

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: April 25, 2011
	<p>Agenda Item No. 28</p> <p>Roll Call No. <u>11-0680</u></p> <p>Communication No. <u>11-259</u></p> <p>Submitted by: Donald M. Tripp, Director of Park and Recreation</p>

AGENDA HEADING:

Setting date of hearing for a Long-Term Lease, Operation, Management and Maintenance Agreement between the City and the Greater Des Moines Botanical Center for the Des Moines Botanical Center and adjacent grounds of approximately 13.498 acres.

Setting date of hearing on the vacation of approximately 13.498 acres lying between the Des Moines Botanical Center, located at 900 Robert D. Ray Drive, and the Des Moines River, including Robert D. Ray Drive, as parkland and right-of-way.

SYNOPSIS:

Approving the setting of hearing on the attached Long-Term Lease, Operation, Management and Maintenance Agreement (lease agreement) with Greater Des Moines Botanical Corporation (GDMBC) which will transfer operations, management and maintenance of the Des Moines Botanical Center (Botanical Center) and adjacent grounds of approximately 13.498 acres to the GDMBC. The City and GDMBC will also enter into a separate Economic Development Grant Agreement (grant agreement) proposed for consideration on May 9, 2011, by which the City will provide the GDMBC with an annual grant of \$200,000 for ten years, subject to compliance with the lease agreement terms. These agreements provide assurance of the City’s financial commitment and relieve the City of capital and operating investments by shifting responsibility to the GDMBC over the 25-year lease agreement. The City will benefit by the elimination of long-term fiscal liability for the Botanical Center, while the Botanical Center will receive infrastructure improvements beyond the scope of City funding.

Approving the setting of a hearing on the vacation of approximately 13.498 acres lying between the Botanical Center, located at 900 Robert D. Ray Drive, and the Des Moines River, including Robert D. Ray Drive, as parkland and right-of-way.

FISCAL IMPACT:

Subject to City Council approval, the recent expansion of the Metro Center Urban Renewal Area (10th Amendment approved April 11, 2011, by Roll Call No. 11-0628), will provide tax increment revenue that will enable the City to provide annual grants commencing upon completion of improvements in accordance with the lease agreement and extending those grants for ten years, for a total of \$2,000,000.

In addition, \$245,000/year of BRAVO, Inc. (BRAVO) funds will be allocated to operation of the Botanical Center over a ten-year period (pending approval of a new BRAVO agreement).

Other costs associated with the lease agreement:

ADA Compliance

\$550,000 for completion of projects necessary for existing Botanical Center infrastructure to comply with specifications of the Americans with Disabilities Act's (ADA) Project Civic Access Settlement Agreement (settlement agreement) and the City's Transition Plan are at the City's expense and funded through the Capital Improvement Program (CIP).

Relocation of a segment of the John Pat Dorrian Trail

Constructed in the late 1970s, the John Pat Dorrian Trail is one of the oldest trails in the metro area. Over the last 20 years, the trail has begun to show significant deterioration; the asphalt surface is cracked and crumbling in many locations. The trail width is approximately 8 feet, but heavy use demands an increase to 12 feet in width. The trail is a high priority for replacement and widening. This trail project has not been designed. The pre-design estimated cost to rebuild the trail from the Armory to University Avenue is estimated at \$725,000; the estimated incremental project cost to move the trail's location as part of the proposed lease agreement is at least \$75,000. The new total is now projected to be \$800,000. The current adopted CIP does not include funding to rebuild this trail segment and due to the uncertainty of levee height requirements related to the Des Moines River Flow Frequency Report the initial scope of the trail reconstruction/relocation will be from I-235 to University Avenue. The lease requires the City to rebuild this trail by January 2013. In order to accomplish this, additional general obligation bond funding is being programmed into the upcoming bond sale this spring.

New Fire Hydrant

The GDMBC has requested a new fire hydrant installation as part of the lease agreement; not to exceed \$18,500.

Amount:**Economic Development/CIP:**

Economic Development Grants - \$2,000,000 [\$200,000 over ten years (tax increment revenues)]

ADA City Transition Plan/Project Civic Access - \$550,000 (included in Adopted CIP)

Relocation of Recreation Trail - \$75,000 (general obligation bonds)

Total Economic Development/CIP - \$2,625,000

Annual Operating Support: BRAVO (pending agreement approval) - \$245,000 (for the first ten years)

Total Operating Support: BRAVO (pending agreement approval) - \$2,450,000

Funding Source:

BRAVO: FY 12 Operating Budget, Community Partnership Programs, GE001, FIN010400, Page 106. Plus an additional \$550,000, FY 11-12 CIP, ADA Modifications for Municipal Buildings, BLD042, Page Municipal Building – 4, and additional bonding of \$75,000 for trail relocation and \$475,000 for revised trail replacement estimate.

ADDITIONAL INFORMATION:

The Botanical Center is owned by the City but currently managed and operated by the Board of the Des Moines Water Works Trustees (DMWW) through a 28E Agreement approved by the City Council in 2003 (Roll Call No. 03-2834). The DMWW has been successful in operating the Botanical Center and

developing new and innovative exhibits, and fundraising to underwrite operations and improvements. The 28E Agreement with DMWW will expire on December 31, 2012, and DMWW has expressed its desire to not renew the agreement.

In 2008, leaders of the Friends of the Botanical Center and civic supporters envisioned a new future for the Botanical Center that would allow for its development and resurgence as a major cultural and educational facility. To assist with this vision, they engaged with EMD Consulting Group and Hoerr Schaudt Landscaping Architects to develop a master plan and strategy. The City provided \$30,000 toward the expense (July 14, 2008, Roll Call No. 08-1270), with the balance of \$60,000 paid by private sector investors. The master plan would help GDMBC achieve its goal to propel the Botanical Center into a premier, regional attraction by expanding and reconfiguring its borders and facilities, while raising the financial resources necessary to undertake and operate this concept.

Upon completion of the master plan, GDMBC began work with the City Manager and City staff to develop guiding principles that would implement a proposed transfer of management and facility operations to the new non-profit. The guiding principles were unanimously approved by City Council on May 10, 2010, by Roll Call No. 10-685. The primary benefit of the resulting, proposed lease agreement for the City is that it transfers responsibility for the significant annual expenses of supporting the Botanical Center from the Des Moines taxpayers to an expanded base of financial supporters via the GDMBC. The GDMBC desires the flexibility and control in the planning and construction of Botanical Center improvements and operations that are outlined in this lease agreement, and believe it will enable them to meet fundraising levels necessary to execute their expansion goal. As has been the case with the DMWW's 28E Agreement, the GDMBC understands that management standards will be incorporated into the new lease and management agreement.

The proposed lease agreement would provide for long-term lease of the Botanical Center facilities, while assuring the City's maximum financial commitment towards operations subsidy after an initial period of City funding, and relieving the City of maintenance and capital investment funding responsibility, shifting that responsibility to the GDMBC. In addition to the lease agreement, the City and GDMBC would enter into a separate economic development grant agreement by which the City will provide grants that are dependent upon compliance with the lease agreement terms.

Significant items in the lease agreement:

- The initial term is 25 years, with two 25-year renewal options at the sole discretion of the GDMBC.
- GDMBC will own improvements it constructs during the term of the lease agreement, which will become the property of the City upon termination of the lease agreement.
- A restaurant will be an allowed use of the property within the Botanical Center.
- GDMBC will own the plant collection and personal property; however the collection and personal property will revert to the City upon termination of the lease agreement.
- The City Council will retain the right to appoint a Councilmember and the City Manager to the GDMBC Board as voting members.
- GDMBC's intended expanded gardens will require the closure and removal of Robert D. Ray Drive from the I-235 overpass north to the terminus at East 6th Street.
- The John Pat Dorrian Multi-Use Recreational Trail will be relocated to the west, to a route closer to the Des Moines River. The trail will not be part of the leased premises, but will remain a City linear park.
- Relocation of the trail and implementation of the overall master plan will entail removal of a significant number of trees; the master plan also calls for the planting of a multitude of new trees,

shrubby, perennials and other plant material associated with expansive outdoor botanic display gardens.

- GDMBC will use its best efforts to increase attendance.
- The GDMBC shall obtain, at its expense, periodic inspections after three full years of operation and thereafter every four years, to include the condition of the gardens, condition of the buildings, attendance levels, educational programs and fundraising activities, by persons or firms with education and training in botanical gardens.
- The proposed master plan will become an exhibit to the lease agreement after the plan is presented to the City Council for approval.
- The City Council has approval rights over the GDMBC master plan.
- Significant changes to the master plan must be approved by the City Council.
- GDMBC will complete \$10 million in fundraising in the first five years, including \$7.5 million for improvements to the Center and grounds, \$2 million for an endowment for operational expenses and \$500,000 for construction-related costs, such as interest on construction loans and fundraising, and operating costs during and immediately after construction.
- The lease agreement shall commence on January 1, 2013 and shall continue in full force until midnight on December 31, 2037, unless otherwise terminated according to the terms of the lease agreement. However, the GDMBC may delay the lease agreement commencement date until January 1, 2014, provided that they give the City written notice of intent by no later than May 1, 2012.

By providing this funding, the City will avoid making substantially higher capital investments or possible need for a decision to close the facility. 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. It is acknowledged that the City's cash investment is comparable to anticipated expenditures it is currently making for basic infrastructure improvements and operational needs. However, the end result of having other, non-City investments contributing to the facility will be a greatly-improved attraction for the City of Des Moines.

As previously stated, a key component of the guiding principles and resulting lease agreement involves the transfer of financial responsibility for the significant annual expenses of supporting the Botanical Center from the Des Moines taxpayers to an expanded base of financial supporters. The lease agreement will allow the City to shift more responsibility to the GDMBC and allow more flexibility to the GDMBC in management of the Botanical Center and planning, funding and construction of Botanical Center improvements. The GDMBC will own the improvements, personal property and plant collection built or acquired during the term of the lease agreement. The plant collection that is currently City-owned, as well as property used in the operation of the Botanical Center, including equipment and materials, will be transferred to the GDMBC under the proposed lease agreement. Upon termination of the lease agreement, the City would assume ownership of the improvements, personal property and plant collection used in the operation of the Botanical Center. All planned improvements to the Botanical Center from 2013, or the lease commencement date, through the first five years of the lease will be described in a conceptual master plan. This master plan will become an exhibit to the lease agreement after the plan is presented to the City Council for approval. Any proposed material changes to the master plan, such as those needed to reflect donor requirements and improvements planned for after the initial \$7,500,000 in improvements, will require City Council approval.

In summary, the agreements in this proposal benefit the City, GDMBC and the taxpayers for the following reasons:

- They support the growth of the Botanical Center.

- The City will own all improvements constructed by GDMBC at the termination of the agreement.
- City costs for the Botanical Center are reduced.
- The City's investment will leverage non-City investments, while increasing the potential to fund the facility regionally.

In conclusion, the City will be relieved of current infrastructure and operating costs to the Botanical Center. Resulting costs will be similar in amount to basic infrastructure improvements and repair needs that the City would be responsible for in the event that the facility would revert to the City. The return is a greatly-improved attraction for the City of Des Moines.

PREVIOUS COUNCIL ACTION(S):

Date: May 10, 2010

Roll Call Number: 10-685

Action: [Guiding](#) principles for negotiation of a long term lease and management agreement for the Botanical Center and grounds. ([Council Communication No. 10-259](#)) Moved by Meyer to adopt. Motion Carried 7-0.

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.

BOARD/COMMISSION ACTION(S):

Board: Plan and Zoning Commission

Date: April 7, 2011

Resolution Number: 11-2011-1.04

Action: Commission voted 8-1-3 to recommend APPROVAL of a request from Friends of the Des Moines Botanical Center, represented by Fred Weitz, for the permanent closure of the park road adjacent

to the Des Moines Botanical Center to through-access from a point immediately north of 1-235 to East 6th Avenue, subject to development in accordance with proposed master plan and encouraging those in negotiation (the City and the Friends of the Des Moines Botanical Center) to extend every reasonable effort to maintain access to the north trailhead for pedestrian and vehicular traffic

Board: Park and Recreation Board

Date: December 28, 2010

Resolution Number: 10-105

Action: Approval of Botanical Center lease agreement.

Board: Park and Recreation Board

Date: November 23, 2010

Resolution Number: 10-098

Action: Receive and file Botanical Center lease agreement.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Recommending approval of the proposed master plan (date unknown, however the master plan will be completed prior to lease agreement commencement)

May 9, 2011: Recommending approval of the lease and management agreement
Recommending approval of the economic development grant agreement
First reading of vacation ordinance recommendation

May 23, 2011: Second and final reading of vacation ordinance recommendation (staff will recommend waiver of third reading)

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