

Date December 23, 2013

**RESOLUTION TO APPROVE THE SECOND AMENDMENT TO THE LEASE AGREEMENT WITH DES MOINES DAYCARE, L.L.C. OF CITY-OWNED PROPERTY IN THE UPPER LEVEL OF THE 5<sup>th</sup> AND KEO WAY PARKING GARAGE**

**WHEREAS**, on June 11, 2012, by Roll Call No. 12-0926, the City of Des Moines as landlord and Des Moines Daycare, L.L.C. as lessee entered into a Lease Agreement for the purpose of lessee's operation of its Des Moines Daycare Center business within the City-owned upper level of the 5<sup>th</sup> and Keo parking garage (hereinafter "Leased Premises"); and

**WHEREAS**, on June 5, 2013, under authority granted by Roll Call No. 12-0926, the City's Real Estate Division Manager and Des Moines Daycare, L.L.C. negotiated and signed the First Amendment to Lease Agreement as requested by Des Moines Daycare, L.L.C., to make minor, unsubstantial changes to the original agreement, including (1) replacing one of the L.L.C. Members and Individual Guarantors, (2) changing the rent payment due date from the 1<sup>st</sup> of the month to the 15<sup>th</sup>, and (3) setting up a repayment plan for past due rent; and

**WHEREAS**, Des Moines Daycare, L.L.C. has now requested that the size of the Leased Premises be reduced from 20,530 square feet to 9,944 square feet, or to 48% of the square footage set forth in the Lease Agreement, for the remainder of the lease term; and

**WHEREAS**, Des Moines Daycare, L.L.C. and City staff have negotiated that the above reduction in square feet for the Leased Premises will result in a proportionate reduction to the rent payment from \$5,133 per month to \$2,464 per month, beginning on December 15, 2013 and thereafter for the duration of the Lease Agreement, and that the Lease Agreement be further amended to allow for termination by the City with or without cause upon 30 days' notice, with no other changes to the Lease Agreement as amended by the First Amendment thereto.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, as follows:

1. That the Second Amendment to Lease Agreement between the City and Des Moines Daycare, L.L.C., on file in the office of the City Clerk, reducing the total square footage of the Leased Premises from 20,530 square feet to 9,944 square feet and the rental consideration paid by Des Moines Daycare, L.L.C. from \$5,133 per month to \$2,464 per month, and allowing for 30-day notice of lease termination by the City with or without cause, is hereby approved.

2. In accordance with the Second Amendment to Lease Agreement, the Leased Premises as amended shall be legally described as follows:

9,944 square feet on the top floor of the north end of the 5th & Keo Way parking garage located north of and adjoining the real property locally known as 555 5th Avenue, Des Moines, Iowa, which area is legally described as follows:

★ Roll Call Number

13-1972

Agenda Item Number

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Date December 23, 2013

A PORTION OF THE AIRSPACE SITUATED ABOVE A PORTION OF LOTS 10, 15 THRU 21, AND A PORTION OF THE EAST/WEST ALLEY LYING SOUTH OF AND ADJOINING SAID LOTS 14 THRU 21, AND ALL OF LOTS D AND 11, ALL IN THE NEW YMCA PLAT, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

- 3. That the Mayor be and is hereby authorized and directed to sign the Second Amendment to Lease Agreement and the City Clerk is hereby authorized and directed to attest to the Mayor's signature.
- 4. That the Real Estate Division Manager of the Engineering Department is hereby authorized, directed, and designated to act on behalf of the City to continue to administer and enforce the terms of the Lease Agreement and of the First and Second Amendments thereto.
- 5. The proceeds from the lease of this property shall be deposited into the following account: 2013-14 Operating Budget, Page 2, Engineering Department Traffic and Transportation - Parking Administration, EG062085.

Moved by Mahaffey to adopt.

APPROVED AS TO FORM:

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

(Council Communication No. 13-609)

*rw*

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
VOSS	✓			
MOORE	✓			
TOTAL	7			

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