

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date	May 10, 2010
	Agenda Item No. I Roll Call No. 10-685 Communication No. <u>10-259</u> Submitted by: Donald M. Tripp, Director of Parks and Recreation	

AGENDA HEADING:

Approving Des Moines Botanical Center proposed development and long-term lease guiding principles, and authorizing the City Manager to negotiate a long term lease.

SYNOPSIS:

Recommend approval of the proposed guiding principles, which would transfer the management and facility operations of the Des Moines Botanical Center while capping the financial commitment and relieving the City of capital and operating investments, and shifting that responsibility to the Des Moines Botanical Center non-profit entity.

FISCAL IMPACT:

If approved, the Metro Center Urban Renewal District would need to be expanded for the purpose of financing an economic grant via Tax Increment Financing resulting in \$2,000,000 paid in annual installments over a ten year period. The proposal will reduce the City’s cost to operate and maintain the facility over the proposed term. This proposed agreement is part of the City’s overall budget strategy which calls for non-essential assets to be transferred to non-profit entities that have the capability and commitment to both enhance the facility and absorb the resulting financial obligations.

ADDITIONAL INFORMATION:

In 2008, the Des Moines Botanical and Environmental Center leaders and civic supporters envisioned a new future for the Center that would allow for its development and resurgence as a major cultural and educational facility. To assist with this, EMD Consulting Group and Hoerr Schaudt Landscaping Architects were engaged to develop a proposed master plan and strategy. On July 14, 2008, by Roll Call No. 08-425, the City provided \$30,000 toward the study, and the balance of \$60,000 was paid for by the private sector.

J.C. “Buz” Brenton, Fred Weitz, Janis Ruan and Tom Urban have approached the Des Moines Water Works Board of Directors and the City of Des Moines, regarding their desire to lead an effort to make improvements to the building, expand the exterior grounds and to establish a Foundation to operate the Des Moines Botanical Center. As a condition to this offer, two stipulations have been requested; 1) Robert D. Ray Drive south of I-235 be closed and incorporated into the master planning area and 2) a private non-profit corporation is established to oversee the operations and management of the Des Moines Botanical Center.

The Botanical Center is a significant part of the overall riverfront and will be a natural extension of the Principal Riverwalk project. However, in its current configuration, the Botanical Center is an underutilized asset that will be difficult to sustain as time goes on. Unless there is a new vision and a new plan for the facility and surrounding area, the future of the Botanical Center remains uncertain. At the same time, with the nearby improvements in Principal's Riverwalk project, the Botanical Center offers a significant opportunity for improvement and expansion that could increase its attractiveness and financial viability. The Master Plan, as proposed, will give Council a clear idea of a more viable future of the facility.

The closure of Robert D Ray Drive in the vicinity of the Botanical Center is a key requirement put forth. It would be premature to proceed with street closure until the final Master Plan for the Botanical Center is prepared and presented to Council for review and approval. The Master Plan that calls for a significantly improved, expanded, and financially viable Botanical Center would warrant closure of the street so long as public access to the riverfront is retained and access to the Botanical Center for the public and emergency vehicles is maintained. Upon approval by Council of a final Master Plan for the Botanical Center, Council could then initiate the required formal process necessary to close the street

Upon receiving the proposed master plan, Des Moines Botanical and Environmental Center leaders and civic supporters began to work with the City Manager to develop guiding principles that would consent to the following proposal.

1. The form of agreement shall be a long-term lease and management/operations agreement. Proposed term of 25 years plus an option of two 25 year renewals, opt out clause at end of first term by Lessee with notice to the City. City's ability to terminate for major breach by Lessee. A current agreement with Des Moines Water Works (DMWW) exists, if Lessee wants to begin earlier than January 13, 2013, the City will attempt to negotiate an early closure to the existing agreement. The lease amount is proposed to be \$1 per year on the basis of establishing public purpose to the future of the building, grounds and programs and accessibility to the programs by all.
2. The Lessee agrees to raise a minimum of \$10,000,000 to fund \$7,500,000 of improvements, a \$2,000,000 endowment for operating and repairs and \$500,000 for related costs during the first five years of the lease.
3. The City Council will be asked by the City Manager to close and vacate Robert D. Ray Drive as suggested on the Lessee's plans. The project plans will include an approved emergency access and improvements to the fire protection system as required by the City.
4. The City's funding will be capped as follows: The City will provide \$200,000 per year as an economic grant solely from TIF funds and not from general obligation funds, subject to non-appropriation by the City Council, for a period of ten years beginning at the completion of the improvements per the Master Plan, estimated to be by January 1, 2013. Provided that contract expenditure/funding requirements are met by Lessee, the City will provide larger annual distributions during the first two years. Additionally, the City will use its best efforts to encourage BRAVO members to provide \$195,000 per year through BRAVO for ten years to the Lessee and to provide an additional \$50,000 for five years. The ten years during which BRAVO funds are committed should commence upon completion of the improvements. In the event that BRAVO ceases to exist or the City's hotel/motel tax is not obligated to BRAVO, and the City continues to receive hotel/motel tax in an amount comparable to the current amount, the City will provide Lessee with \$195,000 for ten years. All payments will cease upon Lessee's failure to perform its

obligations under the agreement and City funding will be contingent upon Lessee meeting improvement construction goals. All future and ongoing obligations for expenses of the building, grounds and programs shall be transferred to the Lessee. In addition, the City will fund the installation of an additional fire hydrant up to \$18,500.

Proposed City Financing Summary:

Economic TIF grant: \$200,000/yr. x 10 years

BRAVO - \$195,000 – over 10 years (as long as BRAVO continues with agreement)

Additional BRAVO - \$50,000 per year (City to advocate; requires BRAVO approval)

5. No cash deposit of “good faith” will be expected by the City from the Lessee.
6. The City will pay for the relocation of the trail to the lower level near the river which will be outside the leased premises, (existing lease boundaries will need to be reassigned, as current leased area goes to the Des Moines River). The reconstruction of the trail is already a part of the current City Capital Improvement Program. The present trail will be removed by the lessee; however there will be uninterrupted access to trail users during the times of flooding or other acts of nature through the leased premises. The City will have the right to enter the leased premises at all times for maintenance, inspection and construction activities related to the trail, levee and utilities in place. The City will line the brick sanitary sewer running through the premises prior to the commencement of the improvements.
7. Improvements and changes to the leased premises must comply with the master plan that is approved by the City Council. The City will own all improvements at the end of the lease term and the Lessee will provide as built plans on all improvements. Construction of improvements requires insurance coverage and bonding as deemed appropriate by the City.
8. The City requests at least two positions on the Board of Directors of the non-profit corporation.
9. Prior to execution of the lease and the transfer of any City funds to Lessee, the Lessee shall, to the City’s satisfaction:
 - a. Provide an updated final development plan, management plan, and budget for City review.
 - b. Provide evidence of financial capability to complete project.
 - c. Provide a detailed description of the non-profit corporation, the Board membership, articles of incorporation, and other information necessary to fully understand the governance entity.
 - d. Transfer of City funds to be made in installments and following Lessee’s meeting of contract goals/private and non-city funds fundraising.
10. The City proposes the same number of free uses of the Botanical Center as it now receives from DMWW. This is due to the convenient nature of this facility for larger public meetings not easily accommodated in other downtown City buildings.
11. The Botanical Center will continue to be operated as a public facility serving a stated estimate of visitors per year.
12. The Lessee shall provide the City with an annual report of activities including attendance numbers and programs each year.

13. The lessee will pay all building permit fees.
14. The Lessee will have naming rights on all new improvements and any existing structures not already designated. The Lessee will honor any existing donation agreements. Naming rights may not extend beyond the term of the then current lease term.
15. An inventory of all property to be leased shall be included as an attachment to the agreement.
16. The parties agree that it is a virtual certainty that, even after completion of the improvements, the Botanical Center will operate at a loss. The parties understand that this operating loss will be offset by earnings from the endowment, private donations and support of public entities. While the City of Des Moines has committed to support of the operations for the first ten years after the completion of the improvements, it understands that the continued support after the first ten years may be necessary in order for the Botanical Center to continue operations and to fulfill the requirements of this lease. Such continued funding is at the discretion of the City Council.

In conclusion, the City's investment will leverage non-City investments, while increasing the potential to regionally fund the facility. Furthermore, the City will be relieved of current infrastructure and operating costs (although the City will provide a cash investment to the Lessee; it will be similar to basic infrastructure improvements and operational needs that the City would be responsible for, if the facility would return to the City), while in return receiving a greatly improved attraction for the City of Des Moines.

On December 2, 2002, by Roll Call No. 02-2806 the Des Moines City Council approved the First Amendment to the 28E Agreement with Friends of the Des Moines Botanical Center allowing the Friends to control and own the Endowment Fund subject to the Friends agreement to transfer the Fund to the Greater Des Moines Community Foundation and to continue to support the programs, services and operations of the Botanical Center. The balance at the time of transfer to the Foundation was \$428,102. As a part of these discussions, the involvement of the Friends organization and use of the Endowment Funds need to be clarified and outlined as a part of the creation of a private non-profit Foundation to operate and manage the Des Moines Botanical Center.

On December 12, 2003, by Roll Call No. 03-2834, the Des Moines City Council entered into a 28E Agreement with the Des Moines Water Works Board of Directors to assume management of the Des Moines Botanical Center. The current agreement runs through 2012 with an option to renew for two, three year renewals. Should either party desire to terminate the Agreement, said party must provide notice to the other party by July 1 of the next renewal period. Under the terms and conditions of the Management Agreement, the City has the following responsibilities, including an annual operating subsidy not to exceed \$150,000 based on Des Moines Water Works' (DMWW) ability to secure funding from other local municipalities and invested \$200,000 in FY 2004, 2005 and 2006 for capital improvements to the dome. Currently the City's contribution to the Des Moines Botanical Center is managed through the City's overall contribution to BRAVO, which is redistributed to area cultural attractions. No future capital funds have been identified in the City's six-year Capital Improvement Program budget. The 28E Agreement authorizes the DMWW to operate and maintain the building, greenhouses and grounds of the Des Moines Botanical Center, approximately 14.4 acres, excluding Robert D. Ray Drive.

PREVIOUS COUNCIL ACTION(S):

Date: July 14, 2008

Roll Call Number: 08-1270

Action: [Authorizing](#) City Manager to negotiate and execute Agreement for development of a master plan for the Des Moines Botanical Center and grounds, not to exceed \$30,000. ([Council Communication No. 08-424](#)) Moved by Vlassis to adopt. Motion Carried 7-0.

Date: January 12, 2004

Roll Call Number: 04-73

Action: Second Amendment to 28E Agreement with Friends of Des Moines Botanical Center terminating the agreement except to retain the Friends' repayment of Botanical Center Volunteer Supervisor and Botanical Center Education Curator salaries. ([Council Communication No. 04-015](#)) Moved by Hensley to adopt. Motion Carried 6-0.

Date: December 12, 2003

Roll Call Number: 03-834

Action: Discussion and consideration for approval of Intergovernmental 28E Agreement for operation and maintenance of the Des Moines Botanical Center, by the Des Moines Water Works Board of Trustees. ([Council Communication No. 03-598](#)) Moved by Hensley to adopt. Motion Carried 4-3.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Council action on referring proposal to appropriate City Boards and Commissions for review, action on lease, Urban Renewal District, final master plan, closing of Robert D. Ray Drive.

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