



.....
Date January 23, 2023

**HOLD HEARING ON FIFTH AMENDMENT TO 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 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



.....
Date January 23, 2023

the Corporation for operational support for the Botanical Center and Grounds in lieu of an equal amount 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 have negotiated 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; and

WHEREAS, on January 9, 2023, by Roll Call No. 23-0027, it was duly resolved by the City Council that said proposed Fifth Amendment to the Lease Agreement be set down for hearing on January 23, 2023 at 5:00 pm in the Council Chamber; and

WHEREAS, due notice of said proposed Fifth Amendment to the Lease Agreement 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 Fifth 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 Fifth Amendment to the Lease Agreement are hereby overruled and the hearing is closed.
2. The proposed Fifth Amendment to the Lease Agreement with Greater Des Moines Botanical Garden corporation, in form on file in the City Clerk’s Office and requiring the City 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, is hereby approved, subject to approval by the City Council of an amendment to the Third Amended and Restated Urban Renewal Development Agreement between the City and the Corporation.
3. The Mayor is authorized and directed to execute said Fifth 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 Fifth 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 Fifth 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.



Roll Call Number

Agenda Item Number

29

Date January 23, 2023

- 6. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division shall file the original of Fifth 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 corporation.

(Council Communication 23-039)

Moved by _____ to adopt.

Second 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, 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