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|  <p style="text-align: center;"><b>Council<br/>Communication</b><br/>Office of the City Manager</p> | <b>Date:</b>             | December 17, 2012  |
|  | <b>Agenda Item No.</b>   | <b>52</b>  |
|  | <b>Roll Call No.</b>     | [ _____ ]  |
|  | <b>Communication No.</b> | <b>12-625</b>  |
|  | <b>Submitted by:</b>     | <b>Benjamin R. Page,<br/>Director of Park and<br/>Recreation</b> |

**AGENDA HEADING:**

Hold hearing for amendment of Lease of the Des Moines Botanical Center and adjacent grounds of approximately 13.4 acres to Greater Des Moines Botanical Garden, including a portion of Robert D. Ray Drive.

**SYNOPSIS:**

Public hearing for amendment on the Long-Term Lease, Operation, Management and Maintenance Agreement (lease agreement) with Greater Des Moines Botanical Corporation (GDMBC). The amendment addresses utility issues, storage of hazardous materials, and a minor change in the method of paying for fire hydrant service.

**FISCAL IMPACT:**

Amount: \$50,000

There is anticipated to be more than \$50,000 savings related to ADA improvements identified and budgeted for the Botanical Center in the ADA Modifications for Municipal Buildings project. Those savings will be reallocated to address other required ADA modifications in other City facilities.

Funding Source: 2012-2013 CIP, Page Miscellaneous - 8, Enhanced City-Wide Information and Communications Systems, MSC001.

**ADDITIONAL INFORMATION:**

On June 11, 2012, by Roll Call No. 12-0935, City Council approved the master plan by the GDMBC.

On May 9, 2012, by Roll Call No. 11-822, City Council approved the long-term lease, operation, management and maintenance agreement between the City and GDMBC.

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 28E Agreement with DMWW will expire on December 31, 2012. On, January 1, 2013, the GDMBC will commence the Council approved lease, operation, management and maintenance agreement.

During the past year, the GDMBC management has systematically developed their final master plan as well as their management transition planning. In refining the master plan, the GDMBC has identified a proposed utilities corridor and identified a few other items that they would like to clarify and adjust in the lease agreement by this amendment prior to commencing the lease. The GDMBC Board is requesting the following lease amendments:

- Revisions to the utility easement language that would preserve only easements of record which include the City's storm water and sanitary line, MidAmerican's gas utility line, and clarify that the MetroNet fiber lines will remain on the Leased Premises in the utility corridor. The cost for the City would only be related to relocating the MetroNet fiber line and this cost is projected to be up to \$50,000. This work was a part of the original agreement, however at the time of the agreement there was not enough information available to effectively project a cost.
- Developing a utility corridor to reduce the potential impact of utility maintenance and servicing of the future improved spaces within the lease boundaries.
- Extending the period of time for the City MetroNet communication fiber connection from December 31, 2012 to up to July 1, 2013 or sooner pending the GDMBC obtaining alternate internet service.
- Clarifying that the storage and use of Hazardous Substances commonly used in the operation of botanical gardens or offices are allowed on-site, provided that all such usage, storage and disposal is in accordance with applicable laws.
- Allowing the GDMBC to submit paid invoices for up to \$18,500 for the installation of a fire hydrant rather than the City installing and funding this as previously agreed.

### **Significant Terms of the Council-Approved Lease Agreement**

The City Council approved the lease agreement on May 9<sup>th</sup>. The following is a summary of the primary provisions of the approved agreement.

Upon completion of the Phase 1 master plan improvements, 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 GDMBC. In addition to the lease agreement, the City and GDMBC 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.

- The initial term is 25 years, with two (2) 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. (Council appointed Bob Mahaffey to the GDMBC Board.)

- 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, shrubbery, 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 (3) full years of operation and thereafter every four (4) 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.

In conclusion, at the commencement of the lease 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: December 3, 2012

Roll Call Number: [12-1834](#)

Action: [On](#) amendment to vacation Ordinance No. 15,014 regarding reservation of utility easements on vacated Botanical Center and adjacent grounds and for amendment of lease of such vacated property to Greater Des Moines Botanical Garden Corporation, (12-17-12). ([Council Communication No. 12-605](#)). Moved by Hensley to adopt. Motion Carried 7-0.

Date: June 11, 2012

Roll Call Number: [12-0935](#)

Action: [Master](#) Plan by the Greater Des Moines Botanical Garden, for the Des Moines Botanical Center. ([Council Communication No. 12-298](#)). Moved by Mahaffey to adopt. Motion Carried 6-1. Nays: Moore

Date: May 9, 2011

Roll Call Number: [11-0822](#)

Action: [On](#) vacation as parkland and right-of-way and Long-term Lease, Operation, Management and Maintenance Agreement of Des Moines Botanical Center and adjacent grounds to Greater Des Moines Botanical Garden. Moved by Mahaffey to adopt. Motion Carried 6-1. Nays: Moore.

**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 I-235 to East 6th Avenue, subject to the 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 field Botanical Center lease agreement

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**

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