



Roll Call Number

22-0806

Agenda Item Number

33

Date May 23, 2022

**HOLD HEARING ON FOURTH AMENDMENT OF LEASE OF THE
DES MOINES BOTANICAL CENTER TO THE GREATER DES MOINES
BOTANICAL GARDEN AND APPROVAL OF SAME**

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 three times thereafter; and

WHEREAS, the City and Corporation wish to reinstate and affirm the original intent and terms of the Lease Agreement regarding the City’s provision of operational support funding for the operation of the Botanical Center and Grounds; and

WHEREAS, City staff and the Corporation have negotiated a Fourth Amendment to the Lease Agreement requiring the City to support BRAVO funding for the operation of the Botanical Center and Grounds in the annual amount of \$245,000.00 for a 10-year period, with first payment made during the year of the Lease Commencement Date (2013), a copy of which Fourth Amendment is on file in the City Clerk’s Office; and

WHEREAS, on May 9, 2022, by Roll Call No. 22-0697, it was duly resolved by the City Council that said proposed Fourth Amendment to the Lease Agreement be set down for hearing on May 23, 2022 at 5:00 pm in the Council Chamber; and

WHEREAS, due notice of said proposed Fourth Amendment to the Lease Agreement was given as provided by law, setting forth the time and place for hearing on said proposal; and



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WHEREAS, in accordance with said notice, those interested in said proposed Fourth Amendment to the 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 statements of interested persons, the objections to said proposed Fourth Amendment to the Lease Agreement are hereby overruled and the hearing is closed.
2. The proposed Fourth Amendment to the Lease Agreement with Greater Des Moines Botanical Garden corporation (GDMBG), in form on file in the City Clerk's Office and requiring the City to support BRAVO funding for the operation of the Botanical Center and Grounds in the annual amount of \$245,000.00 for a 10-year period, with first payment made during the year of the Lease Commencement Date (2013), is hereby approved.
3. The Mayor is authorized and directed to execute said Fourth Amendment to the Lease Agreement and the City Clerk is authorized and directed to attest to the City Manager's signature.
4. Upon execution by the Mayor, the City Clerk is authorized and directed to forward the original of the Fourth Amendment to the 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.
5. Upon execution of said Fourth Amendment to the Lease Agreement, the Real Estate Division of the Engineering Department is authorized and directed to forward the original of the said lease 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.
6. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division shall file the original of Fourth Amendment to the Lease Agreement and send copies to the City Clerk, the Land Records Clerk, the Parks and Recreation Department, and to the Greater Des Moines Botanical Garden.



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(Council Communication No. 22- 253)

Moved by Westergaard to adopt.

Second by Boesen

APPROVED AS TO FORM:

/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, and TOTAL.

CERTIFICATE

I, P. Kay Cmelik, 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.

T. M. Franklin Cownie Mayor

P. Kay Cmelik City Clerk