it alone, and that in employing such workers, it is acting individually and not as an agent for the City.

10.2 The City shall not be responsible for withholding or otherwise deducting federal income tax or Social Security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to Foundation or any employee of the Foundation.

## 11. Notice

Unless otherwise directed in writing, all notices and reports shall be delivered to the Parties at the following addresses:

Foundation at:        Kruckeberg Botanic Garden Foundation  
                             P.O. Box 60035  
                             Shoreline, WA 98160-0035  
                             20312 15<sup>th</sup> Ave NW  
                             Shoreline, WA 98177

City at:                 Shoreline PRCS Director  
                             17500 Midvale Ave. N.  
                             Shoreline, WA 98133-4905

## 12. General Provisions

- 12.1 Entire Agreement. This Agreement contains the entire agreement between the Parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this agreement, shall be deemed to exist or bind any of the parties hereto.
- 12.2 Effective date. The effective date of this Agreement shall be when fully executed by both parties.
- 12.3 Modification. This Agreement may be modified only by written agreement of the Parties.
- 12.4 Assignment. Parties may not assign their interests under this Agreement.
- 12.5 Third Party Rights. Under no circumstances shall this Agreement create any third party rights.
- 12.6 Authority. Any undersigned representative of a party to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally execute, and bind such party to, this Agreement.
- 12.7 Captions. The captions of this Agreement are for convenience and ease of reference only, and in no way define, limit, or describe the scope or intent of this Agreement.
- 12.8 Governing Law. This Agreement and the rights of the Parties shall be governed by and construed in accordance with the laws of the State of Washington.
- 12.9 Venue. Venue for any action to enforce this Agreement shall be King County, Washington.
- 12.10 Nondiscrimination. In hiring or employment made possible or resulting from this Agreement, there shall be no unlawful discrimination against any employee or applicant for employment because of sex, age, race, color, creed, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational



qualification. This requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt or the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or in the presence of any sensory, mental or physical handicap.

12.11 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

12.12 Parties Bound. The terms and conditions of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective personal representatives, heirs, successors, and assigns.

IN WITNESS HEREOF, the Parties have executed this Agreement as of the dates provided below.

KRUCKEBERG BOTANIC GARDEN FOUNDATION

CITY OF SHORELINE

\_\_\_\_\_  
Richard Leary, President

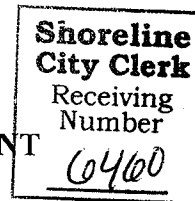
\_\_\_\_\_  
Debbie Tarry, City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Julie Ainsworth-Taylor, Assistant City Attorney



**FIRST AMENDMENT TO BOTANIC GARDEN SERVICE AGREEMENT  
(ORIGINAL CONTRACT NO. 4570)**

WHEREAS, a Botanic Garden Service Agreement was entered into by and between the City of Shoreline and the Kruckeberg Botanic Garden Foundation on December 21, 2007; and

WHEREAS, the parties desire to amend said agreement in order to reflect a change of circumstances;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Existing Agreement Amended.** The City and Kruckeberg Botanic Garden Foundation entered into an agreement on December 21, 2007, identified as: Botanic Garden Service Agreement. The parties hereby amend that agreement.
2. **Amendments to Existing Agreement.**
  - a. Section 2.1 is amended to read as follows:
    - 2.1 General Maintenance Standards. The Foundation agrees to operate, maintain and improve the Garden so as to maintain and enhance a regionally significant botanic garden and collection of species native to lowland forests of the Puget Sound Basin, as well as non-native species compatible with the region, based on the botanic diversity, woodland setting, and naturalistic design of the Garden existing on the effective date of the Agreement and the City's Master Site Plan that was approved by the City Council on September 13, 2010. The Garden shall be maintained based on the Master Site Plan and the Guiding Principles in Attachment A. The Foundation shall conduct its services, including any Foundation plant propagation, in a manner that will ensure public access consistent with the Conservation Easement and the Master Site Plan.
  - b. Section 2.4 is amended to read as follows:
    - 2.4 Work Plan. The Foundation shall prepare on or before July 15<sup>th</sup> of each year, an annual work plan for the operation and maintenance of the Garden outlining a proposed schedule of activities and budget for the upcoming year. This plan shall include budget recommendations for City expenditures that will enhance the Garden and include sustainability practices.
  - c. Section 3.1.6 is amended to read as follows:

3.1.6. Security. The City will add the Garden to the City security contract, purchase and install signage stating the name of the Garden and the hours of operation. The City will consult with the Foundation to provide a live-in caretaker to perform routine park closing duties and ground patrol. The City shall provide and maintain signage and necessary fencing limiting public access per the Master Site Plan.

d. Section 3.1.8 is amended to read as follows:

3.1.8 Marketing: Promotion of Garden and Class Registration. The City will market Garden activities in the Recreation Guide and advertise activities in the City Currents publication as space is available. In addition, the City will include Garden information on the City website. The City cable Channel 21 will be available for Garden information and City sponsored events and programs. No fee will be charged to the Foundation for marketing Garden-related activities such as activities aimed at increasing Garden awareness, use, or improvement. No fee will be charged to the Foundation for processing registration for activities and classes published in the Recreation Guide or for online registration for Foundation classes and events.

e. A new section 3.1.9 is added to read as follows:

3.1.9 Use of City Facilities for Foundation Meetings and Fundraising. Subject to prior scheduling approval from the City, the Foundation may use the City Hall facilities for monthly meetings and its annual fundraising event. No fee shall be charged for rental of the City Hall facilities. Use of City facilities must comply with the City's Rental Policies.

f. Section 3.2.1 is amended to read as follows:

3.2.1 The City will pay to the Foundation quarterly reimbursement for services for Garden maintenance and enhancement. The quarterly reimbursement shall be 25% of the amount approved annually by the City Council in the annual budget. A Request for Reimbursement form must be completed and submitted to the Director within five working days of completion of the quarter for which reimbursement is sought. The Foundation shall pay its personnel at the State prevailing wages for laborers for all Garden maintenance. The prevailing wage rate paid for each year shall be the rate in effect on January 1 of each year. The Foundation shall file annually the Intent to Pay Prevailing Wages form and an Affidavit of Wages Paid form with the Department of Labor and Industries. At the request of the City, the Foundation shall share its payroll information with the City. Staffing for public events and programs that support the Garden outside or beyond the

scope of those identified in the annual work plan shall be paid under this section with prior approval of the City or through user fees under 3.2.3.

g. The existing section 3.2.2 is deleted and a new section 3.2.2 is added to read as follows:

3.2.2 Annual Report. An annual report shall be completed by the Foundation for presentation to the Parks, Recreation and Cultural Service Board and/or the City Council during the first quarter of the following year. This report shall include all revenues and expenditures for the year, annual Garden attendance figures, a listing of all classes and activities, and a listing of any Garden improvements.

h. Section 10 is amended to read as follows:

10. **Notice.** Unless otherwise directed in writing, all notices and reports shall be delivered to the Parties at the following addresses:

Foundation at: Kruckeberg Botanic Garden Foundation  
P.O. Box 60035  
Shoreline, WA 98160-0035

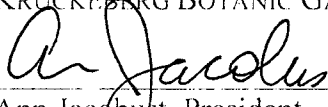
City at: Shoreline PRCS Director  
17500 Midvale Ave. N.  
Shoreline, WA 98133-4921

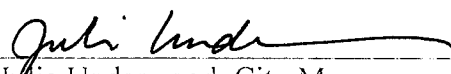
3. **Terms and Conditions of Existing Agreement to Remain the Same.** The parties agree that, except as specifically provided in this amendment, the terms and conditions of the existing agreement continue in full force and effect.

IN WITNESS HEREOF, the Parties have executed this Amendment as of the last date provided below.

KRUCKEBERG BOTANIC GARDEN FOUNDATION

CITY OF SHORELINE

  
Ann Jacobust, President

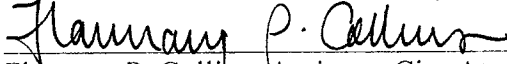
  
Julie Underwood, City Manager

7/15/11  
Date

8/1/11  
Date



Approved as to form:

  
Flannery P. Collins, Assistant City Attorney



## Memorandum

**DATE:** December 21, 2007

**TO:** Robert L. Olander, City Manager

**FROM:** Flannary Collins, Assistant City Attorney *ffc*

**RE:** Kruckeberg Garden Botanic Service Agreement

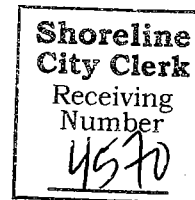
Attached for your signature are two copies of the Kruckeberg Garden Botanic Services Agreement. The Kruckeberg Botanic Garden Foundation ("Foundation") will provide the following services for the Kruckeberg Garden, once the City assumes ownership:

- Operate, maintain and improve the garden;
- Maintain and enhance the garden's plant collections
- Maintain records of the botanic collection
- Provide staff for supervision of volunteers, docent training programs, garden tours, horticultural programs, lectures and other education programs

The Foundation will also prepare an annual work plan for the operation and maintenance of the garden.

The City will pay a total amount of \$100,000 for 2007, 2008, 2009 and 2010 combined (not to exceed \$40,000 for any one year), as well as provide in-kind services including waste pickup, support for garden maintenance, utilities, printing, marketing and grant writing. The Foundation is also free to use the garden for Foundation sponsored-events as approved by the City and use plant stock for plant propagation for Foundation fundraising.

✓ On November 26, 2007, Council authorized the City Manager to execute this service agreement.



## BOTANIC GARDEN SERVICE AGREEMENT

This BOTANIC GARDEN SERVICE AGREEMENT ("*Agreement*") is made and entered into by and between KRUCKEBERG BOTANIC GARDEN FOUNDATION, a Washington nonprofit corporation, having an address of P.O. Box 60035, Shoreline, WA 98160-0035 ("*Foundation*"), and the City of Shoreline ("*City*") (collectively "*Parties*"), on the date provided below.

### 1. *Recitals*

- 1.1. The City is the owner of that certain real property located at 20312 15<sup>th</sup> Avenue N.W., Shoreline, King County, Washington, which is more particularly described as follows ("*Property*"):

PARCEL 1 - S ½ OF THE NW ¼ OF THE NW ¼ OF THE NW ¼, LESS THE W 270 FEET THEREOF, SITUATED IN SEC. 1, TOWNSHIP 26 N, RANGE 3 E, W.M.

PARCEL 2 - W 270 FEET OF S ½ OF NW ¼ OF THE NW ¼ OF THE NW ¼, LESS N 176.47 FEET THEREOF, AND LESS COUNTY ROAD, SITUATED IN SEC. 1, TOWNSHIP 26 N, RANGE 3 E.W.M.

- 1.2. The Property is subject to that certain perpetual conservation easement, granted by Arthur R. Kruckeberg to the E.B. Dunn Historic Garden Trust ("*Dunn Garden Trust*") on October 14, 2003 and recorded on October 17, 2003 at King County AF # 20031017000833, which, among other things, restricts the uses and activities on the Property ("*Conservation Easement*").
- 1.3. The Property contains a unique, natural, Northwest garden created and maintained by Arthur R. Kruckeberg and his deceased spouse, Mareen Kruckeberg, by preserving and enhancing the native plant collection and introducing rare plant species, which unique collections of plants have been sustained in an undeveloped natural area ("*Garden*").
- 1.4. The Foundation's missions is to ensure the Kruckeberg Botanic Garden is dedicated to fostering and providing educational, cultural and aesthetic enrichment to the community and all who visit.
- 1.5. The Foundation is a publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended ("*Code*"), and the regulations promulgated thereunder, and also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and 84.34.250. Foundation is included in the "Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code" published by the Internal Revenue Service.
- 1.6. The Parties have common goals of ensuring the perpetual maintenance of the Garden, protecting the Property from uses contrary to preservation of its botanic collections, and providing to the general public passive aesthetic and

educational opportunities relating to the Garden (hereafter “Goals”).

- 1.7. The Foundation was formed specifically for the purpose of advancing the Goals. The terms and conditions of this Agreement and are intended by the Parties to ensure fulfillment of the Goals and the Foundation is willing to maintain and operate the Garden for the City in exchange for certain benefits and payments.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and in order to maintain the Garden at its current condition or better, and to ensure the public receives access to the benefits and aesthetic values inherent in botanic gardens, the Parties agree as follows:

## 2. *Foundation's Performance*

- 2.1 General Maintenance Standards. The Foundation agrees to operate, maintain and improve the Garden so as to maintain and enhance a regionally significant botanic garden and collection of species native to lowland forests of the Puget Sound Basin, as well as non-native species compatible with the region, based on the botanic diversity, woodland setting, and naturalistic design of the Garden existing on the effective date of the Agreement and the City's Master Site Plan. In cooperation and collaboration with the Foundation, the City shall develop a Master Site Plan consistent with the goals and standards of this Agreement. The Master Site Planning process will commence in 2008 and be completed no later than 18 months after commencement. After adoption of the Master Site Plan, the Garden shall be maintained based on the Master Site Plan and the Guiding Principles in Attachment A. The Foundation shall conduct its services, including any Foundation plant propagation, in a manner that will ensure public access consistent with the Conservation Easement and the Master Site Plan.
- 2.2 Plant Collections. The Foundation shall maintain, enhance and develop the plant collections, and where appropriate add new specimens. Computer and other documentary records pertaining to the botanic collection, including mapping plant locations shall be maintained and updated as necessary.
- 2.3 Public Outreach and Education. The Foundation shall provide staff for supervision of volunteers, docent/steward training programs, garden tours, horticultural programs, lectures and other educational programs, or Foundation-sponsored events as approved by the City.
- 2.4 Work Plan. The Foundation shall prepare on or before September 15<sup>th</sup> of each year commencing in 2008, an annual work plan for the operation and maintenance of the Garden outlining a proposed schedule of activities for the

upcoming year. This plan shall include budget recommendations for City expenditures that will enhance the Garden.

- 2.5 Irrigation. The Foundation shall perform non-major routine maintenance and repair of the irrigation system.

### 3. *City's Performance*

#### 3.1 In Kind Services.

- 3.1.1 Waste Pickup: The City will haul garbage, yard debris and recyclables from the designated bins at the Garden. Upon request by the Foundation, the City will also assist with annual spring and fall clean-up at the Garden by hauling away extra waste and debris. All requests shall be submitted in writing to the Parks Director.
- 3.1.2 City Support for Garden Maintenance. Upon request by the Foundation, City staff and equipment will be made available as resources allow. All requests shall be submitted in writing to the Parks Director.
- 3.1.3 Utilities for Garden Maintenance: City staff will design and construct the irrigation system, and will make modifications on an annual basis and be responsible for major maintenance. City staff will also be responsible for spring irrigation system activation and fall winterization of irrigation and well equipment. The City will pay electrical, water and sewer used for Garden maintenance.
- 3.1.4 Printing: The City will create and publish an annual four (4) page Garden promotional flyer, posters for public activities and events, and a Garden tour map. Additional printing requests shall be submitted in writing to the Parks Director.
- 3.1.5 Grant Writing / Other Fund Raising Assistance: The City will provide grant writing research and assistance to the Foundation, as resources are available.
- 3.1.6 Security: The City will add the Garden to the City security contract, purchase and install signage stating the name of the Garden and the hours of operation. The City will provide a live-in caretaker to perform routine park closing duties and grounds patrol. The City shall provide and maintain signage and necessary fencing limiting public access per the Master Site Plan.
- 3.1.7 Use of Property for Fundraising. The Foundation may use the Property for Foundation sponsored events and programs without prior

approval of the City consistent with Attachment B and so long as the events and programs do not conflict with City sponsored activities or limit reasonable public access. The Foundation may use existing Garden plant stock for on-site plant propagation for exclusive fundraising by the Foundation so long as the propagation does not damage existing plant stock or interfere with Garden aesthetics or public access. The Foundation may conduct ongoing plant sales and a larger annual plant sale event on the Property and the parties will identify areas of the Property that may be secured from public access by the Foundation for these retail sale activities that is commensurate with past activity of the MsK Nursery.

3.1.8 Marketing; Promotion of Garden. The City will market Garden activities in the Recreation Guide and advertise activities in the City Currents publication as space is available. In addition, the City will include Garden information on the City website. The City cable Channel 21 will be available for Garden information and City sponsored events and programs.

3.2 Payments.

3.2.1 The City will pay to the Foundation quarterly reimbursement for services for Garden maintenance and enhancement for 2007, 2008, 2009 and 2010, based upon submitted monthly reports and invoices detailing the hours, work, and expenses for the preceding month; provided that actual reimbursement shall not exceed \$40,000 for any one year and \$100,000 for all four years combined. Rates for paid Foundation personnel shall be reimbursed at State prevailing wages for laborers and 15% of invoiced labor may be billed for Foundation management and overhead. Staffing for public events and programs shall be paid under this section with prior approval of the City or through user fees under 3.2.3 .

3.2.2 It is anticipated by the parties that the Foundation will, with City assistance provided in 3.2.1, have sufficient resources to meet its obligations for Garden maintenance and enhancement activities after 2010. No payments for these services after 2010 will be paid to the Foundation without further agreement of the parties.

3.2.3 Fees and charges for Foundation sponsored events shall be established by the Foundation and shall be the sole property of the Foundation. Fees for all City sponsored events and programs staffed by the Foundation shall be set by the City in Chapter 3.01 SMC. Eighty percent (80%) of fee revenue for City sponsored events staffed by the Foundation shall be retained by the Foundation.

- 3.3 Property Insurance. The City shall provide property insurance covering the premises through the City's risk pool.

#### 4. *Implementation of Agreement*

- 4.1. Meetings. The parties shall meet once a quarter or more often if needed for progress/status reports and to manage issues as they arise.

#### 5. *Insurance and Indemnification*

- 5.1. Insurance. The Foundation shall obtain Commercial General Liability insurance covering premises, operations, independent contractor's liability and damages for personal injury and property damage with combined single limits not less than \$1,000,000. The City shall be named as an additional insured on this policy. The policy is to contain, or be endorsed to contain, provisions that (1) Foundation's insurance coverage shall be primary insurance with insurance or insurance pool coverage maintained by the City as excess of the Foundation's insurance; and (2) Foundation's insurance coverage shall not be cancelled except after thirty (30) days prior written notice to the City.

5.2. Indemnification.

5.2.1 The City shall defend, indemnify, and hold the Foundation, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees resulting from the negligent, gross negligent and/or intentional acts, errors or omissions of the City, its agents employees arising out of or in connection with the performance of this Agreement.

5.2.2 The Foundation shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees resulting from the negligent, gross negligent and/or intentional acts, errors or omissions of the Foundation, its agents or employees arising out of or in connection with the performance of this Agreement.

5.2.3 It is further specifically and expressly understood that the indemnification provided herein constitutes the City and Foundation's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purpose of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

#### 6. *Service Agreement Term and Termination*

- 6.1. Term. The term of this Agreement shall be thirty (30) years, unless earlier terminated as provided herein ("Term").
- 6.2. Termination. The City may terminate this Agreement with cause only after compliance with the dispute resolution process under Section 7.2. In the event of such termination, all finished or unfinished documents, data, studies, worksheets, models and reports, or other material prepared by the Foundation pursuant to this Agreement shall be submitted to the City.

## 7. Remedies

- 7.1. Notice and Opportunity to Cure. In the event either party fails to perform as required by this Agreement, written notice of the default shall be given and the defaulting party shall have thirty (30) days from the date of receipt of the notice to cure the default or longer if circumstances warrant.
- 7.2. Dispute Resolution. If the default is not cured after notice or the parties are otherwise unable to resolve differences that arise under this Agreement, the parties shall enter into non-binding mediation with Dunn Garden Trust or other mutually agreeable third party as the mediator. If such mediation is not successful, then the parties shall proceed to binding arbitration.
  - 7.2.1. In the event this Agreement is terminated by the City, the Foundation shall be entitled to payment for all hours worked and reimbursable expenses incurred to the effective date of termination, less all payments previously made. This provision shall not prevent either party from seeking any legal remedies it may have for the violation or nonperformance of any of the provisions of this Agreement and any such charges due the City shall be deducted from the final payment due the Foundation. No payment shall be made by the City for any expenses incurred or work done following the effective date of termination unless authorized in advance in writing by the City.
  - 7.2.2. The Foundation reserves the right to terminate this Agreement with not less than one hundred eight (180) days written notice, or in the event the City fails to pay the Foundation's outstanding invoices within 30 days following notice of default.
  - 7.2.3. If the Foundation dissolves, liquidates or is otherwise unavailable to perform the scope of services, the City may, at its option, after notice, cancel this Agreement.

## 8. Ownership of Documents.

- 8.1 All documents, data, drawings, specifications, software applications and other products or materials produced by the Foundation in connection with the services



rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not . All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products and materials prepared by the Foundation are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold the Foundation harmless for such use. All or portions of materials, products and documents produced under this Agreement may be used by the Foundation upon confirmation from the City that they are subject to disclosure under the Public Records Act.

- 8.2 All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City. Any information relating to the services will not be released without the written permission of the City.
- 8.3 The Foundation shall preserve the confidentiality of all City documents and data accessed for use in Foundation's work product.

**9. *Independent Contractor Relationship.***

- 9.1 The Foundation is retained by the City only for the purposes and to the extent set forth in this Agreement. The nature of the relationship between the Foundation and the City during the period of the services shall be that of an independent contractor, not employee. The Foundation, not the City, shall have the power to control and direct the details, manner or means of services. Specifically, but not by means of limitation, the Foundation shall have no obligation to work any particular hours or particular schedule and shall retain the right to designate the means of performing the services covered by this Agreement, and the Foundation shall be entitled to employ other workers at such compensation and on such other conditions as it may deem property, provided, however, that any contract so made by the Foundation is to be paid by it alone, and that employing such workers, it is acting individually and not as an agent for the City.
- 9.2 The City shall not be responsible for withholding or otherwise deducting federal income tax or Social Security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to Foundation or any employee of the Foundation.

**10. *Notice***

Unless otherwise directed in writing, all notices and reports shall be delivered to the Parties at the following addresses:

Foundation at: Kruckeberg Botanic Garden Foundation  
P.O. Box 60035

Shoreline, WA 98160-0035

City at: Robert Olander  
Shoreline City Manager  
17544 Midvale Ave. N.  
Shoreline, WA 98133-4921

## 11. *General Provisions*

- 11.1. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this agreement, shall be deemed to exist or bind any of the parties hereto.
- 11.2. Effective date. The effective date of this Agreement shall be January 1, 2008.
- 11.3. Modification. This Agreement may be modified only by written agreement of the Parties.
- 11.4. Assignment. Parties may not assign their interests under this Agreement.
- 11.5. Third Party Rights. Under no circumstances shall this Agreement create any third party rights.
- 11.6. Authority. Any undersigned representative of a party to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally execute, and bind such party to, this Agreement.
- 11.7. Captions. The captions of this Agreement are for convenience and ease of reference only, and in no way define, limit, or describe the scope or intent of this Agreement.
- 11.8. Governing Law. This Agreement and the rights of the Parties shall be governed by and construed in accordance with the laws of the State of Washington.
- 11.9. Venue. Venue for any action to enforce this Agreement shall be King County, Washington.
- 11.10. Nondiscrimination. In hiring or employment made possible or resulting from this Agreement, there shall be no unlawful discrimination against any employee or applicant for employment because of sex, age, race, color, creed, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. This requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt or the benefit of any services or activities made possible by or resulting from this

Agreement on the grounds of sex, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or in the presence of any sensory, mental or physical handicap.

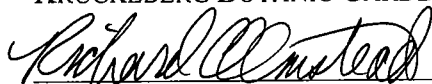
11.11. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

11.12. Parties Bound. The terms and conditions of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective personal representatives, heirs, successors, and assigns.

IN WITNESS HEREOF, the Parties have executed this Agreement as of the dates provided below.

KRUCKEBERG BOTANIC GARDEN FOUNDATION

CITY OF SHORELINE

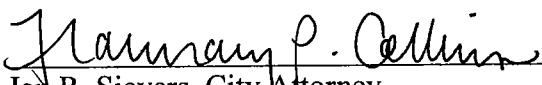
  
Richard Olmstead, President

  
Robert Olander, City Manager

12/7/07  
Date

12/21/07  
Date

Approved as to form:

  
for Ian R. Sievers, City Attorney

ATTACHMENT A

Guiding Principles for the Kruckeberg Botanic Garden

Arthur R. Kruckeberg

The founding principle of the **Kruckeberg Botanic Garden** was that plant diversity is one of the wonders of the natural world and that there is both scientific and educational value to presenting that diversity in a natural setting. The setting of the Garden is that of a remnant Puget Sound lowland ecosystem, with a matrix of native conifers and understory vegetation among which plants from this and other biomes are grown that complement the beauty and diversity of the native flora. Throughout the development of the Garden, plants, whether native or exotic, have been selected for their beauty and uniqueness, thus providing the added amenity of horticultural value for the plants in the collection.

In order to preserve this vision for the future of the **Kruckeberg Botanic Garden**, the following principles can serve as a guide to the future management of the Garden.

- The native flora of the Pacific Northwest (PNW) should always be a primary theme in the Garden and should be defined by the broad climatic zone that is shared by a contiguous region ranging from Northern California to parts of the northern Rockies west to Montana and north to British Columbia.
- The Garden should maintain a preference (though this need not be exclusive) for plants in naturally occurring form, including natural hybrids and varieties, over garden hybrids and cultivars. However, the overriding principle of diversity and the goal of having plants that complement naturally occurring forms permits the judicious selection of garden varieties.
- For plants not native to the PNW, plants from similar climatic zones and plants taxonomically related to our native flora should have preference. Due to the climatic similarity and biogeographic connection, East Asian plants are a strong preference. Secondly, other cool temperate Mediterranean climates (e.g., Chile), will provide valuable components to the Garden.
- Represented in the Garden are several taxonomic groups and one specialized ecological habitat that are of particular interest to the founders and of particular value due to the diversity of these collections. These include the oaks (*Quercus* spp.), conifers (especially the diversity of unusual conifer families and genera), and the serpentine garden, which represents the founder's primary contributions to science. Other taxonomic groups that would fit well with the principles on which the Garden has been developed and might merit augmenting include maples (*Acer* spp.), witch hazels (Hamamelidaceae), and the hydrangea family (Hydrangeaceae). In addition, continued expansion of native woodland

herbaceous perennials would be desirable and would permit increased biodiversity in a space-limited setting.

- While the woodland garden is a prominent theme in the Garden, the 'meadows' provide an important habitat to display sun-loving plants and special collections in rockeries, including the serpentine collection. An effort should be made to prevent over-planting the meadows with trees, in order to maintain the high-light environment necessary for these collections and to preserve the vision of expansiveness of the open meadow.
- The Garden should continue to serve as a reserve for germplasm of rare and unusual plants from the PNW and elsewhere. The Garden should participate in native plant seed collection and support collaborations that bring appropriate new plants into the Garden from foreign locations. Propagation of the Garden's diversity by the MsK Nursery shall be perpetuated.
- The Garden should continue to be managed as the primary source material for the MsK Nursery. Where feasible, existing plants should be perpetuated from Garden collections.
- The Garden should take care to avoid the use of showy displays of cultivated plants for aesthetic purposes only.

ATTACHMENT B

The Foundation is required to seek City approval for the following types of events:

1. Events with 50 individuals or more.
2. Events with sound amplification devices.
3. Events where concessions are sold.
4. Events where liquor is sold.