



## Legislation Text

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**File #:** 19-1534, **Version:** 1

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**STRATEGIC PRIORITY:** Quality of Life  
**AGENDA DATE:** October 23, 2019  
**COUNCIL DISTRICT(S):** 9  
**DEPARTMENT:** Park & Recreation Department  
**EXECUTIVE:** John D. Jenkins

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### **SUBJECT**

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 - Financing: No cost consideration to the City

### **BACKGROUND**

Dallas Arboretum and Botanical Society, Inc. (DABS), a Texas non-profit corporation located at 8617 Garland Road whose primary purpose is to maintain, promote and operate recreation and cultural facilities for the benefit of the public on the approximate 22 acres of land. DABS was established to maintain, promote and operate one or more arboreta and botanical gardens for the benefit of the public and its members.

As part of the first amended DABS contract, executed on March 23, 1988 ("Master Agreement"), the City of Dallas assumed responsibility for all utilities. The same contract required a utility audit to be conducted and to identify the optimum energy usage. DABS would then be responsible for energy usage exceeding this optimum amount. An audit completed by the City Auditor's Office on December 7, 2018 identified the required energy audit per contract requirements had not been completed and subsequently, the Department worked to have this audit completed in June 2019. The energy audit identified optimum energy usage to be 3,353,450 kilowatts per hour (kWh) or \$206,649.00. The average energy, electricity usage per year is \$209,000.00.

The City entered into a Supplemental Agreement No. 2 to the Master Agreement for the construction, development and maintenance of a Children's Garden and partial modification of the first amended DABS contract ("hereinafter referred to as the "Supplemental Agreement"), authorized by City Council per Resolution No. 11-1122, on April 27, 2011. Utilities for the Children's Garden and parking facilities are the sole responsibility of DABS per the Supplemental Agreement. The energy usage audit included those facilities under the Supplemental Agreement but are excluded from the optimum energy usage calculation since the City does not pay energy costs for these two areas of DABS.

In June 26, 2013, the parties entered into Amendment No. 3 that identified the following approximate annual funding amounts for utilities:

- Light and Power - Approximately \$220,000.00 annually
- Natural Gas - Approximately \$12,000.00 annually
- Water and Sewer - Approximately \$163,000.00 annually

To avoid confusion on all past documents regarding DABS, this Amendment No. 3 was construed together as a single contractual agreement, hereinafter referred to as the “Arboretum Agreement.”

The Park and Recreation Department is recommending that the utility funding amounts be revised to reflect actual usage amounts, instead of actual dollar amounts, for each utility, excluding The Rory Meyers Children's Adventure Garden and parking garage - kilowatts per hour (kWh) for electricity, centum cubic feet (CCF) for natural gas and gallons used for water. By using usage as the amount to base a cap on DABS will be able to budget for their utility expenses accordingly while also incentivizing conservation efforts taken by their operations to reduce utility usage. The usage caps proposed are as follows and are based off of 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)

It is also recommended that an Energy Audit and a review of usage amounts for water and natural gas be conducted every five years at the Arboretum. The purpose of an energy audit and the usage review is to understand the historical energy requirements and billing history, understand the utility usage and to identify opportunities to reduce utility consumption and reduce utility costs. The energy audit and utility usage review conducted every five years will allow for modification to the usage caps and to identify level of financial responsibility between the City and DABS.

The City Auditor also noted in their audit December 2018 report the Park and Recreation Department should develop a process to annually define specific performance indicators, or measures, relevant to DABS. DABS, in conjunction with the Department, has identified the following standard performance measures:

- A monthly reporting of the number of visitors to the 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 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 CY 2020: (1) annual water consumption; (2) annual natural gas consumption; and (3) annual electric power consumption

Annually, the City, through its 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.

### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

In 1984, the City through the Park and Recreation Board and DABS entered into an agreement for the operation, management and maintenance of an arboretum and botanical garden by Resolution No. 84-2407.

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.

On April 27, 2011, City Council authorized 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.

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.

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 \$395,000.00 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.

### **FISCAL INFORMATION**

No cost consideration to the City.

### **OWNER**

#### **Dallas Arboretum and Botanical Society, Inc.**

Mary Brinegar, President and Chief Executive Officer  
Alan Walne, Chairman  
Jim Ryan, Vice Chairman  
John Cabe, Secretary  
Lisa Armstrong, Treasurer