



# CITY COUNCIL AGENDA

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## COUNCIL ACTION: Approved on 3/28/2017

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<b>DATE:</b>	3/28/2017	<b>REFERENCE NO.:</b>	C-28165	<b>LOG NAME:</b>	80FWBGCONTRACTS
<b>CODE:</b>	C	<b>TYPE:</b>	NON-CONSENT	<b>PUBLIC HEARING:</b>	NO
<b>SUBJECT:</b>	Authorize Execution of Amended and Restated Agreements with the Fort Worth Garden Club and Fort Worth Botanical Society, Inc., for Certain Uses Associated with the Botanic Garden and Waive Construction-Related Permit Fees for Future Projects (COUNCIL DISTRICT 7)				

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### RECOMMENDATION:

It is recommended that the City Council:

1. Authorize an Amended and Restated Agreement with the Fort Worth Garden Club for the use of the Botanic Garden to, among other things, license certain areas within the Garden Center Building, sell merchandise, conduct programs and special events, and improve the existing facilities and structures;
2. Authorize an Amended and Restated Agreement with the Fort Worth Botanical Society, Inc., for the use of the Botanic Garden to, among other things, operate the Gardens Restaurant, license certain areas within the Rock Springs Building, sell merchandise, and conduct programs and special events, and improve the existing facilities and structures; and
3. Authorize waiver of construction-related permit fees to the extent permitted by law for future projects under the Amended and Restated Agreements with the Fort Worth Garden Club and the Fort Worth Botanical Society, Inc.

### DISCUSSION:

On November 15, 2016, the City Council authorized the acceptance of the Fort Worth Botanic Garden Strategic Plan from EMD Consulting Group, LLC, and referred it to the City Manager and Staff for further review and evaluation to develop strategies and polices for the implementation of the strategic plan (Plan) (M&C G-18885). The Plan establishes several key goals, including the reorganization of support groups and the increase of private support for the Fort Worth Botanic Garden (FWBG). The reorganization process will take place over two phases – (1) implementing actions for realigning governance and existing financial resources and (2) realigning governance structure in anticipation that a single entity, currently referred to as the Botanic Garden Conservancy, may serve as the future sole support organization for the FWBG and whose primary functions will be to promote and manage membership and conduct fundraising. This Mayor and Council Communication (M&C), in conjunction with a companion (M&C) concerning future revenues from FWBG activities, addresses Phase 1.

The Fort Worth Garden Club (FWGC) and Fort Worth Botanic Society, Inc. (FWBS) are long-standing support groups of the FWBG and have significantly contributed to its success over the past 40 years. The City currently has Agreements with the FWGC and FWBS governing each's use of the FWBG. In order to carry out Phase 1 of the reorganization plan, the Agreements need to be amended and restated to redefine each party's use of the FWBG and realign the financial resources associated therewith. Below is a summary of the current Agreements and the key terms of the proposed amended and restated Agreements.

### FWGC

In the mid-1980s, the FWGC contracted with the City to construct the Garden Center Conservatory Complex and an attached Lecture Hall (Complex) at no cost to the City (M&C C-2639 and C-9250). In exchange, the City agreed to operate the facilities primarily for educational purposes and secondarily to provide space to

hold meetings of public interest and benefit. Thereafter, the City and FWGC have been parties to a series of Agreements pursuant to which (1) all revenue generated through the Complex was deposited into a special fund maintained by the FWGC and used solely for the operation, expansion, or improvement of the Complex and Botanic Garden; (2) the FWGC was granted the right to use certain space within the Complex as a gift shop and office space; and (3) the FWGC directly funded certain Staff positions, with the current Agreement being Fort Worth City Secretary Contract No. 31502, as amended and renewed by CSC Nos. 31502-A1, 31502-A2, and 31502-R1A3.

The key terms of the proposed Amended and Restated Agreement include the following:

FWGC will be permitted to use the FWBG to make City-authorized improvements to existing facilities and structures.

Any funds remaining in the special fund maintained by the FWGC after the effective date of the Agreement will remain in FWGC's special fund and any funds and revenues received by the FWGC as a result of the rights granted in this new Agreement will be deposited into its special fund. All funds in the FWGC's special fund must be used and expended for the benefit of the FWBG.

Except as set forth below, any and all revenues generated at the Complex after the effective date of the Agreement will be deposited with the City into a special revenue fund.

The FWGC will no longer fund any Staff positions at the FWBG.

FWGC will continue to license areas within the Garden Center including certain designated office space. FWGC will retain a non-exclusive right to sell merchandise at the FWBG and use the FWBG for certain programs and special events

The primary term of this Agreement will expire on April 1, 2018, and will include two optional six month renewals.

The projected effective date of this Agreement will be April 1, 2017.

The prior Agreement between the City and FWGC will automatically terminate and be superseded by the Amended and Restated Agreement on the effective date.

### **FWBS**

Since 1973, the FWBS and City have been party to a series of Agreements pursuant to which the FWBS has operated the Japanese Garden and performed other designated functions related to the FWBG, with the current Agreement being CSC No. 32788, as amended and renewed by CSC Nos. 35186, 32788-A2, 32788-A3, and 32788-R1A4. The FWBS currently leases the Japanese Garden and certain areas within the Rock Springs Building, including the Gardens Restaurant. The current Agreement also gives the FWBS (1) the exclusive right to sell merchandise or services throughout the Japanese Garden; (2) a non-exclusive license to operate a gift shop at the FWBG; (3) a non-exclusive right to sell merchandise and services through the FWBG; and (4) permission to use the FWBG for programs and events. The FWBS is required to deposit all funds collected as a result of its rights under the current Agreement into a specially restricted account to be managed by the FWBS and used solely for the operation, expansion, and improvement of the FWBG. The FWBS also employs 10 individuals to carry out its functions and directly funds, either in whole or in part, eight Staff positions for the FWBG.

The key terms of the proposed Amended and Restated Agreement including the following:

Beginning on the effective date of the Agreement, the City will assume operational control over the Japanese Garden and all gift shops, which will include Staff. FWBS will provide funding for one City employee to help operate, maintain, and provide services at the FWBG.

Except as set forth below, beginning on the effective date of the Agreement, any and all revenue generated at the FWBG, including, without limitation, revenue from the Japanese Garden and any gift shops, will be deposited with the City into a special revenue fund.

Any funds remaining in the special fund maintained by the FWBS as of the effective date of the Agreement will remain in FWBS's special fund and any funds and revenues received by the FWBS as a result of the rights granted in this new Agreement will be deposited into its special fund. All funds in the FWBS's special fund must be used and expended for the benefit of the FWBG.

FWBS will continue to lease and operate the Gardens Restaurant.

FWBS will continue to license other areas within the Rock Springs Building, including certain designated office space and the north entrance joint usage area, and a portion of the "Triplex" storage building.

FWBS will retain a non-exclusive right to sell merchandise throughout the FWBG and use the FWBG for certain programs and special events.

FWBS will be permitted to make City-authorized improvements to existing facilities and structures.

The primary term of this Agreement will expire on April 1, 2018, and will include two optional six-month renewals.

The projected effective date of this Agreement will be April 1, 2017.

The prior Agreement between the City and FWBS will automatically terminate and be superseded by the Amended and Restated Agreement on the effective date.

Both Agreements will also include construction-related permit fee waivers. Permit fee waivers for any future improvements by the FWGC and FWBS are appropriate because they further the public purpose of improving City-owned property with privately-donated funds. Adequate controls are in place to ensure that this public purpose will be carried out under the terms and conditions of the Agreements, which require that all improvements undertaken by or on behalf of the FWGC or FWBS must receive advance written approval from the Park and Recreation Department and comply with all requirements set forth in the Agreements.

The Fort Worth Botanic Garden is located in COUNCIL DISTRICT 7 and is classified as a citywide special use facility.

**FISCAL INFORMATION/CERTIFICATION:**

The Director of Finance certifies that this action will result in revenues previously being received by the FWBS and the FWGC to be receipted by the City. Appropriations for both revenue and expenditures for the Botanic Garden Special Revenue Fund area addressed in an accompanying Mayor and Council Communication.

**TO**

Fund	Department ID	Account	Project ID	Program	Activity	Budget Year	Reference # (Chartfield 2)	Amount
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**FROM**

Fund	Department ID	Account	Project ID	Program	Activity	Budget Year	Reference # (Chartfield 2)	Amount
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**Submitted for City Manager's Office by:**

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**ATTACHMENTS**

[Garden Club 1295.pdf](#)

[Society 1295.pdf](#)