

★ Roll Call Number

14-1938

Agenda Item Number

26 A

December 22, 2014

Date

APPROVAL OF SECOND AMENDMENT OF LEASE AND OPERATION, MANAGEMENT AND MAINTENANCE AGREEMENT WITH GREATER DES MOINES BOTANICAL GARDEN FOR BOTANICAL CENTER AND ADJACENT GROUNDS

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 the park drive known as Robert D. Ray Drive; and

WHEREAS, on May 9, 2011, by Roll Call No. 11-0822, the City Council approved the Lease Agreement in which the Greater Des Moines Botanical Garden corporation ("GDMBG") agreed to be responsible, at its cost, for \$7,500,000 in improvements, including expanded gardens on the grounds of the Botanical Center, by June 1, 2015, and to create 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 ("Lease Agreement"); and

WHEREAS, per the Lease Agreement, such improvements must be constructed in accordance with a Master Plan approved by the City Council; and

WHEREAS, on June 11, 2012, by Roll Call No. 12-0935, the City Council approved the conceptual Master Plan developed by GDMBG for construction of improvements in the Botanical Center and its grounds; and

WHEREAS, the Lease Agreement commenced on January 1, 2013; and

WHEREAS, on December 17, 2012, by Roll Call No. 12-1971, the City Council approved an Amendment to the Lease Agreement regarding certain utilities, a fire hydrant installation, and Hazardous Substances commonly used in the operation of botanical gardens or offices; and

WHEREAS, due to the age and condition of the Botanical Center glass dome, all of the approximately 650 geodesic panels and associated hardware to the Botanical Center dome must be replaced at an estimated cost of \$1,500,000 ("the Dome Project"); and

WHEREAS, City staff and GDMBG have negotiated an amendment to the Lease Agreement requiring GDMBG to make such replacement of the dome panels and to provide the City with two additional free uses of the Botanical Center per year for City revenue generating events, a copy of which is on file in the City Clerk's Office.

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

1. The proposed Second Amendment to the Lease, Operation, Management and Maintenance Agreement to require the Greater Des Moines Botanical Garden to replace the approximately 650 geodesic panels and all of the associated hardware to the Botanical Center dome by no later than July 1, 2015, and to provide the City with the right to use the Botanical Center for two revenue generating events each year at no charge to the City, is hereby approved.
2. The Mayor is authorized and directed to sign said Second Amendment as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
3. The City Clerk is authorized and directed to forward the original of the Second Amendment to the Real Estate Division of the Engineering Department for the purpose of causing said document to be recorded.
4. Upon execution of said Second Amendment, the Real Estate Division of the Engineering Department is authorized and directed to forward the original of the said lease amendment to the Polk County Recorder's Office for the purpose of causing said document to be recorded.
5. Upon receipt of the recorded document back from the Polk County Recorder, the Real Estate Division shall file the original of the Second Amendment and send copies to the City Clerk, the Land Records Clerk and to the Greater Des Moines Botanical Garden.

(Council Communication No. 14-⁵⁹⁷) Moved by Hensley to adopt.

APPROVED AS TO FORM:
Ann DiDonato
 Ann DiDonato, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GATTO		✓		
GRAY	✓			
HENSLEY	✓			
MAHAFFÉY	✓			
MOORE	✓			
TOTAL	6	1		

MOTION CARRIED APPROVED
T. M. Franklin
 Mayor

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.

Diane Rauh
 City Clerk