



Date February 21, 2022

RESOLUTION APPROVING CHAPTER 28E AGREEMENT BETWEEN THE CITY, POLK COUNTY, AND INVEST DSM, INC.

WHEREAS, on August 19, 2019, by Roll Call No. 19-1346, the City Council approved a Chapter 28E Agreement by and between the City, Polk County, and Invest DSM, Inc. to facilitate the amount and use of funding to be provided by the City and County to Invest DSM from August 1, 2019 until July 31, 2022, and with said funding to be used by Invest DSM, Inc. for operating expenses and program and project activities associated with Revitalization Plan implementation; and

WHEREAS, said existing Agreement expires on July 31, 2022, and the City, Polk County and Invest DSM, Inc. desire to enter into a new and updated Chapter 28E Agreement, which Agreement will be considered for approval by the Polk County Board of Supervisors and Invest DSM, Inc. in the near future, and which Agreement includes the following terms:

- Duration from August 1, 2022 until July 31, 2027;
• Funding obligations of the City including payment of \$5,000,000 in fiscal year 2023, and \$5,000,000 in each fiscal year thereafter for the duration of the Agreement or annual notice of funding commitment for each fiscal year thereafter for the duration of the Agreement;
• Funding obligations of the County including payment of \$5,000,000 in fiscal year 2023, and annual notice of funding commitment for each fiscal year thereafter for the duration of the Agreement;
• Failure by the City or the County, respectively, to provide notice or to provide funding in an amount equal to or greater than \$1,250,000 in any fiscal year constituting default by said party;
• Use by Invest DSM, Inc. of up to ten percent of the annual funding to cover operating expenses, and the remainder to cover expenses related to program and project activities associated with implementation of Revitalization Plans for Special Investment Districts designated by the Invest DSM, Inc. Board of Directors and approved by the City Council;
• Reporting by Invest DSM, Inc. to the City and County regarding program progress every six months;
• Representation by the City and County on the Invest DSM, Inc. Board of Directors on a tiered basis, with three representatives each for contributing \$5,000,000 annually, two representatives each for contributing between \$2,500,000 and \$4,999,999 annually, one representative each for contributing between \$1,250,000 and \$2,499,999 annually, and no representatives for contributions less than \$1,250,000 annually; and

WHEREAS, the updated Chapter 28E Agreement will be effective on August 1, 2022, upon expiration of the existing Agreement, and all parties desire to approve the updated Agreement now in order to make appropriate budgetary plans, recommendations and approvals for upcoming fiscal years.

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

1. The Chapter 28E Agreement by and between Polk County, Iowa, the City of Des Moines, Iowa, and Invest DSM, Inc. for Funding and Operation of Invest DSM, Inc. is hereby approved for effective date



**Roll Call Number**

**Agenda Item Number**

29

**Date** February 21, 2022

of August 1, 2022, and the Mayor and City Clerk are directed to execute and attest, respectively, said Agreement on behalf of the City.

2. Upon the effective date of August 1, 2022, the City Manager or his designee are authorized and directed to administer the Chapter 28E Agreement on behalf of the City, and the Finance Department is authorized and directed to issue payment in accordance therewith.

MOVED BY \_\_\_\_\_ TO ADOPT.

SECOND BY \_\_\_\_\_.

FORM APPROVED:

*/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

## **CHAPTER 28E AGREEMENT**

**BY AND BETWEEN POLK COUNTY, IOWA, THE CITY OF DES MOINES, IOWA,  
AND INVEST DSM, INC. FOR FUNDING AND OPERATION OF INVEST DSM, INC.**

**THIS AGREEMENT** is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between Polk County, Iowa, a political subdivision of the State of Iowa (hereafter “County”), the City of Des Moines, Iowa, a municipal corporation (hereafter “City”), and Invest DSM, Inc., an Iowa non-profit corporation (hereafter “Invest DSM”).

### **WITNESSETH:**

**WHEREAS**, Invest DSM is a corporation formed, organized, and to be exclusively operated for non-stock charitable and educational purposes including but not limited to coordinating the implementation of neighborhood revitalization plans, as adopted and delegated by the City of Des Moines, Iowa or other governmental units located within Polk County Iowa; acting as an umbrella organization to receive and strategically distribute funds, coordinate partnerships, and develop programs to achieve plan goals and outcomes; supporting activities that promote community building and resident leadership development in specified neighborhood areas; and participating in or sponsoring real estate development projects, housing rehabilitation and new construction projects, commercial and rental property rehabilitation and façade projects, and similar projects in the City of Des Moines, Iowa and elsewhere in Polk County, Iowa, including contracts and cooperative efforts with public and private entities for the same; and

**WHEREAS**, on June 18, 2019, the County approved a resolution approving the Articles of Incorporation and Bylaws of Invest DSM, and appointing three members of the County Board of Supervisors as representatives to the Invest DSM Board of Directors; and

**WHEREAS**, on June 24, 2019, by Roll Call No. 19-1048, the City approved a resolution supporting creation of Invest DSM, received the Articles of Incorporation and Bylaws of Invest DSM, and appointing three members of the Des Moines City Council as representatives to the Invest DSM Board of Directors; and

**WHEREAS**, on August 19, 2019, by Roll Call No. 19-1346, the City Council approved a Chapter 28E Agreement by and between the County, City, and Invest DSM to facilitate the amount and use of funding to be provided by the City and County to Invest DSM from August 1, 2019 until July 31, 2022, with no option for renewal; and

**WHEREAS**, the County, City, and Invest DSM have agreed to terms relating to the continued funding and operation of Invest DSM following the expiration of the above-referenced Chapter 28E Agreement.

**NOW THEREFORE**, the County, City, and Invest DSM (hereafter jointly referred to as individually as a “Party” or collective as “the Parties”) do hereby agree as follows:

## **Article I - Joint Exercise of Powers Under Chapter 28E of the Code of Iowa.**

1. **Purpose – Funding and Operation of Invest DSM.** Pursuant to Chapter 28E of the 2021 Code of Iowa, the Parties do hereby agree that the sole purpose of this Agreement is to facilitate the amount and use of funding to be provided by the County and City to Invest DSM.

2. **Effective Date and Duration.** Pursuant to Section 28E.5 of the Code of Iowa, the Parties agree that this Agreement shall be effective upon its approval and execution by all Parties and its recording with the Secretary of State; and that the duration of this Agreement shall be in effect from August 1, 2022 until July 31, 2027.

3. **Designated Administrator.** The Parties hereby agree that Amber Lynch, Executive Director of Invest DSM, shall be designated as the administrator of this Agreement as provided by Section 28E.6 of the Code of Iowa.

4. **No Entity.** No separate entity is hereby created.

5. **Individual Ownership and Responsibility.** Except as otherwise explicitly provided herein, each Party shall at all times hold and own its respective properties. Each Party shall be solely authorized to supervise, direct, and manage its own activities and the activities of its respective employees and agents hereunder.

6. **Funding.** Invest DSM shall be solely responsible for any and all costs and expenses that are directly and indirectly related to its operations, other than the funding to be provided by County and City to Invest DSM for its use as set forth in this Agreement.

7. **Administration.** Invest DSM shall be solely responsible for all administrative functions related to this Agreement and related to the use of funding provided by the County and City in accordance with this Agreement.

## **Article II – Funding and Use of Funds**

8. **Funding Obligations – County.** In fiscal year 2023 (commencing July 1, 2022 and ending June 30, 2023), and by no later than September 1, the County shall pay \$5,000,000.00 U.S. Dollars to Invest DSM to be used as set forth herein. Thereafter for the duration of this Agreement, the County shall provide annual notice to Invest DSM and to the City in accordance with Section 13 below, no later than February 1<sup>st</sup> of each year, stating whether the County intends to provide funding to Invest DSM for the following fiscal year and in what amount, which amount shall be paid by the County to Invest DSM no later than September 1 of the applicable fiscal year.

8.1. **Default – County.** Failure to provide such notice, and failure to provide funding in an amount equal to or greater than \$1,250,000.00 in any fiscal year for the duration of this Agreement, shall constitute defaults under this Agreement.

9. Funding Obligations – City. In fiscal year 2023 (commencing July 1, 2022 and ending June 30, 2023), and by no later than September 1, the City shall pay \$5,000,000.00 U.S. Dollars to Invest DSM to be used as set forth herein. For each fiscal year thereafter for the duration of this Agreement, the City shall either (i) pay \$5,000,000.00 U.S. Dollars to Invest DSM, to be used as set forth herein, or (ii) provide notice to Invest DSM and to the County in accordance with Section 13 below, no later than February 1<sup>st</sup> of each year, stating whether the City intends to provide funding to Invest DSM for the following fiscal year and in what amount, which amount shall be paid by the City to Invest DSM no later than September 1 of the applicable fiscal year.

9.1. Default – City. Failure to provide such notice, and failure to provide funding in an amount equal to or greater than \$1,250,000.00 in any fiscal year for the duration of this Agreement, shall constitute defaults under this Agreement.

10. Use of Funds – Invest DSM. A. Invest DSM shall use the funds provided by the County and City as follows:

1. Up to ten percent (10%) of the funding provided annually by the City and County shall be used by Invest DSM to pay for Invest DSM operating expenses, with payment of such expenses divided evenly between the City cash contribution and the County cash contribution. Invest DSM operating expenses eligible for payment under this Section include, but are not limited to, salary and benefits for the Executive Director, salary and benefits for employees of Invest DSM, accounting services, banking fees, IT services, office space rent, equipment and supplies, HR services, and/or other types of administrative costs incurred by Invest DSM for its day-to-day operation.
2. The remainder of the funding provided annually by the City and the County that is not used for Invest DSM operating expenses shall be used to pay expenses related to program and project activities associated with implementation of the Revitalizations Plans for the Special Investment Districts designated by the Invest DSM Board of Directors and approved by the Des Moines City Council. Such program and project activities include those listed on Exhibit A attached hereto and by this reference made a part hereof. All Parties hereto agree that Invest DSM may use both the principal and interest earned on the annual funding provided by the City and County to fund programs and project activities developed by Invest DSM.

B. The Parties hereto agree that income restrictions on Invest DSM program and project activities shall not be required.

C. Invest DSM shall monitor progress toward outcomes identified in the Revitalization Plans for the Special Investment Districts, and will report progress to the City and County every six months for the duration of this Agreement either in person or by virtual meeting or in writing pursuant to the notice requirements of Section 13 below.

### **Article III – Board Representation**

11. Board Representation – Fiscal Year 2023. The City and County each are entitled to representation of three Director positions on the Board of Directors of Invest DSM, in accordance with the Bylaws of Invest DSM and representing the equal funding contributions to be made by the City and the County in fiscal year 2023 as set forth in Sections 8 and 9 above. All Parties hereto expect that the remaining positions on the Board of Directors will continue to be filled by persons with experience, skills and knowledge complementing the mission of Invest DSM, including professional or business community based citizens representing individuals or businesses providing monetary or other donations to Invest DSM, in accordance with the requirements of the Bylaws of Invest DSM.

12. Board Representation – Fiscal Years 2024 through 2027. A. The City and County shall each be entitled to continued representation of Director positions on the Board of Directors of Invest DSM in fiscal year 2024 and each fiscal year thereafter for the duration of this Agreement as follows, separately and respectively:

- For contributing \$5,000,000.00 U.S. Dollars in the applicable fiscal year: Three Director positions
- For contributing an amount between \$2,500,000.00 and \$4,999,999.00 U.S. Dollars in the applicable fiscal year: Two Director positions
- For contributing an amount between \$1,250,000.00 and \$2,499,999.00 U.S. Dollars in the applicable fiscal year: One Director position
- For contributing less than \$1,250,000.00 in the applicable fiscal year: No Director positions

B. All parties hereto agree that Invest DSM may initiate an amendment to its Bylaws to reduce the representation of either, or both, the City and County in Director positions on the Board of Directors of Invest DSM in fiscal year 2024 and/or any fiscal year thereafter for the duration of this Agreement to reflect the representation required in subsection 12(A) above, and the City and County further agree to direct their respective representatives on the Invest DSM Board of Directors to vote in favor of such amendment(s).

### **Article IV – General Provisions**

13. Notices. All notices which the Parties are authorized or required to give one another pursuant to this Agreement shall be in writing and may be personally delivered or sent by ordinary mail to the addresses hereafter provided. Mailed notices and invoices shall be deemed to be received by the Party to whom directed when they are postmarked. Such notices and invoices shall be delivered or mailed to the following persons at the addresses listed:

Notices to City:

Scott Sanders, City Manager  
City of Des Moines  
400 Robert D. Ray Drive  
Des Moines, Iowa 50309



Notices to the County:

John Norris, County Administrator  
Polk County, Iowa  
111 Court Ave, Suite 300  
Des Moines, Iowa 50309

Notices to Invest DSM:

Amber Lynch, Executive Director  
Invest DSM  
525 SW 5<sup>th</sup> Street, Suite F  
Des Moines, Iowa 50309

14. Audit. The City or County may, by notice in writing, request access to Invest DSM's records for purposes of conducting an independent audit of costs and expenses paid or to be paid pursuant to this Agreement. Such notice shall identify the records sought for audit. Invest DSM shall provide access to the records sought for audit within thirty (30) calendar days after receipt of the audit request. A copy of the audit findings shall be promptly provided to Invest DSM. Any such audit shall be conducted solely at the City or County's expense, as applicable.

15. Declaration of Default and Notice. In the event that any Party determines that any other Party has defaulted in the performance of its obligations hereunder, including but not limited to pursuant to Section 8.1 above, the aggrieved Party may declare that default has occurred and give notice thereof to the defaulting Party(ies). Notice of default shall be given in writing, shall specify the nature of the default and the provision of the Agreement involved, and shall specify what action is required of the defaulting Party(ies) to correct the default. The defaulting Party(ies) shall have thirty calendar days from the date of its receipt of the notice of default to correct the default. If at the end of said thirty calendar-day period the default has not been corrected, that Party may terminate the Agreement as provided in Section 16 of this Agreement.

16. Termination.

A. Any Party may terminate this Agreement for default by any other Party(ies) by giving written notice of termination, following notice and right to cure as set forth in Section 15 above.

B. Any Party may terminate this Agreement for any reason whatsoever.

C. In any such event as set forth above, termination shall be effective on the thirtieth calendar day following the giving of notice.

D. The Parties agree that upon such termination, this Agreement and all obligations of all Parties hereunder will terminate and cease, and that any funding previously provided hereunder by the County and/or the City to Invest DSM shall remain with Invest DSM for its use following such termination.

17. Interpretation. If any section, provision or part of this Agreement shall be found to be invalid or unconstitutional, such finding shall not affect the validity of the Agreement as a whole or any section, provision or part thereof not found to be invalid or unconstitutional.

18. Entire Agreement. This Agreement represents the entire agreement between the County, the City and Invest DSM related to the funding and operation of Invest DSM. Any subsequent change or modification to the terms of this Agreement shall be in the form of a duly approved and executed amendment to this Agreement.

19. Governing Law, Attorney Fees and Court Costs. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa.

20. Co-Partnership Disclaimer. It is mutually understood that nothing in this Agreement is intended or shall be construed as in any way creating or establishing a partnership between the Parties hereto, or as constituting any Party as an agent or representative of the other for any purpose or in any manner, other than as specified herein.



Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CITY OF DES MOINES, IOWA**

ATTEST:

\_\_\_\_\_  
P. Kay Cmelik, City Clerk

\_\_\_\_\_  
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

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

STATE OF IOWA    )  
                                  ) ss:  
COUNTY OF POLK )

On this \_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and P. KAY CMELIK , to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 22-\_\_\_\_\_ of City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 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 City of Des Moines, Iowa, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in the State of Iowa

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**POLK COUNTY, IOWA**

(SEAL)

By: \_\_\_\_\_  
Chair, Board of Supervisors

ATTEST:

By: \_\_\_\_\_  
County Auditor

STATE OF IOWA            )  
                                      )SS  
COUNTY OF POLK )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before a Notary Public in and for said State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who being duly sworn, did say that they are the Chair of the Board of Supervisors and County Auditor, respectively of Polk County, Iowa, a political subdivision, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said County, and that said instrument was signed and sealed on behalf of said County by authority and resolution of its Board of Supervisors and said Chair of the Board of Supervisors and County Auditor acknowledged said instrument to be the free act and deed of said County by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**INVEST DSM, INC.**

\_\_\_\_\_  
Amber Lynch  
Executive Director

Acknowledgement

State of IOWA            )  
                                  )  
County of POLK        ) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public, personally appeared Amber Lynch, the Executive Director of Invest DSM, Inc., to me known to be the person named in and who executed the foregoing instrument and acknowledged that Amber Lynch executed the same as his/her voluntary act and deed.

\_\_\_\_\_  
Notary Signature  
Notary Public in the State of Iowa

## EXHIBIT A

Invest DSM agrees to implement Revitalization Plans for the Special Investment Districts. Such activities may include, without limitation, the following:

- Providing or sponsoring resident leadership development and training programs;
- Marketing and promoting the neighborhoods to prospective home buyers;
- Coordinating with other public and private entities to complete activities related to Revitalization Plan implementation, which may include but is not limited to:
  - City of Des Moines, various departments: Capital Improvement Projects, Code Enforcement, Public Works, Economic Development, Real Estate Division, etc.
  - Private developers
  - Non-profit organizations
- Facilitating rehabilitation financing of above-market improvements for owner-occupied, single-family structures in Special Investment Districts;
- Acquisition and rehabilitation financing of above-market improvements, including exterior and interior rehabilitation and home improvements, for owner-occupied, one to four-unit structures in Special Investment Districts;
- New construction financing, including costs associated with acquisition and demolition, of above-market homes for sale to residents in Special Investment Districts;
- Rehabilitation financing of above-market improvements to existing investor-owned multi-family property for rent to residents in Special Investment Districts;
- Rehabilitation financing for downsizing multi-unit conversion homes to fewer units in Special Investment Districts, when specified in the Revitalization Plans;
- Rehabilitation financing for above-market improvements to commercial properties in Special Investment Districts;
- New construction financing, including costs associated with acquisition and demolition, of above-market commercial development projects;
- The acquisition of commercial and residential properties for future development consistent with Revitalization Plans in Special Investment Districts;
- The purchasing, leasing or selling of real property located in Special Investment Districts;
- The acquisition, holding and disposition of commercial and residential properties anywhere in Polk County for future development, acting as a land bank;

- Participating in or sponsoring real estate development projects;
- Entering into lawful contracts and agreements for the redevelopment of commercial and residential properties, or other activities related to plan implementation;
- Entering into other cooperative efforts with public and private entities to support implementation of Revitalization Plans in Special Investment Districts;
- The establishment of loan guarantee funds or funds with flexible underwriting standards to support housing programs in which Invest DSM is providing a loan at a greater risk than would be provided under normal underwriting standards;
- It is anticipated that Invest DSM will obtain other financing to support the above efforts, above and beyond those government source monies contributed by the City and County, including without limitation the following sources:
  - Commercial banks
  - Equity funds
  - Private funds