



Date January 9, 2023

SETTING DATE OF HEARING FOR FIFTH AMENDMENT TO LEASE OF THE DES MOINES BOTANICAL CENTER TO THE GREATER DES MOINES BOTANICAL GARDEN

WHEREAS, the City of Des Moines owns the City of Des Moines Botanical Center, including adjacent greenhouses, located at 909 Robert D. Ray Drive, Des Moines, Iowa 50316-2897 (“Botanical Center”), and approximately 13.498 acres of grounds adjacent to the Botanical Center and between the Botanical Center and the Des Moines River, including the park drive known as Robert D. Ray Drive from north of the Interstate 235 bridge to East 6th Street and including and the parkland containing the Robert D. Ray Asian Garden (collectively “Leased Premises”), with legal description of the Leased Premises on file in the office of the City Clerk and incorporated by reference herein; and

WHEREAS, on May 9, 2011, by Roll Call No. 11-0822, the City Council approved the Lease and Operation, Management and Maintenance Agreement pursuant to which the City leased the Botanical Center and related grounds to the Greater Des Moines Botanical Garden corporation (“Corporation”) and the Corporation agreed to be responsible to construct, at its cost, \$7,500,000 in improvements, including expanded gardens on the grounds of the Botanical Center, by June 1, 2015, and to create and fund an endowment of \$2,000,000 for operational expenses at the Botanical Center and grounds, and to fund \$500,000 for construction-related costs and operating costs during and immediately after construction as consideration for rent, for an initial period of 25 years, with two 25 year renewal options at the option of the Corporation (“the Lease Agreement”); and

WHEREAS, the Lease Agreement has been amended four times thereafter; and

WHEREAS, in March of 2021, the United States Government adopted the American Rescue Plan Act (ARPA) in response to the continuing intertwined public health and economic crisis created by COVID-19 and established the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) to provide state, local, and Tribal governments with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery; and

WHEREAS, the City of Des Moines was allocated and has received funds in the amount of \$94,824,614.00 from SLFRF and pursuant to the Final Rule of the United States Department of Treasury, allocations and expenditure of the funds must meet specific purposes and occur within specific time limitations; and

WHEREAS, on July 18, 2022, by Roll Call No. 22-1150, the City Council approved the expenditure of \$1,000,000.00 for contributions to the Corporation for use at the Botanical Center, as allowed by the Final Rule of the U.S. Department of Treasury for use of ARPA (SLFRF) funds as a provision of government services; and

WHEREAS, the City intends to use said funds to provide \$600,000.00 of additional funding to the Corporation for operational support for the Botanical Center and Grounds, and \$400,000.00 of funding to the Corporation for operational support for the Botanical Center and Grounds in lieu of an equal amount



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of Metro Center Urban Renewal Project Tax Increment Financing (TIF) funding as allowed by the Third Amended and Restated Urban Renewal Development Agreement approved by the City Council on December 6, 2021, by Roll Call No. 21-1826; and

WHEREAS, City staff and the Corporation are negotiating a Fifth Amendment to the Lease Agreement, in substantially the form on file in the City Clerk's office, providing an upfront, lump-sum payment of \$1,000,000.00 in ARPA (SLFRF) to the Corporation for operational support for the Botanical Center and Grounds in accordance with the ARPA federal program requirements and all other existing terms of the Lease Agreement.

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

- 1. The City Council of the City of Des Moines shall consider adoption of the Fifth Amendment to Botanical Center Lease, Operation, Management and Maintenance Agreement by and between the City of Des Moines, Iowa and the Greater Des Moines Botanical Garden corporation (GDMBG), in substantially the form on file in the office of the City Clerk.
2. The meeting of the City Council at which the adoption of said proposed Fifth Amendment to the Lease Agreement is to be considered by public hearing shall be held on January 23, 2023, at 5:00 pm in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, at which time the City Council will hear both those who oppose and those who favor the proposal.
3. The City Clerk is authorized and directed to publish notice of said proposal and hearing in the accompanying form to be given by publication once, not less than four days and not more than twenty days before the date of hearing.

Moved by _____ to adopt.

APPROVED AS TO FORM:

Seconded by _____.

/s/ Glenna K. Frank
Glenna K. Frank
Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, SHEUMAKER, MANDELBAUM, VOSS, WESTERGAARD, TOTAL, MOTION CARRIED, APPROVED.

CERTIFICATE

I, Laura Baumgartner, 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