

DEVELOPMENT AGREEMENT FOR THE SAINT PAUL-CHANGSHA CHINA
FRIENDSHIP GARDEN AT PHALEN-KELLER REGIONAL PARK

This Development Agreement is entered into this ____ day of November, 2017, between the City of Saint Paul, a municipal corporation (“City”) and the Minnesota China Friendship Garden Society (“Society”), a 501(c)(3) corporation.

WHEREAS, Changsha, China is a sister city to the City of Saint Paul (since 1988); and

WHEREAS, Phalen-Keller Regional Park is a sister park to Changsha Yanghu Wetlands Park (since 2015); and

WHEREAS, in 2011, City, Ramsey County, and the Metropolitan Council approved a China Changsha style garden (“Garden”) as part of the Phalen-Keller Regional Park Master Plan; and

WHEREAS, City received \$50,000 in Legacy Funds from the State of Minnesota for conceptual design of a China garden; and

WHEREAS, the Changsha area is recognized as the ancestral home of the Minnesota Hmong, and Minnesota has the largest urban Hmong population in the United States, and a large portion of the Hmong community is located in the Phalen-Keller Regional Park area; and

WHEREAS, Society has engaged the Chinese, Hmong and Phalen-Keller Regional Park communities to raise interest and awareness of this project, and will actively fundraise for the Project; and

WHEREAS, the City of Changsha and Changsha Yanghu Wetlands Park will present City for use in Phalen-Keller Regional Park a gift of a replica of Changsha’s Aiwan Pavilion, one of four famous pavilions in China (“Replica Pavilion”), along with transportation and installation costs, to be delivered for installation in 2018;

Now, therefore, parties agree as follows:

ARTICLE I
PROJECT DESCRIPTION

- 1.1 Scope of Project. City, with the assistance of the Society, intends to fund, design and construct the Garden in Phalen-Keller Regional Park. The entire Garden, although not fully designed at this time, is estimated by the St. Paul Parks and Recreation Department to cost approximately seven million dollars (\$7,000,000.00). Construction of the entire Garden is referred to herein as the “Project”. Preliminary conceptual designs for the Project have been prepared in cooperation with the architect team of Jennifer Junfang Fan and Jon Youhua Wen, from Changsha Hunan Jianke Landscape Company. The Project will be constructed in several phases.

- 1.2 Name of Garden. Garden shall be formally identified and known as Saint Paul-Changsha China Friendship Garden and a 3-character Chinese name to be identified in the future by Society.
- 1.3 Design Features of Project. The Project will include the Replica Pavilion, a Hmong Cultural Plaza, a lakeside pavilion (with enclosed classroom, restroom, covered walkway leading to a second, small open-air pavilion, and moon gate plaza), a Hmong Embroidery Wall, an entrance arch, an arched bridge, a donor wall, a stone garden, and a site for a future cultural gift from the Changsha Hmong. The main pavilion will be a replica of the famous Aiwan Pavilion in Changsha. A stone garden will lead from this pavilion to the water channel and use local stone. Chinese and Hmong cultural symbols and historical information will be included to enhance the educational opportunities of this China Garden.
- 1.4 Phase 1. Phase 1 will include (a) the installation of the Replica Pavilion, (b) the construction of the Hmong embroidery wall, surrounding pathways and landscaping, the West entrance arch, and the East entrance donor wall, and (c) the designation of a site for a future cultural gift from the Changsha Hmong.

ARTICLE II PHASE 1 TIMELINES

- 2.1 This Agreement shall become effective upon execution and shall continue in force until completion of Phase 1, unless earlier terminated in accordance with Article VI.
- 2.2 Parties have agreed that the Replica Pavilion, Hmong embroidery wall, surrounding pathways and landscaping, and the site designation for the cultural gift will be the first elements installed and will be completed as a stand-alone park feature. The estimated cost of \$300,000.00 will be raised primarily through fund-raising done by Society.
- 2.3 City will provide a detailed project budget breakdown in a timely manner so Society has sufficient time to secure monetary and in-kind donations of labor and materials. Construction will begin once the requisite Phase 1 donations are secured. It is the intent of the parties to begin and complete installation of the replica pavilion and the Hmong Embroidery Wall in 2018.
- 2.4 The installation of the entrance arch, donor wall and future cultural gift will each separately proceed upon availability of funds. *It is the intent of the Society to raise sufficient funds for the installation of the entrance arch and donor wall in 2018.*
- 2.5 The Hmong Cultural Plaza will be designed after preliminary research and input from the Hmong CP Advisory Group and feedback and collaboration with the Changsha landscape architect.

ARTICLE III
PHASE 1 FUNDING

- 3.1 Society understands that construction and operations funding have not been secured and agrees to cooperate with the City in advocating for future budget appropriations from the State of Minnesota.
- 3.2 The City's pre-construction expenses, including design and soft costs, could be initiated prior to securing the entire budget, if those funds are secured and appropriated.
- 3.3 Society may secure in-kind donations of equipment, labor, and materials for the Project (e.g., rocks, plants, cement, stone, cranes, etc.), subject to the requirements for compliance with all City procurement requirements.

ARTICLE IV
CITY RESPONSIBILITIES

- 4.1 City will be responsible for design, operation, and maintenance of the Project.
- 4.2 City will consult with the Changsha landscape architects and Society to ensure the design, lay-out, details and construction reflect a Changsha style Chinese garden, and may enter into a design services agreement with the Changsha Landscape Architect.
- 4.3 City will consult with Society in advance about decisions as to what can be built with available funds, expenditure of the funds, and decisions regarding the design and construction of the Project. City retains the final authority to make decisions after consultation on any matter regarding maintenance, durability, and accessibility.
- 4.4 City agrees that a Society representative will be included in the selection process for all professional services consultants selected through an RFP process and will have input into bid specifications as appropriate. City agrees that the Society may appoint (at its own expense) Representative(s) to attend meetings coordinated by City, including field meetings and close out project reviews.
- 4.5 City will continue to own the property in Phalen-Keller Regional Park and all future improvements to the property. Nothing in this Agreement binds the City to any specific course of action in the event of damage or vandalism to the Project improvements. In the event of damage or vandalism, the City agrees to use any resulting insurance proceeds towards the restoration or reconstruction of the Project Improvements.

ARTICLE V
SOCIETY RESPONSIBILITIES

- 5.1 Society will lead communication with Changsha, China, and the representatives of Yanghu Wetlands Park.
- 5.2 Society will be responsible for obtaining a reciprocal gift to be donated to Yanghu Wetlands Park in return for the donation to the Project of the replica of Changsha's Aiwan Pavilion. Parties have agreed that the reciprocal gift will be a set of five full-size Peanuts characters statues.
- 5.3 In recognition of the fundraising role of the Society, City agrees that Society will be

permitted to schedule up to three events each year at the Friendship Garden with fees being waived for permits and services.

- 5.4 City agrees to cooperate with the Society to schedule and provide additional programming, and/or facilitate partnered programming. Parties agree that the programming will not be funded by the City.

ARTICLE VI SUBSEQUENT PHASES OF PROJECT

- 6.1 Both parties express their good faith commitment to cooperate on subsequent phases to complete the Project, and to enter into further agreements specific to those phases consistent with their experience on Phase 1.

ARTICLE VII TERMINATION

- 7.1 The occurrence of any of the following shall constitute a “Default” by the City under this Development Agreement and the City shall have thirty days following the receipt of written notice from Society of the exact nature of the default to cure, or will be in breach of this Development Agreement.
- (a) Failure to establish a Project budget for Phase 1 once an estimated budget has been established and funds have been secured.
 - (b) Failure to begin preparations for construction of Phase 1 of the Project once a budget has been established by the city council and funds have been secured.
 - (c) Failure to complete construction in a commercially reasonable and timely manner, unless the failure is due to circumstances beyond the control of the City.
- 7.2 The occurrence of any of the following shall constitute a “Default” by Society under this Development Agreement and it shall have thirty days following the receipt of written notice from the City of the exact nature of the default to cure, or will be in breach of this Development Agreement.
- (a) Failure to maintain non-profit status of the Society.
 - (b) Failure to raise the agreed upon funds needed for Phase 1 of the Project by August of 2020.
- 7.3 Parties acknowledge that damages are not an appropriate remedy for default by either party and that in the event of default on the part of the City that the Society is entitled to

bring an action for specific performance rather than terminate the agreement. In the event of default on the part of the Society the City may terminate this Agreement and shall have no further obligation to construct the Project.

- 7.4 Mediation. Parties may mutually agree to engage in mediation prior to beginning any action based upon default. Such mediation shall be non-binding, and shall be limited to three hours with a neutral third party selected by the parties. Each party shall be responsible for half the cost of the mediator and any of its own expenses.

ARTICLE VIII
MISCELLANEOUS

- 8.1 Conflicts of Interest. No member of the governing body of the Minnesota China Friendship Garden Society shall have any financial interest, direct or indirect, in this Agreement, or any contract, agreement or other transaction contemplated to occur or be undertaken to effect the purpose of this Agreement.
- 8.2 Notices and Demands. Any notice under this Agreement by either party to the other shall be sufficiently given when it is sent by registered or certified mail, postage prepaid, return receipt requested, and addressed to:

MINNESOTA CHINA FRIENDSHIP GARDEN SOCIETY 1280 Belmont Drive St. Paul, MN 55125 Attn: Linda Mealey-Lohmann, President	CITY OF SAINT PAUL Parks and Recreation 25 W. Fourth Street Saint Paul, MN 55102 Attn: Mike Hahm
---	--

- 8.3 Law Governing. This Agreement shall be governed and construed in accordance with the laws of the State of Minnesota.
- 8.4 Independent Contractors. Nothing in this Agreement is intended to or shall be construed as creating a joint venture or partnership among or between the parties.

In Witness Whereof, parties have caused this Agreement to be duly executed on the date first written above.

City of Saint Paul

Minnesota China Friendship Garden Society

Mayor

President

Director of Finance

Secretary

Director of Parks and Recreation

Approved as to form:

Assistant City Attorney