

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: July 29, 2013
	Agenda Item No. 27 Roll Call No. <u>13-1206</u> Communication No. <u>13-383</u> Submitted by: Benjamin R. Page, Park and Recreation Director

AGENDA HEADING:

Recommending approval of the First Amendment to the Urban Renewal Development Agreement for the Des Moines Botanical Center (Botanical Center).

SYNOPSIS:

Approving the First Amendment Urban Renewal Development Agreement for the Des Moines Botanical Center with Greater Des Moines Botanical Corporation (GDMBC), which now has the responsibility of all operations, management, capital improvements, and maintenance of the Botanical Center. The City and GDMBC entered into a separate Economic Development Grant Agreement on May 9, 2011, by which the City provides the GDMBC with an annual grant of \$200,000 for 10 years, subject to compliance with the lease agreement terms. The GDMBC is now requesting biannual payments of \$100,000 each starting on December 1, 2013 with additional \$100,000 payments every June 1 and December 1 thereafter as opposed to the previously agreed annual payment of \$200,000 per year.

FISCAL IMPACT:

Subject to Council approval of the proposed amendment of the Urban Renewal Development Agreement, economic grants would be funded annually from the Metro Center tax increment revenues of \$200,000/year starting upon completion of 70% improvements for the first \$100,000 biannual payment on December 1, 2013 and all other payments after 100% of improvements are completed in accordance with the lease and extending for 10 years for a total of \$2,000,000.

Amount: Economic Development Grants: \$2,000,000 (Tax increment revenues)

Funding Source: Org S371CM99, 528190, Project TF045

ADDITIONAL INFORMATION:

On June 20, 2013, the GDMBC Board provided a written request to amend the Urban Renewal Development Agreement grant payments. Originally, the GDMBC was scheduled to receive one (1) payment per year in the amount of \$200,000 for a period of 10 consecutive years upon completion of Phase 1 improvements. The GDMBC is now requesting that this payment be made biannually over this same period of time with the first payment being received on December 1, 2013. If approved, this would represent approximately 70% of the improvements are completed as opposed to the current

agreement of 100% completion of Phase 1 improvements. Reasons for the request include the following:

- Original fundraising commitment with the City was \$10,000,000; however, GDMBC has raised an additional \$2,000,000 for a total of \$12,000,000 making way for additional improvements beyond the agreement.
- The GDMBC is planning on initiating a Phase 2 Capital Campaign in the amount of \$6,000,000, which is not required by their agreement with the City.
- All of the non-landscaping construction work is under contract with a guaranteed maximum price just short of \$4,200,000. This work is well underway and is expected to be largely completed by October 1, 2013. The landscaping work is currently being bid and is anticipated that it will be under contract in July 2013. It is expected that the initial landscaping contract will be approximately \$3,850,000, which will include all of the Phase I work plus some Phase II work, to the extent that funds are raised.
- Approximately \$650,000 has already been raised for Phase II.

The May 9, 2011, Urban Renewal Development Agreement is clear that the initial installment will not be made until the City has received acceptable documentation that the GDMBC has obtained \$10,000,000 of non-City committed funding and the improvements have been completed in accordance with the Lease. The City has 60 days to make the initial installment from the date the City determines that the improvements are completed in accordance with the terms of the Lease. The City has received acceptable documentation that GDMBC has obtained the \$10,000,000 of non-City funding.

The Lease requires that capital improvements to the Botanical Center building and expanded gardens in the amount of \$7,500,000 be made pursuant to a Master Plan approved by the City Council and pursuant to a timetable set out in Exhibit C of the Lease. Sec.III.C., the City Council approved a Master Plan on June 11, 2012, which described a Phase I and Phase II for construction of improvements. As long as the improvements in Phase I amounts to at least \$7,500,000 and the construction schedule conforms to the Capital Improvements Construction Timeline set out in Exhibit C of the Lease - which specifies that certain categories of work be completed and requires that construction of the improvements be completed by November 2013, the payment can be made.

Section IX.A.1 of the Lease requires the City to support BRAVO funding for the operation of the Botanical Center in the amount of \$245,000 for 10 years with a first payment to be made in 2014 if the improvements are completed in accordance with the Master Plan and Exhibit C. As discussed above regarding the Urban Renewal Development Agreement, as long as the cost of the improvements is at least \$7,500,000 and the improvements comply with Exhibit C, the initial City BRAVO payments may begin in 2014. (BRAVO payments began in January 2013, as BRAVO recognized that the GDMBG was already operating the facility and needed the additional operating support to begin sooner than the original agreement.)

Although not typical, due to the chair of GDMBC being out of state, the Urban Renewal Development agreement amendment has not been signed prior to council approval. Upon the return of the board chair, a signature will be obtained. The chair has reviewed the agreement and has no changes to the proposed agreement and has indicated via electronic mail that this will be signed as presented to the City Council.

These agreements provide assurance of the City's financial commitment and relieve the City of capital and operating investments by shifting that responsibility to the GDMBC over the 25 year agreement.

The City benefits 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.

PREVIOUS COUNCIL ACTION(S):

Date: May 9, 2011

Roll Call Number: [11-0822](#), [11-0823](#), [11-0824](#), and [11-0825](#)

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.

- A) [First](#) consideration of ordinance above. Moved by Mahaffey that this ordinance be considered and given first vote for passage. Motion Carried 6-1. Nays: Moore.
- B) [Final](#) consideration of ordinance above (waiver requested by Greater Des Moines Botanical Garden), requires six votes. Moved by Mahaffey that the rule requiring that an ordinance must be considered and voted on for passage at two Council meetings prior to the meeting at which it is to be finally passed be suspended, that the ordinance be placed upon its final passage and that the ordinance do now pass, #15,014. Motion Carried 6-1. Nays: Moore.
- C) [Approving](#) Urban Renewal Development Agreement. ([Council Communication No. 11-266](#)) Moved by Mahaffey to adopt. Motion Carried 6-1. Nays: Moore

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: Plan and Zoning 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 trail head for pedestrian and vehicular traffic.

Board: Park and Recreation Board

Date: December 28, 2010

Resolution Number: 10-105

Action: Approval of Botanical Center lease.

Board: Park and Recreation Board

Date: November 23, 2010

Resolution Number: 10-098

Action: Receive and file Botanical Center lease.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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