

 <p style="text-align: center;"><b>Council Communication</b> Office of the City Manager</p>	<b>Date:</b> February 27, 2012
	<b>Agenda Item No.</b> 33 <b>Roll Call No.</b> [                      ] <b>Communication No.</b> <u>12-090</u> <b>Submitted by:</b> <b>Donald M. Tripp, Director of Park and Recreation</b>

**AGENDA HEADING:**

Recommend approval of Greater Des Moines Botanical Garden Corporation (GDMBGC) named giving policy.

**SYNOPSIS:**

Staff recommends approval of the GDMBGC proposed named giving policy.

**FISCAL IMPACT:**

According to the GDMBGC, the proposed policy action is a key instrument to accomplish their contractual obligation in raising \$10,000,000 within the first five years of the agreement.

**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). This agreement is set to expire on December 31, 2012. On May 9, 2011, by Roll Call No.11-0822, the City Council approved an Operation, Management and Maintenance agreement with GDMBGC that is set to commence on January 1, 2013.

One such requirement of the agreement is that the GDMBGC successfully gain City Council approval on their proposed naming rights policy. At the time of the agreement approval process, the naming policy had not yet been developed. Below is the agreement language regarding the naming policy taken directly from the approved agreement.

**XIV. ADVERTISING AND MARKETING OF THE BOTANICAL CENTER**

**A. CITY LOGO AND NAMES**

*Upon completion of the Improvements described in the Master Plan, the Leased Premises shall be renamed and shall be known and designated as the “Greater Des Moines Botanical Garden”. In addition, subject to the approval of the City Council, the CORPORATION may propose the award of naming rights for the Leased Premises, Botanical Center Building and Grounds, or the Botanical Center building, as an incentive for substantial private donations.*

*The CORPORATION has the right to name new structures and Improvements In Accordance With CORPORATION’s naming policy, subject to approval of such policy*

*by the City Council. The CORPORATION shall not alter the naming rights to previously named structures without the prior written approval of the City Manager or the City Council. It is up to the City Manager's discretion whether City Council approval is required for such structures. In addition, the CORPORATION will use its best efforts to reach a mutually satisfactory accommodation with the donor for any non-structure items attached to naming rights if such items will be removed or moved as part of the development under the Master Plan. The CORPORATION will honor any written donor agreements disclosed by the CITY prior to the Lease Commencement Date.*

The following “named giving policy” has been provided by the GDMBGC to fulfill this contractual obligation.

**GDMBGC Proposed Named Giving Policy:**

Any gift made with the stipulation of naming rights to the Greater Des Moines Botanical Garden facility, program or position is subject to approval by the Board of Directors. All previous written donor agreements with the City of Des Moines which have been provided to the Greater Des Moines Botanical Garden will be honored. Renaming of previously named structures will require the approval of the City Manager or the City Council. It is up to the City Manager's discretion whether City Council approval is required for such structures. In the event that non-structure named elements are removed or moved as part of the Master Plan, the Board of Directors will use their best efforts to reach a mutually satisfactory accommodation with the donor. Named gifts are subject to IRS regulations regarding potential benefit when presented by a corporation or other entity other than an individual or family foundation.

The term of naming rights reserved is variable based on the gift. The term of naming rights cannot extend beyond the then current term of the lease with the City of Des Moines. In the event that a longer term is deemed by the Board of Directors to be necessary to appropriately recognize the size of the gift, the approval of the Des Moines City Council must be obtained. In addition, donors must be informed that naming rights will expire upon termination of the lease or 20 years whichever is earlier. All named elements are subject to annual review, and the Board reserves the right to remove naming rights without penalty or repayment of the initial gift should the Board believe removal is in the best interests of the organization. The spirit of each agreement should be to perpetuate the agreement as originally written and signed by both parties unless malicious, deviant or otherwise harmful behavior on the part of the named party is deemed to be detrimental to the organization.

The approved lease agreement provides for a long-term lease of the Botanical Center facilities, while assuring the City's maximum financial commitment toward 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 GDMBGC. In addition to the lease agreement, the City and GDMBGC have entered 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 GDMBGC.
- GDMBGC 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.

- GDMBGC 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 GDMBGC Board as voting members.
- GDMBGC'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, shrubbery, perennials and other plant material associated with expansive outdoor botanic display gardens.
- GDMBGC will use its best efforts to increase attendance.
- The GDMBGC 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 GDMBGC master plan.
- Significant changes to the master plan must be approved by the City Council.
- GDMBGC 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 GDMBGC 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.

#### **PREVIOUS COUNCIL ACTION(S):**

Date: January 9, 2012

Roll Call Number: 12-0047

Action: [Greater](#) Des Moines Botanical Garden application for a Vision Iowa Community Attraction and Tourism (CAT) Grant to be used for expansion at the Botanical Center and authorizing City Manager to send a letter of support. Sponsor: Council Members Mahaffey and Meyer. ([Council Communication No. 12-022](#)) Moved by Hensley to receive and file and directing the City Manager to prepare and send such letter of support to the Vision Iowa Board on behalf of the City of Des Moines. Motion Carried 7-0.

Date: April 25, 2011

Roll Call Number: 11-0680

Action: [On](#) vacation and Long-term Lease, Operation, Management and Maintenance Agreement of Des Moines Botanical Center and adjacent grounds including a portion of Robert D. Ray Drive to Greater Des Moines Botanical Garden, (5-9-11). ([Council Communication No. 11-259](#)) Moved by Hensley to adopt. Motion Carried 7-0.

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.

**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).

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