

October 23, 2019

**WHEREAS**, in 1984, the City through the Park and Recreation Board and Dallas Arboretum and Botanical Society, Inc. (DABS) entered into an agreement for the operation, management and maintenance of an arboretum and botanical garden by Resolution No. 84-2407; and

**WHEREAS**, on March 23, 1988, the contract was revised to reflect that the City and DABS both agree upon a 25-year agreement with one ten-year renewal option for the operation, management and maintenance of the Dallas Arboretum by Resolution No. 88-1042; and

**WHEREAS**, on April 27, 2011, Supplemental Agreement No. 1 to the First Amended Arboretum and Botanical Society Contract "Master Agreement" with the Dallas Arboretum and Botanical Society, Inc. for the construction, development and maintenance of The Rory Meyers Children's Adventure Garden at the Dallas Arboretum located at 8525 Garland Road by Resolution No. 11-1122; and

**WHEREAS**, on February 27, 2013, City Council authorized Supplemental Agreement No. 2 to the contract with the Dallas Arboretum and Botanical Society, Inc., as previously amended and supplemented, to manage, maintain and operate an arboretum and botanical garden for a ten-year term, for the period March 23, 2013 through March 23, 2023, by Resolution No. 13-0412; and

**WHEREAS**, on June 26, 2013, City Council authorized Amendment No. 2 to the Supplemental Agreement for the Construction, Development and Maintenance of a Children's Garden Facility at the Dallas Arboretum to allow Dallas Arboretum and Botanical Society to assign revenue from the parking premises to repay the parking facility construction debt; and Amendment No. 3 to the First Amended Arboretum and Botanical Society Contract to extend the term by ten years including estimated utility costs of \$395,000 annually for the period March 24, 2023 through March 23, 2033 at the Dallas Arboretum located at 8525 Garland Road by Resolution No. 13-1072; and

**WHEREAS**, Resolution No. 13-1072, Amendment No. 3 also clarified that the Supplemental Agreement and Master Agreement, including Amendment No. 3 shall hereinafter be referred to as the "Arboretum Agreement"; and

**WHEREAS**, this action will authorize Amendment No. 4 to the Arboretum Agreement with Dallas Arboretum and Botanical Society, Inc. to set a cap on utility usage and to identify standard performance measures for the remaining term of the agreement.

**Now, Therefore,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

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**SECTION 1.** That the City Manager is hereby authorized to execute Amendment No. 4 to the Arboretum Agreement with Dallas Arboretum and Botanical Society, Inc., approved as to form by the City Attorney, to set a cap on utility usage and to identify standard performance measures for the remaining term of the agreement.

**SECTION 2.** That the utility funding amounts be revised to reflect actual usage amounts, instead of actual dollar amounts, for each utility, excluding the Children's Garden and parking garage – kilowatts per hour (kWh) for electricity, centum cubic feet (CCF) for natural gas and gallons used for water.

**SECTION 3.** That usage caps proposed are as follows and are based on a five-year average for natural gas and water, and the optimum energy usage is obtained from the energy audit for electricity:

- Light and Power - 3,353,450 kilowatts (kWh)
- Natural Gas - 14,911 (CCF)
- Water and Sewer - 116,437,743 (Gallons)

**SECTION 4.** That DABS will be responsible for reimbursing the City on a monthly basis for any excess usage.

**SECTION 5.** That the City shall conduct an energy audit and a review of usage amounts for water and natural gas every five years from the date of the original energy audit, June 2019.

**SECTION 6.** That DABS, shall submit to the Park and Recreation Board an annual performance plan for the Arboretum no later than January 31<sup>st</sup> of each year during the term of the agreement. The Performance Plan will set forth the performance objectives for the Arboretum and will also identify "performance indicators" reasonably related to the performance objectives of Society. The performance indicators to be included in the Performance Plan shall include at a minimum, but not necessarily be limited to the following:

- A monthly reporting of the number of visitors to the Dallas Arboretum;
- Monthly reporting of the number of education classes and number attendees to the Arboretums sessions, both on and off-site;
- A listing of the public events scheduled for the Dallas Arboretum and an annual total number of private events at the various venues located within the grounds;
- A copy of the audited financials which lists all revenue sources, other than the City; and
- Monthly report of utility expenditures for the Premises to include a two percent reduction beginning calendar year 2020: (1) annual water consumption; (2) annual natural gas consumption; and (3) annual electric power consumption.

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**SECTION 7.** That annually, the City, through its Park and Recreation Department Director, and DABS shall also agree to specific performance standards and the addition of other performance indicators relevant to operations, no later than January 31st of each calendar year, during the term of the agreement.

**SECTION 8.** That if in any given year DABS fails to meet any one of the performance indicators as set forth in the Performance Plan by a deviation of ten percent or more, the Park and Recreation Department Director or Park and Recreation Board may, after taking all factors into consideration, require DABS to implement a remediation plan. As part of the remediation plan, DABS shall provide periodic updates to the Park and Recreation Board on the remedial action being taken.

**SECTION 9.** That this contract is designated as Contract No. PKR-2019-00010239.

**SECTION 10.** That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.