

City of Detroit

CITY COUNCIL

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TO: The Honorable City Council

FROM: David Whitaker, Director
Research and Analysis Division Staff

DATE: January 18, 2013

RE: **CONTRACT 2874833 for LEASE OF BELLE ISLE**

The following contract is submitted for the consideration of the City Council.

2874833 REVENUE – 100% State Funding – To Provide a Lease Agreement (Belle Isle Park) Between the City of Detroit – Recreation Department and State of Michigan (DNR) – State of Michigan, PO Box 30257, Detroit, MI 48909 – Contract Period: January 17, 2013 through January 17, 2014 – Contract Amount Not to Exceed: \$0.00

This proposed Lease Agreement with the State of Michigan Department of Natural Resources (DNR) is being resubmitted through the Purchasing Division as a Special Letter to the City Council dated January 18, 2013. City Council is being requested to consider this contract at your regular session of January 22, 2013, without referring it to the Neighborhood and Community Services Committee for review.

Please note: *the 1-year term indicated above is incorrect.* The proposed lease is for a term of 30 years, from January 17, 2013 through January 17, 2043 (Sec. 4.1).

Excluded from the proposed Lease are the roadways on Belle Isle, which will be transferred to the State Dept. of Transportation and the greenhouses on Belle Isle. The transfer of roadway segments from the City to the Michigan Department of Transportation (MDOT) includes the roadways on Belle Isle and Grand Boulevard / MacArthur Bridge from the centerline of East Jefferson Avenue to Sunset Drive/Riverbank Road on Belle Isle. The greenhouses are excluded from the Leased Premises and shall remain under the control, management and full responsibility of the City of Detroit.

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City Council may wish to note, there is a contract on the list that is submitted for January 22, 2013, with Public Works (CPO 2866257) for the use of Street Funds to replace Woodside Bridge over Canoe Stream on Belle Isle. *City Council may wish to inquire if this work will now be the responsibility of the Michigan Department of Transportation?* However, the Lease indicates that MDOT will use Act 51 funds the City would have received to maintain the roads and bridges on Belle Isle. *City Council may wish to inquire the amount of Act 51 funding the City will NOT receive, but will be used by MDOT for Belle Isle?*

The proposed Lease is indicated to be a Revenue Contract, however there is NO revenue to be paid to the City for this contract. The State DNR will be responsible for all park management costs, payment for utilities, and the maintenance or improvements required to the utility infrastructure. The proposed lease does provide to the State DNR (Sec. 2.6) the authority to collect, receive and administer all revenue generate or earned from the State's management of the park, including grants, permit revenue, fees, sponsorships, advertising and cooperative ventures. All "Park Revenue" received is to be used exclusively to manage, improve, promote and market Belle Isle, and for any related legal expenses. The City is also required to remit to the DNR any payments for events that occur at Belle Isle after the effective date of this lease, including payments that already may have been received (Sec. 2.8).

City Council recently received approved, the Week of December 10, 2012, a contract with C3 Presents, to produce the Orion Music Plus More Festival on Belle Isle, for a term from Dec. 2012 through November 2015. The Petition (No. 2640) to use Belle Isle for this music festival is currently under review by the Neighborhood and Community Services Committee.

The City Council Research and Analysis Division previously reviewed the terms of the proposed lease and submitted a privileged and confidential report dated December 21, 2012, which addressed the proposed lease and changes made to the original draft of the lease. Following is a further analysis of the proposed lease.

The parties to the Lease are still the Recreation Dept. on behalf of the City (Lessor) and the Dept. of Natural Resources (DNR) on behalf of the State of Michigan (Lessee). Under the Lease, the DNR would assume responsibility for the management, operation and maintenance of the Park and integrate it into the State Park system. The effective date of the Lease would be the date it is approved by this Honorable Body.

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The proposed Lease term is 30-years from the effective date. The Lease also includes an option to extend this lease for two additional 30-year terms. The lease includes a provision that the City may terminate the lease 10 years after effective date (January 17, 2013) and at every 10-year interval thereafter, with at least 18 months written notice to the State of its intent to terminate.

The two 30-year extensions available under the Lease are automatic unless:

- The City or State provides written notice to the other party at least 1-year in advance of the expiration of the initial contract term or
- The State provides written notice to the City at least 1-year in advance of the expiration of the second contract term.

The State will institute the Recreation Passport access program for vehicles entering Belle Isle. Purchase of a Passport allows access to all state parks, recreation areas, state forest campgrounds and non-motorized trailhead and boat launch parking. The DNR has the ability to waive the Passport requirements under MCL 324.74116(4)(c) and the proposed Lease contains a provision waiving those requirements for Belle Isle until March 31, 2013.

The value of the DNR's services (operations and maintenance) is the agreed-upon consideration under the proposed Lease. No monetary compensation will be paid to the City during the original Lease term or any extensions.

The following amendments were also made to the original Lease: addition of Exhibit F to address public safety concerns; shifting the appointments on the Advisory Committee; provision regarding outreach to hire qualified Detroiters; modification of the termination provisions; and incorporation of the 2005 Belle Isle Master Plan as a planning guide for infrastructure improvements.

RESOLUTION

RESOLVED, that in order to promote a thorough discussion of all issues regarding the proposed Lease of Belle Isle Park, the Detroit City Council hereby waives the attorney client privilege on the Research and Analysis' memorandum dated December 21, 2012 entitled *Amended Lease of Belle Isle Park*.

City of Detroit

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PRIVILEGED & CONFIDENTIAL **ATTORNEY-CLIENT COMMUNICATION**

TO: The Detroit City Council

FROM: David Whitaker 
Research & Analysis Division Staff

DATE: December 21, 2012

RE: **AMENDED LEASE OF BELLE ISLE PARK**

Council's Divisions were asked to review and comment upon the original version of the proposed Lease of Belle Isle Park (Park). Certain Council offices and each of the Divisions submitted questions relative to the proposed Lease. The Research & Analysis Division (RAD) submitted its report *Proposed Lease of Belle Isle Park*, dated September 17, 2012 (copy attached).¹ Council also held extensive discussions in session surrounding this topic.

Since that time, negotiations between the City and State have occurred resulting in the Amended Lease (Lease). This memorandum outlines the revisions contained in the Amended Lease, dated December 17, 2012, which was provided electronically by the Governor's Office.

The parties to the Lease are still the Recreation Dept. on behalf of the City (Lessor) and the Dept. of Natural Resources (DNR) on behalf of the State of Michigan (Lessee). Under the Lease, the DNR would assume responsibility for the management, operation and maintenance of the Park and integrate it into the State Park system. The effective date of the Lease would be the date it is approved by this Honorable Body.²

The following amendments were made to the original Lease to address the concerns that were raised by representatives participating in the negotiations:

- Sec. 2.3 – Addition of language to incorporate traditional Belle Isle uses such as family reunions into the operation of the Park.

¹ RAD highlighted key concerns in its original report that may or may not have been addressed in the negotiations. RAD has not undertaken to regurgitate those concerns as its initial report is attached.

² Sec. 9.12. This contract must also be signed by the Purchasing Director.

- Sec. 2.10 – Incorporates a new exhibit (Exhibit F) to address public safety concerns. This exhibit was not attached to the Amended Lease circulated electronically. This attachment is critical to interpreting and analyzing this particular provision and RAD recommends no action be taken on the Lease itself until the complete document, with Exhibit, can be properly vetted.
- Sec. 2.11 – Changes the reporting requirements from annually to quarterly. Adds requirement that a representative from the State and the Advisory Committee chair will appear before the Mayor and Council semi-annually to respond to questions or concerns raised during the previous reporting period.
- Sec. 2.12 – Shifts the appointments on the Advisory Committee. Three (3) members to be appointed by Council, two (2) by the Mayor. The one (1) joint appointment by the Governor and Mayor will serve as chairperson and the five (5) appointments by the Governor remain the same. In the original Lease the Mayor had three (3) appointments and Council had two (2).
- Adds Sec. 3.5 – Lessee's Park Staff. This new provision indicates the State will follow its hiring standards and practices and "will develop and implement an outreach plan that will include working with local training agencies and schools to increase the potential of hiring qualified Detroit residents."
- The termination provisions were modified so that the State's options to terminate the Lease mirror the City's termination provisions (ten years after the effective date and every ten years thereafter with eighteen months advance written notice of the intent to terminate). However, under any of the termination scenarios, the City is responsible for any outstanding debt payments after any breach, as discussed below.
 - Sec. 4.3 – Now Sec. 4.3.2 Termination by Lessee – The State may terminate the Lease every ten (10) years with 18-month notice in writing. The following provisions from the original Lease remain the same:
 - The notice must provide the proposed date of termination and identify the obstacles to continuation of the Lease.
 - The City can call for up to three (3) negotiating sessions between the notice of intent to terminate and one month prior to the proposed termination date where the parties must work in good faith to resolve the obstacles to the continuation of the Lease through its current term. The Director of the DNR is required to attend such sessions in person.
 - Adds Sec. 4.3.1 Termination by Lessor – City has the opportunity to terminate the Lease every ten (10) years with 18-month notice in writing. The City is responsible for repayment of any outstanding debt or bonds the State incurred to finance Park improvements. Under the original Lease at Sec. 4.1 Term, the City's only option to terminate without cause was through written notice of its intent to terminate at least 1 year before the current 30-year term expired.
 - Sec. 4.4 – Lessor's Option to Terminate for Cause – Original Lease terms remain the same. The City must provide notice and opportunity to cure (30-business days). If the State fails to timely cure the breach, the City

- may terminate the Lease and the State must surrender possession of the Park to the City within 90 business days.
- Adds Sec. 4.5 – Lessee's Option to Terminate for Cause – The State has the same opportunity to terminate for cause as the City under Sec. 4.4. The City is responsible for repayment of any outstanding debt or bonds the State incurred to finance Park improvements.
 - Adds Sec. 4.8 – Enforcement of Obligations after Lease Expiration or Termination – The parties agree that certain obligations under the Lease are intended to survive and remain enforceable after the Lease has expired or is terminated:
 - The State is obligated to surrender possession of the Park if the Lease is terminated for cause by either party and transfer the unexpended balance of Park revenues. *Why was termination under Sec. 4.3.1 and 4.3.2 not included in this provision? Especially if any obstacles identified by the State to its continued operation of the island cannot be resolved or if the City is no longer desirous of the State controlling the Park?*
 - The City is obligated under Sec. 4.2 Grant Obligations to operate and maintain the Park under any encumbrances imposed under the terms of any of the grants or contributions obtained by the State to construct any improvements.
 - The City is obligated under Sec. 6.2 Park Improvements and Alterations that the improvements will remain on the Leased Premises/Park unless otherwise agreed to in writing by both parties. Certain improvements may be subject to restrictions or conditions imposed by the funding source; after the Lease has expired, the City is required to accept those improvements subject to any such conditions. *As with Sec. 4.2, does the City have any input into the acceptance of these long-term grants? To what extent will the Advisory Board's opinion or the City's elected leadership guide such decisions? As previously mentioned in RAD's September report, the ability to restrict the City in this manner far exceeds the leasehold interest the State would normally possess and does so without Council approval accepting the grants.*
 - Sec. 6.2 – Adds language that the State will consult with the Advisory Committee and utilize the 2005 Belle Isle Master Plan as a planning guide for infrastructure improvements in the Park. The Amended Lease also contains language that the State will use its best efforts to secure funds from the State Park Endowment Fund, State Park Improvement Fund, grant sources and other funding sources that may become available to the State in the future to finance Park improvements. There lacks any prohibitions or requirements regarding the preservation of historical structures or features on the island.

RAD would also recommend the following:

- That an acknowledgement that the Agreement has been certified and approved by Council be included in the endorsements with the appropriate resolution attached as Exhibit G.

- Park revenue referenced in Sec. 2.7 Park Sub-Account should be changed to "referenced in paragraph 2.6."
- The signature page endorsement for Corporation Counsel should cite 2012 Detroit City Charter Sec. 7.5-206 instead of Sec. 6-406 under the 1997 version of the Charter.

Correspondence dated December 4, 2012, from Rodney Stokes, who is Special Advisor for City Placemaking to Governor Snyder, sent to Council President Pugh and Council Member Tate, summarizes the events that have taken place since the September 25th City Council meeting. The letter also indicates a desire to reach an agreement on the Lease or have a commitment from Council that the renegotiated Lease will be put up for a vote by Council at its first meeting in January 2013. Absent such commitments by December 17th, Mr. Stokes indicated it would not be possible for DNR to include the Park in its operation and maintenance plans for 2013. *It maybe prudent for Council to confirm the status of the DNR's planning process for 2013 and whether it includes the Park prior to acting on the Amended Lease.*

If RAD can be of further assistance, please advise.

City of Detroit


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ELIZABETH IRBY
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TO: The Detroit City Council

FROM: David Whitaker 
Research & Analysis Division Staff

DATE: September 17, 2012

RE: **PROPOSED LEASE OF BELLE ISLE PARK**

The Research & Analysis Division (RAD) was requested to review and summarize the proposed Lease of Belle Isle Park (Park) and identify questions and concerns for clarification in preparation for the upcoming Committee of the Whole. RAD's observations are in italics throughout this report.

The parties to the proposed Lease are the Recreation Dept. on behalf of the City (Lessor) and the Dept. of Natural Resources (DNR) on behalf of the State of Michigan (Lessee). Under the Lease the DNR would assume responsibility for the management, operation and maintenance of the Park and integrate it into the State Park system. The effective date of the Lease would be the date it is approved by this Honorable Body.¹ *As identified throughout this report, there is a critical need for the rights and responsibilities of the parties to be clearly set forth in the Lease after good-faith negotiation between the parties and the opportunity for City Council to exercise its due diligence in reviewing this important document that has long-term implications for the City and its residents.*

The Lease references the following Exhibits at Sec. 9.14:

- Exhibit A Legal Description
- Exhibit B Identification of Roads and Bridges
- Exhibit C Memorandum of Understanding between the City and MDOT
- Exhibit D Memorandum of Understanding between the City and DNR
Regarding the Belle Isle Greenhouses
- Exhibit E Phased Management Approach of Belle Isle dated July 2012

As of the printing of this report, Exhibits B through E have not been received by Council or its Divisions. *These attachments are critical to interpreting and analyzing the Lease*

¹ Sec. 9.12. This contract must also be signed by the Purchasing Director.

and RAD recommends no action be taken on the Lease itself until the complete document, with Exhibits, can be properly vetted.

There are numerous topics that are either not fully addressed or not addressed at all in the Lease that are ripe for discussion such as: current Park staff and the necessity of having employees with institutional knowledge involved in the Park's future; inclusion of Detroit residents and vendors in all aspects of the Park's rehabilitation, management and operation; clearly stating the relationship between the parties in the decision-making process and procedures for resolving differences of opinion on planned improvements that will likely exist after the Lease is terminated. Also, the lease of Belle Isle was contemplated in Annex E² to the Financial Stability Agreement (FSA) between the City and State. The initiatives in Annex E were not mandatory (as compared to those in Annex B)³. *What is the rationale for the City entering into a potential 90-year lease when the FSA is designed to drastically improve the City's finances in 3-years?*

A number of specific questions were directed to RAD during last week's Budget Finance and Audit Standing Committee meeting regarding the proposed Lease. These questions are addressed in this report to the extent possible given the limited information available at this time. RAD will supplement its responses as more detailed information becomes available.

Authority and Jurisdiction

The Lease cites sections of the Natural Resources and Environmental and Protection Act⁴ (NREPA) that authorizes the DNR to prepare and update a comprehensive plan for the development of the State's outdoor recreational resources and to undertake land acquisition and improvement programs as authority to enter into the Lease to manage and operate Belle Isle as a State Park.

Pursuant to MCL 247.660a, the City would transfer and MDOT would accept jurisdiction of certain roads and bridges at the Park. This portion of the State Trunk Line Highway System (or Public Act 51) covers jurisdictional transfers of roadways and the formula for recalculating the corresponding funding. *A clear understanding of the current classification of the paved drives/roadways on Belle Isle is in order. It is possible that the language contained in the Lease would change such classifications and potentially increase the City's responsibilities and liabilities.*

The Lease states "during any term of this Lease" the State will operate, manage and repair the Park as a State park for the benefit of the public with the goal to maintain the Park in a manner consistent with other State park operations.⁵ This is the only obligation the State undertakes in the Lease and it is aspirational as well as dependant on whether

² Annex E – Supportive Activities of Treasury Department and State.

³ Annex B – City's Operational Reform Program.

⁴ NREPA, 1994 PA 452, MCL 324.70301 and 324.74103.

⁵ Sec. 2.3. However, the Lease should take into consideration the unique features and historical characteristics of Belle Isle and how the operation of such a distinct urban parkway is different than other State park operations. Therefore, maintenance requirements and checks and balances should be consummate with Belle Isle's historical significance and uniqueness.

funding is available. The majority of Sec. 2.3 *Operation as a State Park* of the Lease lists what the State will not do in relation to Belle Isle under the proposed Lease.

The use of the Park, more specifically the Lease Premises outlined below, will be subject to DNR State park laws, rules and regulations as well as applicable State laws. The State may choose to adopt the City's rules and regulations pertaining to the protection of the environment and public health & safety, but is not required to do so.⁶ *Language should be added that the State will comply with the City's zoning ordinance and local ordinances in the Lease. To what extent will it honor the Recreation Department's Strategic Master Plan for Belle Isle and how much weight will the City's opinion hold on Belle Isle projects going forward?*

It is RAD's understanding that the Law Department's position regarding the City's ability to contract with entities in default and its related analysis concerning the City's ability to enter into contracts with the State of Michigan remains unchanged. Council may wish to request the Law Dept. provide an evaluation on this topic as it relates specifically to the transfer of Belle Isle as part of the FSA as well as an analysis of the result of the citizens' case challenging the FSA and how it was dealt with by the Courts.

Leased Premises

Exhibit A to the Lease sets forth the Leased Premises on Belle Isle. RAD is unable to specifically outline what is or is not included in the Lease as Exhibits B-E are not attached to the Lease. RAD reached out to the Administration and DEGC for courtesy copies and both indicated they did not have the Exhibits either. It is important that the City's property file on Belle Isle be examined for any restrictions or covenants on any of the deeds to this property and to reaffirm what portions of the island are not under City control.

The language in the body of the Lease specifically excludes the greenhouses identified in the Memorandum of Understanding (Exhibit D to the Lease). However, the City will remain responsible for all operations (including utilities, maintenance and capital costs). *What is the intent and plan for these greenhouses? It is RAD's understanding that the greenhouses across the street from the Aquarium that are currently used for Recreation Operations will remain with the City. Does Recreation plan to move its greenhouse operations to another location within the City (such as Rouge Park) and did this unfold during contract negotiations with the State? RAD also understands that the Anna Scripps Whitcomb Conservatory requires significant structural upgrades. Is this important building and funding commitments for its restoration part of the Lease or MOU?*

What discussions have occurred and are any supporting documents being prepared relative to the relationship between the City and/or State and the following: U.S. Coast Guard Station Belle Isle, Detroit Yacht Club, Dossin Great Lakes Museum (Detroit Historical Museum), DWSD intake facility, Belle Isle Nature Zoo (Detroit Zoo), Detroit Chevrolet Belle Isle Grand Prix and Detroit APBA Gold Cup races, or any other relevant events or groups.

⁶ Sec. 2.4.

Exhibit B purports to identify the roads and bridges that will be transferred to the Michigan Department of Transportation's (MDOT) jurisdiction, as discussed in the related Memorandum of Understanding (Exhibit C). RAD is unable to specifically outline what is or is not included in the Lease absent these Exhibits. *As mentioned in the previous section, the current classification of all roads/paved drives on Belle Isle must be known in order to analyze the Exhibit when it is received.*

The Lease states that the roads and bridges will be under MDOT's jurisdiction for a period of time not to exceed the Lease term opening up the possibility that MDOT can transfer jurisdiction back to the City at some earlier point during the Lease term. However, the Lease itself clearly states that when the Lease expires, jurisdiction is transferred back to the City. There may be terms or conditions in the MOU that bear on the Lease's reverter language. *Additionally, is there any residual liability that would fall on the City? If the State fails to repair or maintain the roads under its jurisdiction, would the City be able to legally step in and effectuate such repairs? Governmental entities would remain legally liable for poorly maintained road surfaces that cause or contribute to injury or property damage.*

To fund the road and bridge repairs, MDOT will divert transportation funds⁷ intended for the City during the Lease as if jurisdiction had not been transferred to MDOT.⁸ *What other funding sources intended for the City will be captured to fund road and bridge maintenance activities on Belle Isle? What construction and maintenance activities will not be undertaken by MDOT under the Lease and/or the Memorandum of Understanding? What funds are currently used to upkeep the roadways/paved drives on Belle Isle and what amount was expended in each of the past three (3) years?*

Funding of Park Improvements

Although the apportionment guidelines for federal funds contained in State law⁹ encourage special consideration to political subdivisions where population density and land and facility needs are the greatest, it should be noted that under MCL 324.74103(2), **before an improvement program can be undertaken it must be approved by the State legislature as part of its budget.** This requirement is contained in the Lease at Sec. 9.7 which states both the "DNR's and MDOT's performance of obligations under this Lease is subject to the availability of appropriated funds." *If the DNR and/or MDOT is unable to secure adequate funding, what mechanism, if any, is built into the Lease or the MOUs to allow for the City to step in and preserve its asset outside of instituting termination proceedings? As the Fiscal Analyst has pointed out, the City currently spends approximately \$6 million dollars to maintain Belle Isle. What level of funding does the State anticipate under the Lease and for what projects?*

City Council may also wish to request an updated list on the current bonds that are utilized for Belle Isle and a full discussion on how those bonds will be impacted by this proposed Lease.

⁷ Including Public Act 51 funds.

⁸ Lease at Sec. 2.3.2.

⁹ MCL 324.7303.

Entrance Fees

The State will institute the Recreation Passport¹⁰ access program for vehicles entering Belle Isle.¹¹ Purchase of a Passport allows access to all state parks, recreation areas, state forest campgrounds and non-motorized trailhead and boat launch parking. The DNR has the ability to waive the Passport requirements under MCL 324.74116(4)(c) and the proposed Lease contains a provision waiving those requirements for Belle Isle until March 31, 2013. *What rationale was used for a 6-month waiver (if the Lease is approved in Sept. 2012) over a longer-term waiver that begins after the transition period or special provisions for Detroit seniors?*

A Recreation Passport is only required for motorized vehicles. Walking or riding non-motorized bicycles does not require a Passport. According to the DNR's website, the current Passport rates are: \$10/year resident motor vehicle, \$5/year resident motorcycle, \$29/year non-resident¹² annual pass and \$8 for non-resident daily pass.¹³ During the informational meeting held last week at DEGC offices, it was stated the resident rate for a daily pass is \$4. *Is this rate structure equitable for Detroiters, many of whom do not own cars and who historically use Belle Isle in ways different than others in Michigan use State Parks?*

Rent Consideration and Revenue

The value of the DNR's services (operations and maintenance) is the agreed-upon consideration under the proposed Lease. No monetary compensation will be paid to the City during the original Lease term or any extensions.¹⁴

Several sections of the Lease address revenue. Section 2.6 contains a broad grant of power to the DNR "to collect, receive, and administer, subject to applicable law, all revenue generated or earned from Lessee's Management of the Park, including but not limited to revenue generated or earned from: grants; endowments; special events; private lease revenue; concessions; vendors and other contractors; revenue licenses; permit revenue; fees collected; and revenue generated or earned from sponsorships, advertising, and cooperative ventures (collectively "Park Revenue")." The Lease specifically excludes Recreation Passport monies from the list of Park Revenues. Passport revenues are distributed pursuant to the formula set forth in MCL 324.2045.¹⁵

¹⁰ Holders of Recreation Passports also can take advantage of the Passport Perks Program. This is a statewide shopping discount program for Recreation Passport holders that provide discounts on restaurants, stores, oil changes, or tax preparations by showing their vehicle registration to participating businesses.

¹¹ The Michigan Vehicle Code in MCL 257.805 and the Natural Resources and Environmental Protection Act MCL 324.2001, *et seq.*

¹² Resident/non-resident distinction is based on where the vehicle is registered not the residency of the driver.

¹³ Beginning 1/1/13, the cost of a Passport at a state park or recreation area (not through the Secretary of State) will increase. The DNR's website indicates the increases will be tied to the Consumer Price Index and are expected to remain stable for many years.

¹⁴ Sec. 2.2.

¹⁵ First, up to \$1 million dollars reimbursement to the Secretary of State for actual costs in administering the Passport program. The next \$10.7 million is deposited into the state park improvement account, then \$1,030,000 to the waterways account. Half of the remaining revenue is deposited in the state park

Park Revenue can only be used to manage and improve the Park. This includes promotion and marketing of events and programs as well as for any legal expenses the State incurs performing its obligations under the Lease. The State is required to provide the City an annual accounting and the City has the right to review and audit the State's records related to Park Revenues annually.¹⁶

The State must establish a sub-account in the DNR State Park improvement account to administer Park Revenues.¹⁷ *Should the Lease in Sec. 2.7 reference paragraph 2.6 for Park Revenue as opposed to paragraph 2.7? Sec. 2.6 more clearly defines Park Revenue and what monies should flow into the sub-account. However, language restricting the use of funds in that sub-account to Belle Isle improvements and operations should be added.*

The Lease requires the City to remit to the State any payments received for events that occur at the Park after the effective date of the Lease including any payments already received. These monies must be deposited into the sub-account required under Sec. 2.7.¹⁸ *How much money is implicated in this provision and within what timeframe would it need to be turned over to the State?*

Advisory Committee

The role of the City in the future of the Park is greatly reduced under the proposed Lease. Currently, the City, through its Recreation Dept., controls all aspects of the operation, management and maintenance of Belle Isle. Under the Lease, the State would have these responsibilities. Certain provisions of the Lease call for a joint effort between the City and State, such as Public Safety services (Sec. 2.10).

The Lease calls for the establishment of an Advisory Committee to advise the City and State on the implementation of the improvements and master planning for the Park.¹⁹ This committee will consist of:

- Five (5) members appointed by the Governor;
- Three (3) members appointed by the Mayor.
- Two (2) members appointed by City Council; and
- One (1) member jointly appointed by the Governor and the Mayor, who will serve as chairperson.

Additional language clarifying the Committee's purpose and its role in the planning and implementation of improvements as well as what weight its input would be given by the DNR and the State would greatly assist all parties moving forward.

improvement account for capital improvements and the remaining half is divided by percentage and deposited as set forth in the statute.

¹⁶ Sec. 2.9.

¹⁷ Sec. 2.7.

¹⁸ Sec. 2.8.

¹⁹ Sec. 2.12.

Transition Period and Responsibilities

Beginning on the effective date of the Lease, there is a 90-day (calendar days) transition period.²⁰ The City will maintain and pay for its Park staff during this period and assign staff to work with the State to facilitate transfer of functions under the Lease.²¹

During this timeframe, both parties will work cooperatively to facilitate the transfer of management responsibilities from the City to the State and undertake the following action items:

- Within 30 business days, the City will:
 - **Grants & Endowments** –Provide copies of agreements and all documents that have grant or endowment imposed restrictions and conditions. A list of these agreements will be added as an Exhibit to this Lease at a later time. Further, all unexpended funds must be transferred to the State before the Transition Period expires for deposit into the sub-account. Sec. 3.2.1.
 - **Third Party Agreements** –Provide copies of all leases, licenses, permits and third-party agreements relating to the use or occupancy of the Park. Prior to the expiration of the transition period, the State will provide a list of agreements it will assume and the City must assign the designated agreements to the State. Sec. 3.2.2. *What is the potential exposure to breach of contract actions or other challenges by those third parties? What if the State does not assume the agreement and the City is party to a contract for goods or services for a Park it no longer controls?*
 - **Vendor Contracts** - Provide copies of all contracts for goods or maintenance or other operational activity. Prior to the expiration of the transition period, the State will provide a list of contracts it will continue. However, the State is not obligated to assume any of the vendor contracts. Sec. 3.2.3. *What is the potential exposure to breach of contract actions or other challenges by those vendors dissatisfied with the State's decision? What if the State does not assume the agreement and the City is party to a contract with a vendor for activities at a Park it no longer controls?*
 - **Environmental Condition** – Provide copies of all records regarding the Park's environmental condition. Sec. 3.3.
- Within 90 calendar days of the effective date the City must:
 - **Personal Property** - Provide an inventory of personal property from which the State may select which items it intends to keep. The Lease indicates this may be done without a vote of the people. *This sentence is unnecessary and should be replaced with language requiring that the transfer of personal property comply with the City Charter and all local ordinances.* The City must facilitate the transfer of title to the State and remove all personal property not transferred within 90 calendar days after the Transition Period has expired. Sec. 3.2.4. *What about the value of the*

²⁰ Sec 3.1.

²¹ Sec 3.4.

personal property transferred? How will this be calculated and considered as part the proposed transfer?

- **Title** - Provide copies of the deed or other recorded instruments evidencing the City's title to Belle Isle as well as any documentation limiting or restricting use, noting that the State accepts Belle Isle subject to all easements, encumbrances and restrictions of record. Sec. 2.14. *Are there any portions of Belle Isle Park not owned by the City of Detroit or under the control of some other entity?*

What is the feasibility of the City having the data assembled to have the above items prepared timely? What is the rationale between not only the different timeframes but also the counting of business vs. calendar days, which has the potential to increase confusion between deliverables?

Term of Lease and Termination Provisions

The proposed Lease term is 30-years from the effective date.²² The two 30-year extensions available under the Lease are automatic unless:

- The City or State provides written notice to the other party at least 1-year in advance of the expiration of the initial contract term or
- The State provides written notice to the City at least 1-year in advance of the expiration of the second contract term.

What is the rationale for restricting the City's options for withdrawal in the contract extension process?

The City is required to operate and maintain the Park in accordance with the grant obligations and encumbrances imposed by any grant obtained by the State to construct the improvements to the Park even if these obligations extend past the termination or expiration of the Lease. Sec. 4.2. *This provision would bind the City after the Lease term and expand the leasehold interest purported to be granted to the State. Does the City have any input into the acceptance of these long-term grants? To what extent will the Advisory Board's opinion guide such decisions?*

The State also has the ability to terminate the Lease with 18-month prior written notice to the City under Section 4.3. The notice must give the proposed date of termination and identify the obstacles to the State's obligations. The City may call for up to 3 negotiating sessions with the State between receipt of the 18-month notice and 1-month prior to the termination in an effort to resolve the obstacles.

The City may terminate for cause if the State materially breaches the Lease. The City must provide notice and opportunity to cure (30-business days). If the State fails to timely cure the breach, the City may terminate the Lease and the State must surrender possession of the Park to the City within 90 business days. *The termination for cause language may be problematic, as the Lease language only requires that the State endeavor to accomplish certain things it chooses to do provided it has the funding. There are no clear benchmarks or obligations that require the State to affirmatively act.*

²² Sec 4.1.

Therefore, cause may be difficult to establish especially if the underlying issue is a difference in opinion on the manner in which the park is operated and the desirability of the planned improvements. A challenge for cause by the City under the existing Lease language could also run afoul of Sec. 4.5 Quiet Enjoyment which allows the State undisturbed use of the Park as long as it meets its obligations under the Lease.²³

The State must transfer any unexpended balance in the sub-account to the City when the Lease has expired or been properly terminated. *This return of funds should also be accompanied by an accounting.*

Condition of the Leased Premises

The Lease specifically states in Section 5 that the City has made no representations as to the condition of the Park. The State may, at its own cost, obtain environmental assessments. In the event a release or threat of release of hazardous substances by the State occurs after the transition period, the State will report, investigate and take response activity consistent with all Federal, State and local laws. *This section could more clearly delineate that the City is responsible prior to the expiration of the Transition Period and the State is liable after. It also does not clearly indicate which party will be responsible for the response activity costs in the event of a hazardous materials situation.*

Park Management Provisions

Section 6 outlines the State's responsibilities for maintaining and repairing the park, MacArthur Bridge and other roadways, walkways and waterways set forth in Sec. 2.3. These areas are also described in Exhibit A - Legal Description, which was attached to the Lease and Exhibit B - Identification of Roads and Bridges, which has not yet been provided by the Administration. The State is not obligated to continue any of the City's contracts for maintenance or repair of the Park.

The State intends to make improvements and alterations to the Park consistent with Exhibit E – Phased Management Approach. RAD has not reviewed this Exhibit, as it was not provided with the Lease. The improvements will remain on the Leased Premises/Park unless otherwise agreed to in writing by both parties. Certain improvements may be subject to restrictions or conditions imposed by the funding source and after the Lease has expired the City is required to accept those improvements subject to any such conditions. *As with Sec. 4.2, does the City have any input into the acceptance of these long-term grants? To what extent will the Advisory Board's opinion or the City's elected leadership guide such decisions? As previously mentioned, the ability to restrict the City in this manner far exceeds the leasehold interest the State would normally possess and does so without Council approval accepting the grants.*

The State has exclusive authority over all aspects of current and future Park leases, including the authority to terminate, modify, assign and administer leases. This includes subleases for land as well as water access on or to the Park. It also has exclusive right to

²³ The covenant of quiet enjoyment promises a grantee or tenant of real property will be able to possess the premises in peace, without disturbance by hostile claimants. It includes the right to exclude others from the premises, the right to peace and quiet, and the right to clean premises.

enter into contracts, issue licenses and permits for the Park. *This grant of exclusive power undercuts the partnership relationship between the City and State and may warrant further discussion. Also, language clearly stating that the City, upon termination or expiration of the Lease, has the ability to rescind, modify or assume the contracts and leases entered into by the State that are in effect at that time should also be included.*

Section 6.4.1 addresses Special Events. Events with existing agreements for 2012 and beyond will continue as planned. The State will collect & receive fees or revenues generated from any event that occurs after the effective date.²⁴ *RAD recommends that language be added mandating these funds/revenues be placed in the sub-account dedicated for Belle Isle improvements and operations detailed in Sec. 2.7 of the Lease.*

Utilities

After the Transition Period, the State will pay 100% of all public utility services consumed in the Park including: heating, cooling, illumination, power, water, sewer, and telecommunications. However, these utility payments are restricted to those incurred after the Transition Period and as part of the State's management and improvement of the Park. The State will pay for utility infrastructure improvements or maintenance charges that are necessitated by its improvement of the Park under this Lease that are incurred after the Transition Period. *This infrastructure language needs to be reconciled with Sec. 2.3, which states the State is not responsible for the maintenance and repair of any utility systems in the Park. How is this proposal different from the provisions in the William G. Milliken State Park & Harbor agreement? What language protects the DWSD intake facility? A concrete understanding on the parties' responsibilities as to utilities must be reached and clearly set forth in the Lease.*

Miscellaneous Provisions

The proposed Lease also contains the following:

- **Public Safety** – Both parties will cooperate to provide law enforcement, fire and EMS services by jointly completing a security plan during the transition period designating roles for each entity and providing shared jurisdiction. Sec. 2.10.
- **Annual Reporting** – The State will provide annual reports regarding the management of the Park to the Mayor and City Council. Sec. 2.11.
- **Non-Profit Entities** – Both parties will work cooperatively with the Belle Isle Conservancy or its successor. Sec. 2.13. *Was outreach done to the Conservancy or other Park stakeholders and to what extent, if any, were they involved in negotiations regarding the Lease? This language could be interpreted to exclude other non-profit entities, not affiliated with the Conservancy, from participation during the Lease term.*
- **Entry by City** – The City or its agent may enter restricted areas of the Park with 48-hour advance notice to the State except for emergency situations giving rise to the need for immediate access. In the event of an emergency, notice should be given as soon as possible. Sec. 5.3.

²⁴ This comports with Sec. 2.8 Revenue Paid to Lessor.

- **Amendments** – Must be in writing, signed by the parties and approved by the Mayor and City Council. Sec. 9.9.

Section 7 covers assignment and subletting. The State cannot assign the Lease, sublet the Park or allow uses inconsistent with the Lease without the prior written consent of the City. The State does have the ability pursuant to Sec. 7.2 to enter into other agreements such as subleases, licenses, permits and contracts for any part of the Park as long as it is for recreation related purposes and consistent with Sec. 2.3 of the Lease. *RAD recommends language enabling the City to assume, modify or cancel these agreements in the event of termination or expiration of the Lease.*

Section 8 mandates notices be sent via first class mail to the Recreation Dept. Director, the Michigan Dept. of Natural Resources, and the Michigan Department of Transportation. *The City Clerk should also be added to this list. It may be prudent to require notices also be sent via certified mail.*

Section 9 contains General Provisions, most of which are boilerplate in nature (waiver, representations, remedies, and statutory requirements relative to fair employment practices and equal opportunity laws).

Lastly, the signature page of the Agreement does not require endorsement by the Mayor on behalf of the City, but by a representative of the Recreation Dept. *Council may wish to request an opinion from the Law Dept. on whether a department representative has the power to bind the municipality. RAD would also recommend that an acknowledgement that the Agreement has been certified and approved by Council be included in the endorsements with the appropriate resolution attached as Exhibit F.*

If RAD can be of further assistance, please advise.