

Date..... May 9, 2011

HOLD HEARING FOR THE VACATION AND LEASE OF THE DES MOINES BOTANICAL CENTER AND ADJACENT GROUNDS OF APPROXIMATELY 13.498 ACRES TO THE GREATER DES MOINES BOTANICAL GARDEN, INCLUDING A PORTION OF ROBERT D. RAY DRIVE

WHEREAS, the City of Des Moines owns and operates 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 a portion of the park drive known as Robert D. Ray Drive ("Grounds"): and

WHEREAS, the City entered into a Chapter 28E Agreement dated December 12, 2003 with the Board of Water Works Trustees of the City of Des Moines, Iowa for operation and management of the Botanical Center and the adjacent grounds of approximately 14.4 acres, which 28E Agreement expires December 31, 2012; and

WHEREAS, the Greater Des Moines Botanical Garden ("GDMBG") desires to lease from the City the Botanical Center and the Grounds, as described below; and

WHEREAS, a Lease, Operation, Management and Maintenance Agreement with GDMBG has been negotiated in which the GDMBG agrees to be responsible, at its cost, for \$7,500,000 in improvements, including expanded gardens on the Grounds, by June 1, 2015, and an endowment of \$2,000,000 for operational expenses at the Botanical Center and Grounds, and \$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 GDMBG, beginning on January 1, 2013, which consideration reflects the fair market value for lease of the property as estimated by the City's Real Estate Division; and

WHEREAS, the corridor of land on which the John Pat Dorrian Multi-Use Trail will be relocated will be exempted from the proposed leased premises; and

WHEREAS, such proposed leased premises, which includes a portion of Robert D. Ray Drive, are dedicated as parkland; and

WHEREAS, on April 25, 2011, by Roll Call No. 11-0680, it was duly resolved by the City Council that said proposed vacation and lease of the Des Moines Botanical Center and Grounds be set down for hearing on May 9, 2011 at 5:00 pm in the Council Chamber; and

WHEREAS, due notice of said proposal to vacate and lease such parkland and public right-of-way 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 lease, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

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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 vacation and lease of public parkland and right-of-way as described below are hereby overruled and the hearing is closed.

2. There currently is no public need for or benefit from the below described real property to be vacated and the public would not be inconvenienced by reason of the proposed vacation of such parkland and right-of-way, including Robert D. Ray Drive from north of the Interstate 235 bridge to East 6th Street:

BEGINNING AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF EAST UNIVERSITY AVENUE AND THE WEST RIGHT-OF-WAY LINE OF EAST 6TH STREET, BOTH RIGHTS-OF-WAY AS PRESENTLY ESTABLISHED; THENCE SOUTH ON THE SAID WEST RIGHT-OF-WAY LINE TO THE INTERSECTON WITH THE NORTH LINE OF LOT 5 OF RIVER HILLS PLAT FOUR, AN OFFICIAL PLAT; THENCE WEST ON THE SAID NORTH LINE TO THE NORTHWEST CORNER OF SAID LOT 5, ALSO BEING ON THE EAST LINE OF LOT 6 OF SAID RIVER HILLS PLAT FOUR; THENCE SOUTHERLY ON THE EAST LINE OF SAID LOT 6 TO A POINT WHICH IS 72.54 FEET NORTH OF THE SOUTHEAST CORNER OF SAID LOT 6, ALSO BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY I-235 AS SHOWN IN BOOK 9703 PAGE 595 OF THE CONVEYANCE QUIT CLAIM DEED IN THE POLK COUNTY RECORDERS OFFICE; THENCE SOUTHWESTERLY 91.06 FEET ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID I-235; THENCE WESTERLY ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID I-235 TO THE WESTERLY CURB LINE OF ROBERT D. RAY DRIVE, AS PRESENTLY ESTABLISHED; THENCE NORTHEASTERLY ALONG THE WESTERLY CURB LINE OF SAID ROBERT D. RAY DRIVE A DISTANCE OF 175 FEET; THENCE WESTERLY, PERPENDICULAR TO SAID WESTERLY CURB LINE, TO THE EASTERLY BANK OF THE DES MOINES RIVER; THENCE NORTHEASTERLY ALONG SAID EASTERLY BANK TO THE SOUTH RIGHT-OF-WAY LINE OF SAID EAST UNIVERSITY AVENUE; THENCE EAST ON THE SOUTH RIGHT-OF-WAY LINE OF SAID EAST UNIVERSITY AVENUE TO THE POINT OF BEGINNING, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND EXCEPT FOR A 20.0 FOOT WIDE STRIP OF LAND FOR THE RELOCATED ALIGNMENT OF THE MULTI-USE RECREATIONAL TRAIL.

3. The proposed lease of the below described vacated parkland and right-of-way to Greater Des Moines Botanical Garden for the consideration of the Greater Des Moines Botanical Garden agreeing to be responsible for operation of the Botanical Center and, at its cost, to be responsible for \$7,500,000 in improvements, including expanded gardens on the Grounds, by June 1, 2015, and an endowment of \$2,000,000 for operational expenses at the Botanical Center and Grounds, and \$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 GDMBG, beginning on January 1, 2013, constitutes the fair market value for such lease term(s) and such lease be and is hereby approved:

Date May 9, 2011

BEGINNING AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF EAST UNIVERSITY AVENUE AND THE WEST RIGHT-OF-WAY LINE OF EAST 6TH STREET, BOTH RIGHTS-OF-WAY AS PRESENTLY ESTABLISHED; THENCE SOUTH ON THE SAID WEST RIGHT-OF-WAY LINE TO THE INTERSECTION WITH THE NORTH LINE OF LOT 5 OF RIVER HILLS PLAT FOUR, AN OFFICIAL PLAT; THENCE WEST ON THE SAID NORTH LINE TO THE NORTHWEST CORNER OF SAID LOT 5, ALSO BEING ON THE EAST LINE OF LOT 6 OF SAID RIVER HILLS PLAT FOUR; THENCE SOUTHERLY ON THE EAST LINE OF SAID LOT 6 TO A POINT WHICH IS 72.54 FEET NORTH OF THE SOUTHEAST CORNER OF SAID LOT 6, ALSO BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY I-235 AS SHOWN IN BOOK 9703 PAGE 595 OF THE CONVEYANCE QUIT CLAIM DEED IN THE POLK COUNTY RECORDERS OFFICE; THENCE SOUTHWESTERLY 91.06 FEET ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID I-235; THENCE WESTERLY ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID I-235 TO THE WESTERLY CURB LINE OF VACATED ROBERT D. RAY DRIVE, AS PRESENTLY ESTABLISHED; THENCE NORTHEASTERLY ALONG THE WESTERLY CURB LINE OF SAID VACATED ROBERT D. RAY DRIVE A DISTANCE OF 175 FEET; THENCE WESTERLY, PERPENDICULAR TO SAID WESTERLY CURB LINE, TO THE EASTERLY BANK OF THE DES MOINES RIVER; THENCE NORTHEASTERLY ALONG SAID EASTERLY BANK TO THE SOUTH RIGHT-OF-WAY LINE OF SAID EAST UNIVERSITY AVENUE; THENCE EAST ON THE SOUTH RIGHT-OF-WAY LINE OF SAID EAST UNIVERSITY AVENUE TO THE POINT OF BEGINNING, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND EXCEPT FOR A 20.0 FOOT WIDE STRIP OF LAND FOR THE RELOCATED ALIGNMENT OF THE MULTI-USE RECREATIONAL TRAIL.

4. The Mayor is authorized and directed to sign said lease agreement as identified above, and up to two twenty five (25) year renewal agreements, if any, after the initial term of this lease, and the City Clerk is authorized and directed to attest to the City Manager's signature.

5. Upon final passage of an ordinance vacating said parkland and right-of-way, the City Clerk is authorized and directed to forward the original of the Lease, Operation, Management and Maintenance 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.

6. Upon execution of said lease agreement, the Real Estate Division of the Engineering Department is authorized and directed to forward the original of the said lease agreement, 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.

7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division shall file the original of the Lease Operation, Management and Maintenance Agreement and send copies to the City Clerk, the Land Records Clerk and to the Greater Des Moines Botanical Garden.

★ Roll Call Number

Agenda Item Number

50

Date..... May 9, 2011.....

(Council Communication 11-216p)

Moved by _____ to adopt.

APPROVED AS TO FORM:

Ann DiDonato

Ann DiDonato
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
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