 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date:	December 23, 2013
	Agenda Item No.	24
	Roll Call No.	[_____]
	Communication No.	<u>13-609</u>
	Submitted by:	Jeb E. Brewer, P.E., City Engineer

AGENDA HEADING:

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 5th and Keo Way parking garage.

SYNOPSIS:

Recommend approval of the second amendment to the lease agreement with Des Moines Daycare, L.L.C., of City-owned property in the upper level of the 5th and Keo Way parking garage at 555 5th Avenue, Des Moines, Iowa. This action is required by Iowa law prior to making a final determination on the proposed lease amendment by resolution.

Des Moines Daycare is currently in default of the lease for nonpayment of rent and the City’s Real Estate Division has negotiated a second lease amendment that’s in the best interest of both parties. The second amendment reduces the amount of leased space from 20,530 square feet to 9,944 square feet, and reduces the rent from \$5,133/month to \$2,464/month. The City will benefit from the approval of the proposed lease amendment, as it will allow the City to continue to collect rental income from the property and avoids the cost for the City to maintain an empty space for which it would need to pay utilities at an estimated cost of \$2,000/month, until such time a new tenant is secured. The second amendment also provides the City the option to terminate the lease at any time with 30 days notice, which allows City staff to search for other financially secure tenants who can support the use and cost of the entire leased premises.

FISCAL IMPACT:

Amount: \$2,464 per month / \$29,568 per year (Revenue)

Funding Source: The proceeds from the lease of this property shall be deposited into the following account: 2013-14 Operating Budget, Page 72, Engineering Department Traffic and Transportation - Parking Administration, EG062085.

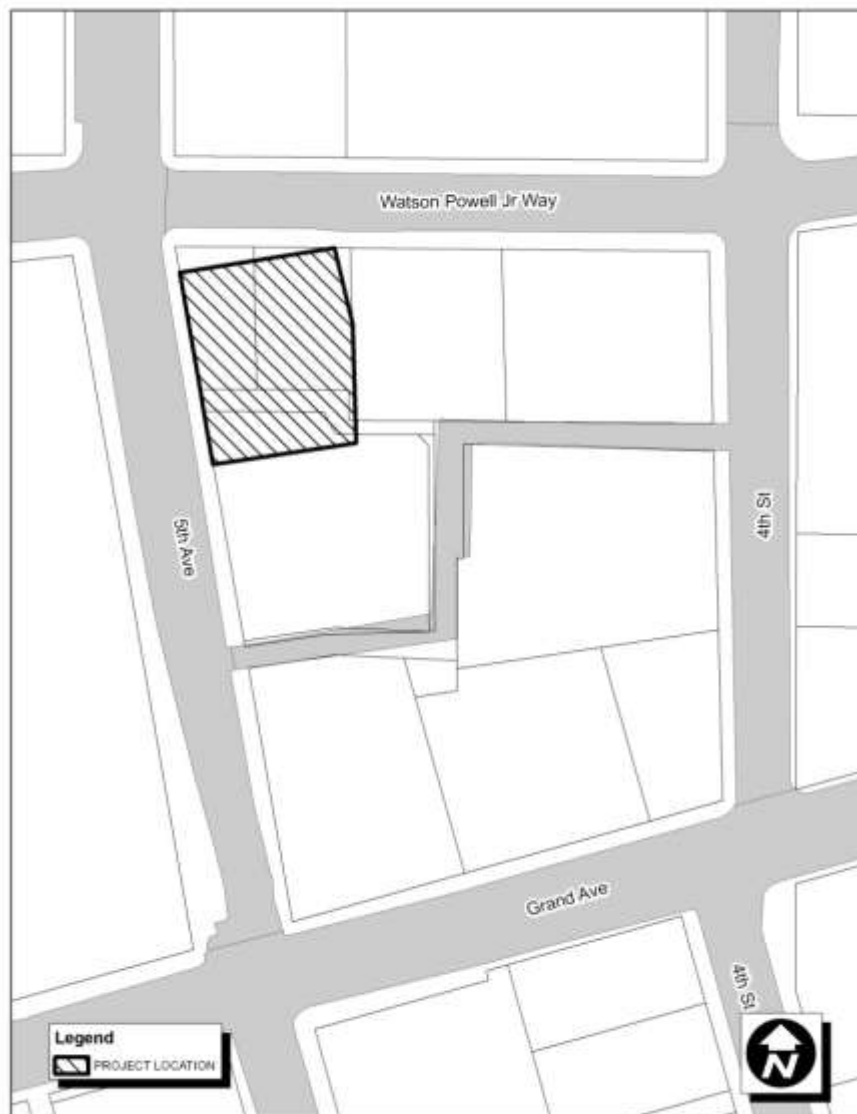
ADDITIONAL INFORMATION:

On June 11, 2012, the City of Des Moines and Des Moines Daycare entered into a lease agreement with the City for the purpose of operating the Des Moines Daycare Center within the upper level of the 5th and Keo parking garage (hereinafter “leased premises”). Approximately one (1) year later, on June 5, 2013, Des Moines Daycare was in default of the lease for nonpayment of rent and City staff negotiated and signed the first amendment to lease agreement. At this time, Des Moines Daycare’s clientele was not large enough to support the use and rent for the entire leased premises. The first

amendment made minor changes to the original agreement, including a repayment plan for past due rent.

In November 2013, Des Moines Daycare was again in default of the lease and asked that the size of the leased premises be reduced from 20,530 square feet to 9,944 square feet or 48% of the square footage set forth in the lease; and that the amount of the monthly consideration paid by Des Moines Daycare be reduced proportionately, starting with payment due on December 15, 2013 and on the 15th of each month thereafter for the duration of the lease agreement. Des Moines Daycare's current enrollment continues to be insufficient for them to support the use and cost of the larger space. They asked that the space and rent be reduced until such time as the business grows sufficiently to support the use and cost of the extra space.

Des Moines Daycare feels its only other option would be to close the business, thereby defaulting on the lease agreement. This would leave the City without any income from the property and with an empty space for which it would need to pay utilities at an estimated cost of \$2,000/month, until such time a new tenant is secured. City staff recommends approval of the second amendment and to actively search for a new tenant, while still receiving rental income for the property.



PREVIOUS COUNCIL ACTION(S):

Date: June 11, 2012

Roll Call Number: [12-0926](#)

Action: [On](#) proposed lease of City-owned property in the upper level of the 5th and Keo Way Parking Garage to Des Moines Daycare, LLC for \$41,064 for the first year and \$61,596 for subsequent years. ([Council Communication No. 12-308](#)) Moved by Hensley to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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