

Mayor and Council Communication

DATE: 05/19/20

M&C FILE NUMBER: M&C 20-0347

LOG NAME: 80BGBRITMANAGEMENT

SUBJECT

Authorize Execution of a Second Amendment to a Management Services Agreement with the Botanical Research Institute of Texas, Inc. in the Amount of \$59,741.00 for Management of Garden Center Operations, Authorize Execution of a New Management Services Agreement with the Botanical Research Institute of Texas, Inc. in the Annual Amount of \$3,350,000.00 for Management of the Fort Worth Botanic Garden, Authorize Supplemental Management Fee in an Amount Not to Exceed \$1,355,000.00 for Phased Transition of Management Services, Authorize Payment of Amount Equivalent to up to 120 Hours Accrued Leave Per Employee in an Amount Not to Exceed \$203,952.10, Authorize Waiver of Construction-Related Permit Fees for Improvements Made by the Botanical Research Institute of Texas, Inc., and Find that Payments, Transfer of Vehicles, City Property, and Equipment, and Waiver of Fees Serve a Public Purpose (ALL COUNCIL DISTRICTS)

RECOMMENDATION:

It is recommended that the City Council:

1. Authorize execution of a Second Amendment to City Secretary Contract No. 49874, a Management Services Agreement with the Botanical Research Institute of Texas, Inc. in the Amount of \$59,471.00 for Management of Select Administrative Operations;
2. Authorize execution of a New Management Services Agreement with the Botanical Research Institute of Texas, Inc. in the amount of \$3,350,000.00 for management of the Fort Worth Botanic Garden;
3. Authorize a supplemental management fee in an amount not to exceed \$1,355,000.00, offset by corresponding reductions in City payroll costs appropriated in the FY2020 Approved Budget, for management services assumed before October 1, 2020;
4. Authorize payment of an amount equivalent to up to 120 hours accrued leave for each Botanic Garden employee that takes a position with the Botanical Research Institute of Texas, Inc. in an amount not to exceed \$203,952.10;
5. Authorize waiver of construction-related permit fees up to \$50,000 for each project for improvements made by the Botanical Research Institute of Texas, Inc.; and
6. Find that payments to and transfer of vehicles, City property and equipment to the Botanical Research Institute of Texas, Inc. and waiver of fees serve a public purpose.

DISCUSSION:

Second Amendment to Contract 49874:

On October 10, 2017 (M&C C-28427) Council authorized staff to execute a contract with the Botanical Research Institute of Texas (BRIT) to manage education and volunteer programs at the Botanic Garden. This action was intended to take advantage of BRIT staff's expertise and increase efficiency in delivering services for both organizations. The contract included payment of a management fee in the amount of \$192,000.00 from annual garden operational funds to BRIT and eliminated positions at the Botanic Garden supporting those services. The agreement, City Secretary Contract Number 49874 (known as GROW), was implemented effective November 2017 and the program has enjoyed increasing success with major growth in Pre-K, K-12, and adult education and in volunteer recruitment, training, and utilization.

Informal Report 10247 on March 5, 2019 informed Council of plans to implement a joint membership program for the Botanic Garden and BRIT and add membership administration to the services already managed by BRIT under the GROW agreement. On May 21, 2019 (M&C C-29133) City Council approved the first amendment to CSC 49874 in the amount of \$88,282.00 for the new joint membership program. Membership has since grown to over 3,000 households in the first year of operation ending March 9, 2020.

On January 1, 2020, the Botanic Garden's Garden Center Coordinator was hired to become BRIT's new Vice President for Operations. As negotiations were already underway for a non-profit management agreement and the VP of Operations would be assuming most of the responsibilities of the Garden Center Coordinator under that agreement, it was decided to leave the Garden position open and allow BRIT to temporarily manage those functions. The proposed amendment allows BRIT to assume many of the advisory, financial management, and day to day sales, housekeeping, and event management supervisory tasks at the Garden during the transition. The increased management fee also funds software and other needs to manage those functions. The result will be significant salary savings, better coordination of events and sales at both facilities, and better oversight of finances. The proposed amendment allows BRIT to access City Information Technology (IT) systems as needed by specified BRIT employees to perform these functions and makes adjustments to the payments required in the first amendment for functions that were not implemented.

The major terms of the proposed amendment to the GROW agreement include the following:

1. Management of select administrative operations at the Botanic Garden, including advisory, financial management, daily sales, housekeeping, and event management functions;
2. Increased management fees in the amount of \$59,791.00 to be paid from the Botanic Garden Special Revenue Fund for management of the administrative operations and related expenses, including: (a) the City's portion of costs for NetSuite software supporting point of sale systems for admission and retail operations, and (b) IT support for installing and supporting NetSuite and other software needed for

- managing transition of data to BRIT for future management of the Garden;
- 3. Additional indemnification protections to address BRIT managing City employees;
- 4. Providing select BRIT employees with access to the City's network, email, and software resources in order to perform the management services;
- 5. Adjustment of payment date for a portion of the management fee for staff support of the membership program in the amount of \$11,630 that was deferred from FY 2018;
- 6. Revision of the management fees for membership marketing support services as performance of those services were not assumed by BRIT until 1/1/20.

Management Agreement:

On November 15, 2016 City Council accepted the Botanic Garden Strategic Plan (M&C G-18885), recommending significant changes in the operation of the Fort Worth Botanic Garden including general admission fees and non-profit management. In January of 2018 a special Botanic Garden Task Force (Task Force) was appointed by the City Manager's office for the purpose of determining how best to ensure a sustainable future for the Fort Worth Botanic Garden. After reviewing multiple financial projections, public input, a visitor intercept study by Highland Market Research, LLC, facility assessments by a multi-disciplinary team led by Elements of Architecture, Inc., and other research, the Task Force presented its recommendations to Council in November of 2018.

On November 13, 2018, Council approved M&C G-19422 accepting Task Force recommendations for a general admission fee and financial accessibility program to reduce impact of fees on low-income visitors. It further authorized staff to pursue an operational management agreement with BRIT to determine whether it was an appropriate and willing non-profit partner. That directive led to initial informal discussions with BRIT culminating with a letter of interest from the City to BRIT in June of 2019. A term sheet of agreed upon provisions for non-profit management was developed beginning in September of 2019 and City Council was briefed on it in January of 2020.

General Conclusions:

1. The joint administration of Garden and BRIT programs under the management of BRIT staff has created synergies and efficiencies resulting in major growth in education, volunteerism, and membership programs for both institutions. This growth represents a significant public benefit for the citizens of Fort Worth. Equivalent growth is expected in sales and events programs.
2. Non-profit management for the Garden appears best suited to assuring continued sustainability.
3. Due to similar mission; professional board governance, administration, and staff well positioned to manage fundraising, research, education, and other programmatic services typical of major botanical gardens; and physical proximity; BRIT is well suited as a non-profit management partner for the Botanic Garden.
4. BRIT is uniquely positioned as the sole non-profit organization to manage the Garden and has provided the City with significant financial and other benefits, including, but not limited to, constructing a LEED certified building on the City's property adjacent to the Garden valued at over \$23 million, entering into a long term ground lease and related agreements with the City for shared use and maintenance of the Botanic Garden and the adjacent property where the LEED building is located, and management of education, volunteer, membership, and marketing programs for the Botanic Garden.
5. Due to the myriad demands of transitioning an operation of the size of the Botanic Garden to new management, it is desirable to closely coordinate efforts, develop joint teams to make and implement strategic decisions affecting both institutions, and phase transfer of employees and operations from the City to BRIT. Transitional provisions allowing City employees to participate fully in these activities as required, including interim day to day management of City staff by BRIT employees in certain cases, will be crucial to success.
6. Assuring that funding is available to allow the Botanic Garden to be properly staffed and equipped to allow proper maintenance and programming serves a public purpose.

The major terms of the new agreement with BRIT include the following:

1. Management Services shall include, but are not limited to, management of the administration, maintenance, exhibits, landscape and horticulture programs, special events, advertising, sales, volunteers, admissions, contracts, improvements, and security for the Botanic Garden.
2. The Agreement would authorize a term of 20 years with a 6 month transition period, effective May 1, 2020 and to be fully implemented by October 1, 2020 or 90 days after 1.) COVID restrictions are lifted and 2.) the Garden reopens with general admission fees. Between May 1, 2020 and the full implementation date, BRIT can assume management of Botanic Garden functions and the City's property and equipment can be transferred to BRIT in phases.
3. For Fiscal Year 2021 (October 1, 2020 through September 30, 2021), the City will pay BRIT a Management Fee in the amount of \$3,350,000.00. For each subsequent fiscal year, the amount of the Management Fee will adjusted by increases in the CPI. If a decrease in the CPI occurs, the Management Fee will be the same amount paid during the previous fiscal year.
4. To support the phased transfer of the management services between May 1, 2020 and October 1, 2020, City will pay to BRIT a supplemental management fee in an amount not to exceed \$1,355,000.00, with such cost being offset by corresponding reductions in City payroll costs as appropriated in the FY2020 approved budget for City positions previously performing transferred responsibilities. The \$1,355,00.00 represents the total amount the City would pay if BRIT assumed management of all functions at the Botanic Garden on May 1, 2020. It is anticipated that the actual expense will be lower. For each function at the Botanic Garden that BRIT assumes management of, the City will calculate the payment based on the number of days remaining from the date BRIT assumes management through September 30, 2020.
5. City employees who take a position with BRIT may choose to have up to 120 hours of earned leave time with the City transferred to BRIT in lieu of the City paying the leave time to the employee. The City will pay to BRIT an amount equivalent to the cost that the City would have incurred for salary and employer-paid benefits if the leave were taken during employment with the City. The estimated cost to the City if all employees take advantage of this option is \$203,952.10
6. Botanic Garden employees within five years of retirement have the option to remain at the Garden as city employees assigned to BRIT. Those employees will retain city benefits and appeal rights. Rights to discipline, evaluate, hire, and terminate remain with the City. These retained employees will be managed on a day to day basis by BRIT and BRIT will provide City supervisors with information on their performance. These employees will also have the right to retire when eligible with full pension benefits earned, to request reassignment to

- another City position, to enter the DROP program when eligible, or to leave the City to seek other employment or become employees of BRIT.
7. The City will provide up to \$17,000,000.00 in debt funded capital improvements and repairs over a 12 year period beginning May 1, 2020. This funding will address deferred facility maintenance identified in the facility assessment conducted by Elements of Architecture, Inc. dated December 22, 2017. The agreement adjusts the deferred maintenance funding for inflation from that study's date of publication.
 8. Current admission fees, as adopted by the City Council on November 13, 2018 (M&C G-19422) are \$12 for adults, \$10 for seniors, \$6 for children and free for children 5 and under. BRIT may increase the admission fees periodically by adding an amount that does not exceed increases in the Consumer Price Index to the amount of the admission fees previously charged. BRIT will provide admission accessibility options with a goal that at least ten percent (10%) of non-membership program admissions will be: (1) free, or at a reduced rate from the admission fees; and (2) have reasonable options for days of the week and the times of admittance for those using the accessibility options.
 9. BRIT may establish a membership program and establish the membership fees for the membership program.
 10. Building permit fees for future improvements made by BRIT at the Botanic Garden will be waived in an amount up to \$50,000.00 for each project. Upon completion of construction, the improvements will be owned by the City and BRIT will create an endowment fund equal to 5% of the construction cost for maintenance of the improvements.
 11. Title to City-owned vehicles will be transferred to BRIT. The City will also transfer furniture, fixtures and equipment necessary for operation of the Botanical Garden to BRIT. Upon termination of the agreement, BRIT will be required to return vehicles, furniture, fixtures and equipment, or their replacements, to the City.
 12. BRIT shall not enter into any other agreements for the management of any other public botanical gardens or otherwise compete with the operation of the Botanic Garden.

By approval of this M&C, the City Council finds that the waiver of building permit fees serve a public purpose by improving City-owned property and sufficient contractual controls are in place to ensure that public purpose is met. The City Council further finds that payment of the management fee to BRIT and the transfer of vehicles, furniture, fixtures, and equipment to BRIT serves a public purpose by ensuring the continued operation of the Botanic Garden as a public garden and sufficient contractual controls are in place to ensure that public purpose is met.

FISCAL INFORMATION / CERTIFICATION:

The Director of Finance certifies that funds are available in the current operating budget, as previously appropriated, in the Botanic Gardens Special Revenue (Botanic Gardens Spcl Revenue) Fund to support the approval of the above recommendations and execution of the amendment. Prior to any expenditure being incurred, the Park & Recreation Department has the responsibility to validate the availability of funds.

Submitted for City Manager's Office by: Dana Burghdoff 8018

Originating Business Unit Head: David Creek 5704

Additional Information Contact: David Creek 5704