

.....
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



Date May 23, 2022

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.



Roll Call Number

Agenda Item Number

33

Date May 23, 2022

(Council Communication No. 22- 253)

Moved by _____ to adopt.

Seconded by _____.

APPROVED AS TO FORM:

/s/ Glenna K. Frank

Glenna K. Frank
Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE | | | | |
| BOESEN | | | | |
| GATTO | | | | |
| SHEUMAKER | | | | |
| MANDELBAUM | | | | |
| VOSS | | | | |
| WESTERGAARD | | | | |
| TOTAL | | | | |

MOTION CARRIED

APPROVED

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.

Mayor

City Clerk

FOURTH AMENDMENT TO
BOTANICAL CENTER LEASE
AND
OPERATION, MANAGEMENT AND MAINTENANCE AGREEMENT
BY AND BETWEEN
THE CITY OF DES MOINES, IOWA
AND
THE GREATER DES MOINES BOTANICAL GARDEN

This FOURTH AMENDMENT TO BOTANICAL CENTER LEASE AND OPERATION, MANAGEMENT AND MAINTENANCE AGREEMENT is made and entered into and is effective on this ____ day of _____, 2022, by and between the City of Des Moines (“CITY”) and Greater Des Moines Botanical Garden, an Iowa non-profit corporation, (the “CORPORATION”), to that Botanical Center Lease and Operation, Management and Maintenance Agreement, by and between the CITY and Greater Des Moines Botanical Garden Corporation, dated May 9, 2011 , as amended by Amendment dated December 17, 2012, Second Amendment dated December 22, 2014, and Third Amendment dated November 15, 2021 (collectively, “the Agreement”).

WHEREAS, on May 9, 2011, by Roll Call No. 11-0822, the City Council approved the Agreement pursuant to which the CITY will lease the Botanical Center and related grounds 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; and

WHEREAS, the parties wish to reinstate and affirm the original intent and terms of the Agreement regarding the CITY’S provision of operational support funding for the operation of the Botanical Center and Grounds, as legally described in Exhibit A hereto.

NOW THEREFORE, for and in consideration of the mutual undertakings of the parties hereto, it is agreed as follows:

1. Section IX.A shall be amended by deleting subsection (1) in its entirety and replacing it with the following:

1. Operational Support. Upon the Lease Commencement Date, the CITY shall support BRAVO funding for the operation of the Botanical Center and Grounds in the annual amount of \$245,000.00 for the first 10 years following the Lease Commencement Date, with the first payment to be made during the year of the Lease Commencement Date, so long as the CORPORATION continues to make significant progress on construction of improvements in compliance with the Master Plan Refresh approved by the Des Moines City Council pursuant to the Third Amendment to the Agreement dated November 15, 2021. The foregoing funding obligations are subject to applicable Iowa law and to the CORPORATION

being in compliance with the terms of this Agreement. The CORPORATION and the CITY acknowledge and agree that all of the obligations of the CITY under this Agreement shall be subject to, and performed by the CITY in accordance with, all applicable statutory, common law, or constitutional provisions and procedures consistent with the CITY'S lawful authority. CITY funds provided for operation of the Botanical Center and Grounds shall not be used for capital improvements.

2. Except as modified above, all other terms of the Agreement shall remain in effect. The parties expressly agree and confirm that any economic development grant funds under the May 9, 2011 Urban Renewal Development Agreement between the CITY and the CORPORATION, as such Agreement has been or may be amended, are not intended to and do not change the terms of the Agreement pertaining to the CORPORATION'S sole responsibility for all costs and expenses of construction of Improvements pursuant to Section VI of the Agreement and for maintenance, repair, replacement and restoration pursuant to Sections V and VII of the Agreement. Furthermore, the parties expressly agree and confirm that the terms of Section IX.A.2 remain in effect and are unchanged pertaining to the CITY having no requirement to provide any additional funding to the CORPORATION or to the Botanical Center and Grounds other than the operational support described in Section IX.A.1 of the Agreement.

IN WITNESS WHEREOF, the parties to this FOURTH AMENDMENT have hereunto set their hands on this day and year as first above written.

City of Des Moines, Iowa

Greater Des Moines Botanical Garden

T.M. Franklin Cownie, Mayor

Kimberley C. Perez, President & CEO

Approved As To Form:

Attest:

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

P. Kay Cmelik, City Clerk

STATE OF IOWA)
) ss.
COUNTY OF POLK)

On this _____ day of _____, 2022 before me, the undersigned, a Notary Public, personally appeared T. M. FRANKLIN COWNIE and P. KAY CMELIK, to me personally known, who, being by me duly sworn, did state that they are the MAYOR and CITY CLERK, respectively, of the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Resolution adopted under Roll Call 22-_____, dated _____, 2022, and that T. M. Franklin Cownie and P. Kay Cmelik acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

Notary Public in the State of Iowa

STATE OF IOWA)
) ss.
COUNTY OF POLK)

On this _____ day of _____, 2022, before me, a notary public, personally appeared KIMBERLEY C. PEREZ, who being by me duly sworn did say that she is the PRESIDENT AND CEO of GREATER DES MOINES BOTANICAL GARDEN, an Iowa non-profit corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors, and she acknowledged the execution of the said instrument to be the voluntary act and deed of said corporation, by it voluntarily executed.

Notary Public in the State of Iowa

EXHIBIT A

Legal Description of Leased Premises:

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 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.

AND

A PART OF LOT 5, BLOCK D, RIVER HILLS PLAT 3, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE SOUTH RIGHT OF WAY LINE OF IOWA INTERSTATE 235 AND THE WEST RIGHT OF WAY LINE OF ROBERT D RAY DRIVE; THENCE SOUTHERLY ALONG SAID WEST RIGHT OF WAY LINE TO THE EASTERLY EXTENSION OF THE NORTH LINE OF THE CENTER STREET BRIDGE, ALSO KNOWN AS THE IOWA WOMEN ACHIEVEMENT BRIDGE; THENCE WEST ALONG SAID EASTERLY EXTENSION TO THE EAST RIVER BANK OF THE DES MOINES RIVER; THENCE NORTHERLY ALONG SAID EAST RIVER BANK TO SAID SOUTH RIGHT OF WAY LINE OF IOWA INTERSTATE 235; THENCE EAST ALONG SAID SOUTH RIGHT OF WAY LINE TO THE POINT OF BEGINNING.