



Date April 18, 2022

RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND INVEST DSM, INC. FOR PROVISION OF SERVICES FOR THE CITY'S BLOCK CHALLENGE GRANT PROGRAM

WHEREAS, on June 24, 2019, by Roll Call No. 19-1048, the City Council approved the creation of Invest DSM, Inc., and received the Articles of Incorporation and Bylaws of the corporation, and appointed board members to the corporation, which corporation documents provide for three City representatives to be appointed by the Des Moines City Council on a Board of Directors containing approximately nine members, including Polk County representatives and business/donor citizen representatives, to operate for charitable and educational purposes including those stated above; and

WHEREAS, the Articles of Incorporation and Bylaws of Invest DSM, Inc., were also reviewed and approved by the Polk County Board of Supervisors, and Polk County has appointed its representatives to the Invest DSM, Inc. Board of Directors; and

WHEREAS, on August 19, 2019, by Roll Call No. 19-1346, and on September 9, 2019, by Roll Call No. 19-1436, respectively, 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 approved an Initial Operating Contract between the City and Invest DSM for operation and management of Invest DSM, Inc. and provision of City services related thereto, which Operating Contract was thereafter updated and entered into for a subsequent year following approval by City Council; and

WHEREAS, on May 24, 2021, by Roll Call No. 21-0784, the City Council approved a Memorandum of Understanding between the City and Invest DSM, Inc. for administration of the Block Challenge Grant under the City's Neighborhood Matching Grant fund program ("the Program") in calendar year 2021, which funds were to be incorporated into a program substantially similar to the Invest DSM Block Challenge Grant program, and related to training of City staff for future operation of the Program, with terms of said Memorandum including payment by the City to Invest DSM of \$200,000.00 for use by Invest DSM to fund the actual costs of the Program paid to an estimated 100-150 Program participants and 10-30 teams, and payment by the City to Invest DSM of \$29,250.00 for use by Invest DSM for staff compensation and costs and expenses associated with providing administrative services for the Program and City staff training; and

WHEREAS, to replace the above-referenced Memorandum which expired on December 31, 2021, the City's Neighborhood Services Department and Invest DSM have negotiated terms of an updated Memorandum of Understanding relating to Invest DSM, Inc., serving as the fiscal agent for the Program from May 1, 2022 through June 30, 2023, with the option for renewal on an annual basis; and



Date April 18, 2022

WHEREAS, as set forth in the updated Memorandum of Understanding between the City and Invest DSM in form on file in the office of the City Clerk, the negotiated terms of the updated Memorandum remove the obligation of Invest DSM to provide training to City staff for the City's Program; replace the obligation of the City to pay a total administrative fee to Invest DSM with the requirement of the City to pay \$15.00 per check processed by Invest DSM for the Program; and include payment by the City to Invest DSM of \$200,000.00 by May 1, 2022 for use by Invest DSM for the sole purpose of funding the actual costs of the Program paid to Program participants, which amount is anticipated to serve between 100 and 150 Program participants, or about 10 and 30 teams.

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

- 1. The updated Memorandum of Understanding by and between the City of Des Moines, Iowa, and Invest DSM, Inc. whereby Invest DSM, Inc. serves as the fiscal agent for the Program, is hereby approved.
2. The Neighborhood Services Department Director is authorized to sign and directed to administer the Memorandum of Understanding on behalf of the City, and the Finance Department is authorized and directed to provide payment in accordance therewith when applicable.

(Council Comm. No. 22- 181)

Moved by _____ to adopt.

Second by _____.

FORM APPROVED:

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

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, MANDELBAUM, SHEUMAKER, VOSS, WESTERGAARD, and TOTAL.

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.

MOTION CARRIED APPROVED

Mayor

City Clerk

MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN THE CITY OF DES MOINES, IOWA, AND INVEST DSM, INC.
FOR FISCAL ADMINISTRATION OF THE BLOCK CHALLENGE GRANT UNDER
THE CITY'S NEIGHBORHOOD MATCHING GRANT FUND

THIS AGREEMENT is entered into on this _____ day of _____, 2022, by and between 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 Board of Supervisors for Polk County (hereafter "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, receiving 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, the County, City, and Invest DSM have agreed to terms relating to the initial funding and operation of Invest DSM, which terms are set forth in a Chapter 28E Agreement between said parties; and

WHEREAS, Invest DSM and the City have negotiated terms relating to Invest DSM serving as the Fiscal Agent for the City's Neighborhood Matching Grant program (hereafter "the Program"), and the parties wish to enter into this Memorandum of Understanding (hereafter "Contract") to establish terms related thereto; and

NOW THEREFORE, the City and Invest DSM (each a “party” and hereafter jointly referred to as “the parties”) do hereby agree as follows:

Article I – Duties and Scope of Services

1. Purpose. The purpose of this Contract is to establish the funding, administrative fees, , duration, terms, and conditions of Invest DSM serving as the Fiscal Agent for the City’s Neighborhood Matching Grant program and the responsibilities of the parties thereof.

2. Program Funding. The City shall provide \$200,000.00 to Invest DSM for calendar year 2022, for use by Invest DSM for the sole purpose of funding the actual costs of the Program paid to Program participants, which amount is anticipated to serve between 100 and 150 program participants, or between 10 and 30 teams, annually.. Said payment will be provided by City to Invest DSM in full no later than May 1, 2022. All Program funds provided by the City will be retained by Invest DSM in a separate account specific to this Contract. Any Program funds unused by Invest DSM due to lack of program participation, termination or expiration (non-renewal) of this Contract, or any other reason, shall be returned by Invest DSM to City within 30 calendar days of City request thereof.

3. Administrative Fee. In addition to the above-stated Program funding, the City will pay Invest DSM an administrative fee of \$15 per check processed for calendar year 2022 for use by Invest DSM for the sole purpose of serving as the Program’s Fiscal Agent. Invest DSM will bill the City for processed checks at the following intervals: June 30, 2022, for all checks processed between May 1, 2022, through June 30, 2022; December 31, 2022, for all checks processed between July 1, 2022, through December 31, 2022; and June 30, 2023, for all checks processed between January 1, 2023, through May 31, 2023.

4. Duration and Renewal. This Contract, and all terms included herein unless otherwise specified, shall be in full force and effect from the date of execution by the City through June 30, 2023 or t. This Contract may renew on an annual basis, in accordance with the terms set forth herein, following (i) written notice from Invest DSM to City requesting renewal, which notice shall be provided in accordance with Section 10 no later than March 1, 2023 or March 1 of any applicable renewal year thereafter, and (ii) written consent to renew provided by City to Invest DSM, which consent shall be provided in accordance with Section 10 no later than April 15, 2023, or April 15 of any applicable renewal year thereafter.

5. Fiscal Agent. Invest DSM will act as the Fiscal Agent for the City, which will include processing payments within fourteen (14) days of notice to Program participants for eligible expenses under the Program.

6. Reporting and Recordkeeping. Invest DSM will provide City with documentation of all Program payments to participants, bank statements, and other relevant information relating to this Contract and to the separate accounts described in Sections 2 and 3. Said documentation will be provided in form requested by the City and on no less than a quarterly basis.

8. Audit. The City may, by notice in writing, request access to Invest DSM's records related to this Contract for purposes of conducting an independent audit of costs and expenses paid or to be paid pursuant to this Contract, and/or to confirm administrative fee expenses or Program participation. 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 expense. In the event that Invest DSM undertakes its own independent audit involving the records and Program funding and administrative fee related to this Contract, a copy of said audit findings shall be promptly provided to City and may be used and relied upon by City in lieu of its audit rights set forth in this Section, at City's sole discretion.

9. Indemnification and Insurance. Invest DSM shall defend, pay on behalf of, indemnify and hold harmless the City of Des Moines, Iowa, its elected and appointed officials, employees and volunteers, and others working on behalf of the City, as provided for in Attachment 1 hereto. Developer shall obtain and maintain in continuous effect during the term of this Contract with the City, including all Contract renewal(s), and while any of its obligation remain unsatisfied, the insurance coverages, limits set forth in Attachment 1 hereto. The City reserves the right to require and enforce future revisions to the insurance requirements in Attachment 1, and Developer agrees to abide by such future revisions upon notice thereof. A Certificate of Insurance citing such coverages and limits shall be provided to the City prior to Invest DSM's commencement of services under this Contract and annually thereafter in the event of renewal(s) of this Contract.

10. Notices. All notices which the parties are authorized or required to give one another pursuant to this Contract 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:

Chris Johansen, Neighborhood Services Director
City of Des Moines
602 Robert D. Ray Drive
Des Moines, Iowa 50309

Notices to Invest DSM:

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

12. Declaration of Default and Notice. In the event that either party determines that the other party has defaulted in the performance of its obligations hereunder, the aggrieved party may

declare that default has occurred and give notice thereof to the defaulting party. Notice of default shall be given in writing, shall specify the nature of the default and the provision of the Contract involved, and shall specify what action is required of the defaulting party to correct the default. The defaulting party shall have thirty (30) calendar days from the date of its receipt of the notice of default to correct the default. If at the end of said thirty (30) calendar day period the default has not been corrected the aggrieved party may terminate the Contract as provided in Section 13 of this Contract.

13. Termination.

- (a) Either party may terminate this Contract for default by the other party by giving written notice of termination, following notice and right to cure as set forth in Section 12 above.
- (b) Any party may terminate this Agreement for any reason whatsoever.
- (c) In such event of termination as set forth in subsections (a) and (b) above, termination shall be effective on the thirtieth (30th) calendar day following giving of notice unless any default has been cured, as determined in the sole discretion of the aggrieved party.
- (d) The parties agree that upon such termination, this Contract and all obligations of all parties hereunder will terminate and cease, other than obligations to indemnify and insure; and that any funding previously provided hereunder by the City to Invest DSM that has not been expended prior to the effective date of termination shall be repaid in full by Invest DSM to City within thirty (30) calendar days of said effective date of termination, which obligation shall survive termination.

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

15. Governing Law, Attorney Fees and Court Costs. This Contract shall be governed by, construed and enforced in accordance with the laws of the State of Iowa and brought in Polk County District Court.

16. Co-Partnership Disclaimer. It is mutually understood that nothing in this Contract 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 or as specified in the Chapter 28E Agreement between the parties and the County and/or in the Operating Contract between the parties.

17. Assignment of Contract. Neither party may assign this Contract to a third party without the prior written consent of the other party hereto.

18. Grievance. In the event a program participant disagrees with any Program decisions made by Invest DSM, the City's Federal Funds Administrator will make the final determination for grievances.

19. Entire Agreement. This Contract represents the entire agreement between the City and Invest DSM related to the Program and the obligations of the parties related thereto. Any subsequent change or modification to the terms of this Contract shall be in the form of a duly approved and executed amendment to this Contract.

Signed on this _____ day of _____, 20____.

CITY OF DES MOINES, IOWA

Scott Sanders, City Manager

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 Scott Sanders, to me personally known, and who, being by me duly sworn did state that he is the City Manager, 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, and that Scott Sanders acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by him voluntarily executed.

Notary Public in the State of Iowa

Signed on this 11 day of April, 2022.

INVEST DSM, INC.

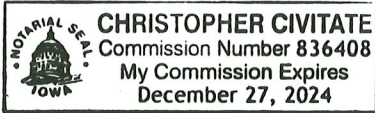
Amber Lynch
Amber Lynch, Executive Director

Acknowledgement

State of IOWA)
)
County of POLK) ss.

On this 11 day of April, 2022, before me, a Notary Public in and for said State and county, personally appeared Amber Lynch, to me personally known, who being by me duly sworn or affirmed did say that the person is the Executive Director of said Invest DSM, Inc., and that said instrument was signed on behalf of the said corporation by authority of its board and the said Amber Lynch acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

Christopher Civitate
Notary Signature
Notary Public in the State of Iowa



ATTACHMENT 1

CITY OF DES MOINES, IOWA
INVEST DSM – OPERATING AGREEMENT

INSURANCE & INDEMNIFICATION REQUIREMENTS

For the purposes of this Attachment and all provisions included herein, the term “Invest DSM” includes Invest DSM, its officers, agents, employees, subcontractors and others under the control of Invest DSM. The term “City” shall mean the City of Des Moines, Iowa, including its elected and appointed officials, employees, agents, volunteers, boards, commissions, and others working on its behalf.

1. GENERAL

Invest DSM shall purchase and maintain insurance to protect Invest DSM and City throughout the duration of the Agreement. Said insurance shall be provided by insurance companies “admitted” or “nonadmitted” to do business in the State of Iowa having no less than an A. M. Best Rating of “B+.” All policies shall be written on an occurrence basis and in form and amounts satisfactory to the City. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the City prior to Agreement execution or commencement of work and/or services.

2. INSURANCE REQUIREMENTS

- A. COMMERCIAL GENERAL LIABILITY INSURANCE: Invest DSM shall procure and maintain Commercial General Liability insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. Coverage shall include: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground- XCU (when applicable). ***Waiver of Subrogation in favor of the City is required as per paragraph 2.J. below.***

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by ISO standard Commercial General Liability Policy form ISO CG 0001 including standard exclusions or a non-ISO equivalent form.

- B. AUTOMOBILE LIABILITY INSURANCE: Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence and aggregate combined single limit covering Bodily Injury and Property Damage. Coverage shall include all owned, non-owned, and hired vehicles. If Invest DSM does not own any vehicles, coverage is required on non-owned and hired vehicles. Policy shall include Contractual Liability coverage. ***Waiver of Subrogation in favor of the City is required as per paragraph 2.J. below.***
- C. UMBRELLA/EXCESS LIABILITY INSURANCE: The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella or Excess Liability Insurance. If the Umbrella or Excess Insurance policy does not follow the form of the primary policies, it shall include the same endorsements as required of the primary policies. ***Waiver of Subrogation in favor of the City is required as per paragraph 2.J. below.***

- D. WORKERS' COMPENSATION & EMPLOYER'S LIABILITY INSURANCE: As required by State of Iowa Workers' Compensation Law, Invest DSM shall procure and maintain Workers' Compensation Insurance, including Employer's Liability Coverage. The Workers' Compensation Insurance shall be written with State of Iowa statutory limits. If, by Iowa Code Section 85.1A, Invest DSM is not required to purchase Workers' Compensation Insurance, Invest DSM shall have a copy of the State's Nonelection of Workers' Compensation or Employers' Liability Coverage form on file with the Iowa Workers' Compensation Insurance Commissioner, as required by Iowa Code Section 87.22. ***Waiver of Subrogation in favor of the City is required as per paragraph 2.J. below.***
- E. CRIME INSURANCE: Invest DSM shall procure and maintain Crime Insurance on a discovery basis covering Employee Dishonesty for each loss at a limit of not less than \$500,000 and with a deductible of not more than \$10,000. Those employees of Invest DSM who have access to or are responsible for the funds provided under this Agreement shall be covered by this insurance. In addition, the insurance shall include coverage for theft, disappearance and destruction for loss inside premises and for loss outside of premises. This insurance shall cover any losses attributable to Invest DSM's employees acting alone or in collusion with others who are not employees of Invest DSM.
- F. DIRECTORS & OFFICERS LIABILITY INSURANCE: Invest DSM shall procure and maintain Directors and Officers Liability Insurance with limits of liability of not less than \$1,000,000 per loss and \$2,000,000 aggregate per policy period for all losses.
- G. ADDITIONAL INSURED ENDORSEMENT: The General Liability Insurance policy shall include standard ISO endorsements CG 20 26 07 04 and CG 20 37 07 04 or their non-ISO equivalents. Invest DSM's insurance shall be primary to that of the City and noncontributory to any other insurance or similar coverage available to the City whether the other available coverage is primary, contributing or excess.
- H. GOVERNMENTAL IMMUNITY ENDORSEMENT: The General Liability Insurance policy shall include the City Governmental Immunities Endorsement language as provided below. Standard ISO or insurance carrier "Waiver of Immunity" endorsements are not acceptable.

**City OF DES MOINES, IOWA
GOVERNMENTAL IMMUNITIES ENDORSEMENT**

1. Nonwaiver of Government Immunity. The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Des Moines, Iowa, as Additional Insured does not waive any of the defenses of governmental immunity available to the City of Des Moines, Iowa under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
2. Claims Coverage. The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time. Those claims not subject to Code of Iowa Section 670.4 shall be covered by the terms and conditions of this insurance policy.
3. Assertion of Government Immunity. The City of Des Moines, Iowa, shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall

do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Des Moines, Iowa.

4. Non-Denial of Coverage. The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Des Moines, Iowa, under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Des Moines, Iowa.
5. No Other Change in Policy. The insurance carrier and the City of Des Moines, Iowa, agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

- I. CANCELLATION & NONRENEWAL NOTIFICATION ENDORSEMENT: The General Liability and Crime Insurance policies shall be endorsed to provide the City with no less than thirty (30) days Advance Written Notice of Cancellation, forty-five (45) days Advance Written Notification for Nonrenewal and ten (10) days Written Notification of Cancellation due to non-payment of premium. ***Written notifications shall be sent to: Risk Management, 400 Robert D Ray Drive, Des Moines, Iowa 50309.***
 - J. WAIVER OF SUBROGATION: To the fullest extent permitted by law, Invest DSM hereby releases the City from and against any and all liability or responsibility to Invest DSM or anyone claiming through or under Invest DSM by way of subrogation, or otherwise, for any loss without regard to the fault of the City or the type of loss involved including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Agreement. Invest DSM's policies of insurance shall contain either a policy provision or endorsement affirming the above stated release in favor of the City, including its elected and appointed officials, agents, employees and volunteers and others working on its behalf.
 - K. PROOF OF INSURANCE: The Consultant shall provide to the City Certificates of Insurance evidencing all insurance coverage as required in paragraphs A through J above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify the Title of the Agreement under "Description of Operations/Locations/Vehicle/Special Items". A Copy of the (1) Additional Insured Endorsements, (2) Governmental Immunities Endorsement and (3) Cancellation and Nonrenewal Notification Endorsement shall be submitted with the Certificates of Insurance. ***Mail Certificates of Insurance to: Risk Management, 400 Robert D Ray Drive, Des Moines, Iowa 50309.***
 - L. AGENTS AND SUBCONTRACTORS: Invest DSM shall require that any of its agents and subcontractors who perform work and/or services on behalf of Invest DSM purchase and maintain the types of insurance customary for the services being provided.
3. **INDEMNIFICATION REQUIREMENTS**

To the fullest extent permitted by law, Invest DSM agrees to defend, pay on behalf of, indemnify, and hold harmless the City against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and

court costs that may be asserted or claimed against, recovered from or suffered by the City by reason of any injury or loss including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with Invest DSM's acts or omissions under this Agreement, including that of its Board of Directors, Executive Director, officers, agents, employees, subcontractors and others under the control of Invest DSM.

Invest DSM's obligation to indemnify the City contained in this Agreement is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

The City shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by Invest DSM arising out of or in any way connected or associated with Invest DSM's work or services, including its officers, agents, employees, subcontractors and others working under the control of Invest DSM, except to the extent caused by or resulting from the negligent act or omission of the City.

Invest DSM expressly assumes responsibility for any and all damage caused to City property arising out of or in any way connected or associated with Invest DSM's work or services under this Agreement, including its officers, agents, employees, subcontractors and others working under the control of Invest DSM.

Invest DSM shall ensure that its activities on City property will be performed and supervised by adequately trained and qualified personnel and Invest DSM will observe all applicable safety rules.