

Date July 13, 2015

HOLD HEARING FOR THE VACATION OF PARKLAND IN ASHWORTH PARK AND ON ADDENDUM AND AMENDMENT OF LEASE TO BERGMAN ACADEMY OF GREENWOOD BUILDING (FORMERLY SCIENCE CENTER OF IOWA BUILDING) AT 100 45<sup>TH</sup> STREET IN ASHWORTH PARK

WHEREAS, on March 24, 2008, by Roll Call 08-515, the City entered into a Lease Agreement By and Between The Academy and the City of Des Moines, Iowa For The Greenwood Building at 100 45<sup>th</sup> Street, Des Moines, Iowa (“Lease Agreement”); and

WHEREAS, The Academy has changed its name to “Bergman Academy”; and

WHEREAS, the Lease Agreement provides for lease of 12,409 square feet on the main level of Greenwood Building to the Bergman Academy and gives them the right to increase the leased premises area, and sets a lease payment for the lower level of the Greenwood Building in the event that Bergman Academy improves and occupies such space, with rent payments increasing annually at 3%, with a deduction of \$7,090.00 annually in consideration of Bergman Academy’s performance of maintenance of the Greenwood Building, for an initial term of 20 years with two renewal periods of 10 years, upon mutual agreement of the parties; and

WHEREAS, Bergman Academy has completed construction of improvements on the lower level of the Greenwood Building by constructing additional classrooms, a multi-purpose classroom, storage room and staff work rooms, resulting in improved additional square footage of 9646 square feet (“the Lower Level Improvements”); and

WHEREAS, the rental rate for the Greenwood Building, including use of such additional 9646 square feet comprising the Lower Level Improvements is currently \$114,920.70 (\$108,293.48 with a \$7,090 credit for annual maintenance) annually; and

WHEREAS, Bergman Academy’s architect has certified that the improvements were completed in substantial conformance with the plans and specifications submitted by the Tenant; and

WHEREAS, Bergman Academy desires to construct at its expense a two story addition to the Greenwood Building to add eight (8) classrooms to serve its growing student population, which will include an elevator to service the existing building and the addition, and to construct a free-standing gymnasium/multipurpose building, with an estimated cost of Four Million Seven Hundred and Seventy-Five Thousand Dollars (\$4,775,000) (“the Addition and Gymnasium Improvements”); and

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WHEREAS, due to site elevations and limitations, the Addition and Gymnasium Improvements will require minimal changes to the boundaries of the Leased Premises, with the total area of the Leased Premises to remain the same; and

WHEREAS, Tenant desires to extend the initial term of the Lease Agreement until December 31, 2044; and

WHEREAS, an Addendum and Amendment to Lease Agreement has been prepared, a copy of which is on file in the City Clerk's Office, which provides for the lease of an additional 9,646 square feet on the lower level of the Greenwood Building to begin on August 1, 2012, for an additional annual rental fee of \$41,284.88 per year beginning on August 1, 2012, with a current total rental amount of \$114,920.70 for the Greenwood Building and leased premises at 100 45<sup>th</sup> Street, providing for the City's acceptance of the Lower Level Improvements, grants Tenant permission to construct the Addition and Gymnasium Improvements, extending the term of the Lease until December 31, 2044, and providing that the City will own such Improvements upon completion and acceptance by the City; and

WHEREAS, it is proposed that the area of the leased premises be amended to include the below described parkland which is proposed to be vacated:

AREA "A"

A PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., CITY DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST 1/4 CORNER OF SAID SECTION 12; THENCE NORTH 89°46'48" WEST ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 12, A DISTANCE OF 1341.05 FEET TO THE NORTHEAST CORNER OF SAID NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12 AND BEING ON THE WEST LINE OF LINDEN HEIGHTS, AN OFFICIAL PLAT; THENCE NORTH 89°46'48" WEST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4 OF THE SOUTHEAST 1/4, A DISTANCE OF 660.00 FEET; THENCE SOUTH 00°13'12" WEST, 40.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°47'22" EAST, 76.81 FEET; THENCE SOUTH 51°55'41" EAST, 73.36 FEET; THENCE NORTH 89°46'48" WEST, 134.73 FEET; THENCE NORTH 00°13'12" EAST, 45.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.11 ACRES (4,760 S.F.).

And

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AREA "B"

A PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., CITY DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST 1/4 CORNER OF SAID SECTION 12; THENCE NORTH 89°46'48" WEST ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 12, A DISTANCE OF 1341.05 FEET TO THE NORTHEAST CORNER OF SAID NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12 AND BEING ON THE WEST LINE OF LINDEN HEIGHTS, AN OFFICIAL PLAT; THENCE NORTH 89°46'48" WEST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4 OF THE SOUTHEAST 1/4, A DISTANCE OF 660.00 FEET; THENCE SOUTH 00°13'12" WEST, 340.00 FEET; THENCE SOUTH 89°46'48" EAST, 93.81 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°46'48" EAST, 56.19 FEET; THENCE NORTH 50°41'21" EAST, 133.54 FEET; THENCE SOUTH 14°01'20" WEST, 75.36 FEET; THENCE SOUTH 50°41'21" WEST, 60.46 FEET; THENCE NORTH 74°02'17" WEST, 98.27 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.12 ACRES (5,114 S.F.).

WHEREAS, the exclusive use of the lower level of the Greenwood Building and the above described parkland to be vacated is not presently required by the City of Des Moines for municipal purposes; and

WHEREAS, on June 22, 2015, by Roll Call No. 15- 1014, it was duly resolved by the City Council that the proposed vacation ordinance and lease of the vacated parkland and lease addendum and amendment be set down for hearing on July 13, 2015, at 5:00 p.m., in the Council Chamber; and

WHEREAS, due notice of said proposal to vacate and lease the above described real estate and to adopt an Addendum and Amendment to Lease such real property was given as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with said notice, those interested in said proposed vacation and Addendum and Amendment to Lease Agreement, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that:

- 1. Upon due consideration of the facts and circumstances of interested persons, the objections to said proposed vacation of parkland as described above and lease of the below described real estate are hereby overruled and the hearing is closed.

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2. Upon due consideration of the facts and statements of interested persons, the objections to said proposed vacation and Addendum and Amendment to Lease Agreement, a copy of which is on file in the City Clerk's Office, which provides for the lease of an additional 9,646 square feet on the lower level of the Greenwood Building to begin on August 1, 2012, for an additional annual rental fee of \$41,284.88 per year beginning on August 1, 2012, with a current total rental amount of \$114,920.70, with an annual rate increase of 1% beginning on August 1, 2020, for the Greenwood Building at 100 45<sup>th</sup> Street, and providing for the City's acceptance of the Lower Level Improvements, grants Tenant permission to construct the Addition and Gymnasium Improvements, extends the term of the Lease until December 31, 2044, and that the City will own such Improvements upon completion and acceptance by the City and to amend the area of the leased premises as described above, are hereby overruled and the hearing is closed.

3. There is no public need for the above described lower level of the Greenwood Building and the above described real property to be vacated and the public would not be inconvenienced by reason of the proposed vacation and lease of such real property and by the lease of an additional 9,646 square feet on the lower level of the Greenwood Building at 100 45<sup>th</sup> Street, with the area of the leased premises to be as described above, which includes the above described vacated parkland, for an additional annual rental fee of \$41,284.88 per year beginning on August 1, 2012, with a current total rental amount of \$114,920.70, with an annual rate increase of 1% beginning on August 1, 2020, for the Greenwood Building and leased premises, granting Bergman Academy permission to construct an addition to the Greenwood Building and free-standing gymnasium at an approximate cost of \$4,775,000, and extending the term of the Lease until December 31, 2044. In consideration of Bergman Academy paying for such improvements that the City will own upon their completion, no additional rent shall be paid to the City for such improved space.

4. The Council hereby determines that the consideration in the form of public benefit to the City of the construction of the Addition and Gym Improvements by Bergman Academy at its cost is acceptable to the City and constitutes the fair market value for such lease terms for such facilities and the proposed Addendum and Amendment to Lease Agreement, a copy of which is on file in the City Clerk's Office, be and is hereby approved.

5. The City hereby accepts the Lower Level Improvements constructed by Bergman Academy.

6. The Mayor is authorized and directed to sign said Lease Addendum and Amendment to Lease Agreement identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

★ **Roll Call Number**

**Agenda Item Number**

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7. Upon final passage of an ordinance vacating said parkland, the City Clerk is authorized and directed to forward the original of the Addendum and Amendment to Lease Agreement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.

8. Upon execution of said Addendum and Amendment, the Real Estate Division of the Engineering Department is authorized and directed to forward the original of said Addendum and Amendment, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Polk County Recorder's Office for the purpose of causing said documents to be recorded.

9. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division shall file the original of this Addendum and Amendment and send copies to the City Clerk, the Land Records Clerk and to the Bergman Academy.

(Council Communication No. 15-**363** )

Moved by \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:

Ann DiDonato  
Ann DiDonato  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk