

Date January 9, 2012

**APPROVAL OF SERVICE AGREEMENT FOR JOINT MAINTENANCE OF THE
WALNUT STREET TRANSIT MALL BETWEEN THE CITY,
DES MOINES AREA REGIONAL TRANSIT AUTHORITY AND THE
DOWNTOWN DES MOINES SELF-SUPPORTED MUNICIPAL IMPROVEMENT DISTRICT**

WHEREAS, the City of Des Moines, the Des Moines Area Regional Transit Authority (“DART”) and the Downtown Self-Supported Municipal Improvement District (“SSMID”) have negotiated the terms of an agreement for the joint maintenance of the Walnut Street Transit Mall between Second Avenue and Tenth Street; and

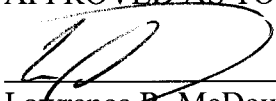
WHEREAS, in accordance with the terms of said agreement, DART will perform certain services with respect to its bus shelters and SSMID will perform certain maintenance and security services during the one-year term of the agreement commencing on July 1, 2011; and

WHEREAS, said service agreement for joint maintenance of the Walnut Street Transit Mall is in the best interests of the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the service agreement for joint maintenance of the Walnut Street Transit Mall between the City, DART and SSMID on file in the Office of the City Clerk is hereby approved and the Mayor is hereby authorized and directed to execute said Agreement on behalf of the City and the City Clerk is directed to attest to the Mayor’s signature.

BE IT FURTHER RESOLVED that the City Manager or his designee is hereby authorized and directed to administer the terms of the Agreement on behalf of the City and to authorize payments to SSMID in accordance with the terms of the Agreement.

APPROVED AS TO FORM: Moved by _____ to adopt.



Lawrence R. McDowell
Deputy City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

MOTION CARRIED APPROVED

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.

City Clerk

**SERVICE AGREEMENT BETWEEN THE CITY OF DES MOINES,
DES MOINES AREA REGIONAL TRANSIT AUTHORITY, AND THE DOWNTOWN
DES MOINES SELF-SUPPORTED MUNICIPAL IMPROVEMENT DISTRICT FOR
JOINT MAINTENANCE OF THE WALNUT STREET TRANSIT MALL**

THIS AGREEMENT is made and entered into this _____ day of _____, 2011 between the City of Des Moines, Iowa, a municipal corporation (hereinafter referred to as the "City"), the Des Moines Area Regional Transit Authority (hereinafter referred to as "DART") and the Downtown Des Moines Self-Supported Municipal Improvement District, an Iowa not for profit corporation (hereinafter referred to as "SSMID").

WHEREAS, the City, DART and SSMID entered a Service Agreement for Joint Maintenance of the Walnut Street Transit Mall dated August 9, 2010 which superseded in its entirety that certain Service Agreement for Joint Maintenance of the Walnut Street Transit Mall dated September 23, 2002 (the "Prior Agreement"); and

WHEREAS, the Walnut Street Transit Mall (hereinafter "Transit Mall") as used in this agreement, refers to the Walnut Street right-of-way bounded by Second Avenue to the east and Tenth Street to the west; and

WHEREAS, the Transit Mall is the primary bus transfer station for DART buses serving communities in the Des Moines metropolitan region and as a result of the busing activity, the Transit Mall is used by a significant workday population and after hours and weekend visitors from throughout the Des Moines metropolitan region; and

WHEREAS, the City has certain duties, rights and powers established by state and city law regarding its public property, including the Walnut Street right-of-way; and

WHEREAS, DART maintains a number of bus shelters in and along the Transit Mall for the convenience of its patrons; and

WHEREAS, SSMID's authorized purposes include enhanced maintenance and cleaning of public spaces and providing services to enhance the safety of persons and property, such as a "Goodwill Ambassador" program, within the defined boundaries of the SSMID District, which includes the area of the Transit Mall; and

WHEREAS, the timely performance of routine and periodic maintenance of the Transit Mall impacts directly on the health, safety, welfare and enjoyment of DART patrons and significant DART patron use of the Transit Mall results in SSMID devoting a relatively greater amount of certain specific services to the Transit Mall than to the remainder of SSMID's defined boundaries; and

WHEREAS, DART is experiencing extreme budget pressures for the fiscal year beginning July 1, 2011.

NOW, THEREFORE, the City, DART and SSMID do hereby agree as hereafter provided:

1. Term. The term of this Agreement shall be one year commencing on July 1, 2011 and ending June 30, 2012. This Agreement will terminate prior to the end of such term in the event the SSMID District is dissolved and terminated by action of the City Council pursuant to Iowa Code Section 386.5 or the SSMID Operating Agreement between the City and SSMID is otherwise terminated. Further, this Agreement will terminate prior to the end of such term in the event any party exercises its rights for early termination as specified in Section 6 of this Agreement.

2. Responsibilities of the City. The City will perform its duties and exercise its rights and powers established by state and city law as the City determines is appropriate regarding the infrastructure of the Walnut Street right-of-way in the Transit Mall.

3. Responsibilities of DART. DART will provide the following services within the Transit Mall:

a. DART will repair and maintain the bus shelters, including window cleaning on a regular basis.

b. DART will remove snow from sidewalk surfaces in and around the bus shelters to the extent of bus shelter overhangs.

c. DART will remove snow from sidewalk surfaces between the bus shelters or other bus patron amenities and the street curb at key access points to allow for safe entry and exit from buses.

d. DART will install and maintain signage to clearly define the nonsmoking area of the Transit Mall (the parties understand that the nonsmoking area extends from a line parallel to the street curb along the north side of the bus shelters on the north side of Walnut Street to a line parallel to the street curb along the south side of the bus shelters on the south side of Walnut Street or such larger area as may be determined by the State Department of Public Health or its designee). The design, contents, type and location of signage shall be in accordance with Iowa Code Section 142D.6 and subject to the approval of the City.

4. Responsibilities of SSMID. SSMID will provide the following services within the Transit Mall:

a. SSMID will devote a greater relative amount of the work time of its goodwill ambassadors and other roving personnel, such as off-duty police officers, to the Transit Mall as SSMID devotes of the same type of services to the remainder of the defined boundaries of the SSMID District. SSMID currently devotes approximately 1.5

out of its 12 goodwill ambassadors and approximately 250-300 hours of off-duty police officers' time to the Transit Mall area. SSMID will continue to devote no less than this current level of resources to the Transit Mall for the term of this Agreement.

b. SSMID will provide daily trash pickup, removal of trash bags from trash receptacles, and proper disposal of the trash bags removed from trash receptacles. SSMID will also replace trash receptacles as needed.

c. SSMID will provide daily inspections for trash and litter and will sweep and remove litter, trash and debris from bus shelters and sidewalks, including sidewalk access ramps where sidewalks enter Walnut Street, on a daily basis.

d. SSMID will: (1) remove snow from sidewalk access ramps where sidewalks enter Walnut Street, as needed on a seasonal basis; and (2) monitor the removal of snow from sidewalks by abutting property owners, reminding abutting property owners when necessary of their snow removal obligations under the law and advising the City when an abutting property owner is unresponsive to SSMID's snow removal reminder.

e. SSMID will arrange, with adjacent property owners and businesses or otherwise, to cover the costs to maintain planters, provide flowers for planting, and weed and water plants as needed seasonally.

f. SSMID will remind and encourage Transit Mall patrons to abide by the State nonsmoking law (Iowa Code Chapter 142D) in accordance with installed signage.

5. Funding of Transit Mall Maintenance Activities. Neither DART nor SSMID shall be responsible for the costs of any Walnut Street right-of-way infrastructure repair performed by the City within the Transit Mall, except by reason of becoming an abutting property owner to Walnut Street or a utility customer, or by separate written agreement. DART shall be responsible for all costs related to the Transit Mall services provided by DART pursuant to Section 3. For the one year term of this Agreement, the City shall pay \$40,000 to SSMID divided in four equal quarterly payments upon receipt of an invoice from SSMID each quarter, which invoice shall detail the Transit Mall services including work time provided by SSMID pursuant to Section 4.

6. Termination. This Agreement may be terminated at any time by any party upon delivery of written notice to the other parties of intent to terminate this Agreement. Said termination shall occur thirty days after delivery of said notice of termination. The City agrees to compensate SSMID for services rendered under this Agreement to the effective date of such termination, or to the date such services cease to be provided by SSMID, whichever occurs earlier, unless otherwise agreed by such parties.

7. Insurance, Indemnification. SSMID shall purchase and maintain insurance in accordance with the insurance requirements set forth in Attachment 1 to protect SSMID, DART and the City throughout the duration of this Agreement. SSMID shall not commit any act which

shall invalidate any policy of insurance. SSMID shall defend, indemnify and hold harmless the City in accordance with the indemnification requirements set forth in Attachment 1. SSMID shall be subject to all terms and provisions set forth in Attachment 1 and the exhibits thereto.

8. Notices and Invoices. All notices which the parties are authorized or required to give one another pursuant to this Agreement, and all invoices, shall be in writing and may be personally delivered, sent by ordinary mail, or electronic medium to the addresses hereafter provided. Mailed notices or invoices shall be deemed to be received by the party to whom directed when they are postmarked. If notice or invoice is given by electronic medium, such notice or invoice shall be deemed to be delivered when the electronic medium is transmitted, provided the person whose e-mail address is used is still in the listed job position on the date transmitted. Such notices and invoices shall be delivered or mailed to the following persons at the addresses or e-mail addresses listed:

Notices to the City:

City Manager
City Hall
400 Robert D. Ray Drive
Des Moines, IA 50309
E-Mail Address: raclark@dmgov.org

Notices to DART:

Elizabeth Presutti, General Manager
Des Moines Area Regional Transit Authority
1100 MTA Lane
Des Moines, IA 50309
E-Mail Address: dart@ridedart.com

Notices to SSMID:

Glenn Lyons, President and CEO
Downtown Community Alliance
700 Locust Street, Suite 100
Des Moines, IA 50309
E-Mail Address: glyons@downtowndesmoines.com

9. Declaration of Default and Notice. In the event that any party determines that another party has defaulted in the performance of its obligations under this Agreement, the aggrieved party may declare that default has occurred and give notice thereof to the defaulting party and other party. Notice of default shall be given in writing, shall specify the nature of the default and the provision of this Agreement involved, and shall specify what action is required by the defaulting party to correct the default. The defaulting party shall have 30 days from the date of its receipt of the notice of default to correct the default. If at the end of said 30-day period the default has not, in the opinion of the aggrieved party, been corrected, that party may thereupon take whatever action it determines is necessary or appropriate to enforce or obtain performance of the provisions of this Agreement.

10. Validity of Terms. 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 other section, provision or part thereof not found to be invalid or unconstitutional.

11. Counterparts. This Agreement may be executed in multiple counterparts, each of which so executed shall be deemed to be an original.

12. Entire Agreement. This Agreement represents the entire agreement between the parties. Any subsequent change or modification to the terms of this Agreement shall be in the form of a duly executed amendment to this Agreement. The parties acknowledge that this Agreement supersedes the Prior Agreement in its entirety.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THE CITY OF DES MOINES, IOWA

T.M. Franklin Cownie
Mayor

ATTEST:

Diane Rauh
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2011 before me, the undersigned, a Notary Public, personally appeared T.M. FRANKLIN COWNIE and DIANE RAUH, to me personally known, who, being by me duly sworn, did state that they are the Mayor and City Clerk, respectively, of the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as Roll Call No. _____ on the ____ day of _____, 2011, and that T.M. Franklin Cownie and Diane Rauh acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

Notary Public for the State of Iowa

**DES MOINES AREA REGIONAL
TRANSIT AUTHORITY**

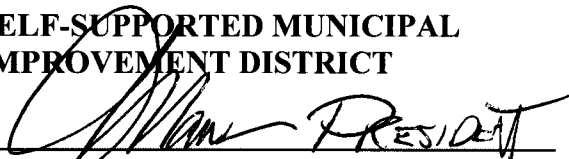
Angela Connolly, Commission Chair

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this _____ day of _____, 2011, before me, the undersigned, a Notary Public, personally appeared Angela Connolly, to me personally known, who, being by me duly sworn, did state that she is the Commission Chair of the DES MOINES AREA REGIONAL TRANSIT AUTHORITY, that no seal has been procured by the corporation; that the instrument was signed on behalf of the corporation by authority of its Commission; and that Angela Connolly acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by her voluntarily executed.

Notary Public for the State of Iowa

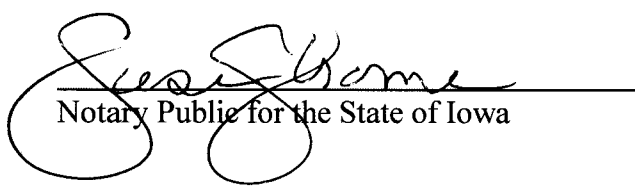
**DOWNTOWN DES MOINES
SELF-SUPPORTED MUNICIPAL
IMPROVEMENT DISTRICT**



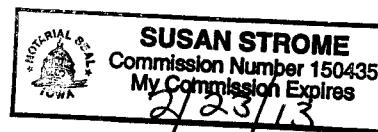
Kent Mauck, President

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 14 day of December, 2011, before me, the undersigned, a Notary Public, personally appeared Kent Mauck, to me personally known, who, being by me duly sworn, did state that he is the President of DOWNTOWN DES MOINES SELF-SUPPORTED MUNICIPAL IMPROVEMENT DISTRICT, that no seal has been procured by the corporation; that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that Kent Mauck acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by him voluntarily executed.



Notary Public for the State of Iowa



ATTACHMENT 1

STANDARD INSURANCE REQUIREMENTS (Non-Construction/Major) INSURANCE AND INDEMNIFICATION REQUIREMENTS

1. GENERAL

SSMID shall purchase and maintain insurance to protect SSMID, DART and the City of Des Moines, Iowa throughout the duration of this Agreement. Said insurance shall be provided by an insurance company(ies), “admitted” and “nonadmitted” to do business in the State of Iowa, having no less than an A.M. Best Rating of “B+”. Except as specifically noted below, all policies shall be written on a per occurrence basis, not a claims-made basis, and in form and amounts and with companies satisfactory to the City of Des Moines. 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. WORKER’S COMPENSATION & EMPLOYER’S LIABILITY INSURANCE: SSMID shall procure and maintain during the life of this Agreement, Worker’s Compensation Insurance, including Employer’s Liability Coverage, in accordance with all applicable statutes of the State of Iowa. The coverage limits shall include \$500,000 each accident for Bodily Injury by Accident, \$500,000 each accident for Bodily Injury by Disease, and \$500,000 policy limit for Bodily Injury by Disease.

This requirement is waived if, under the law as stated in Chapter 85 of the Code of Iowa, SSMID is not required to carry such coverage.

B. COMMERCIAL GENERAL LIABILITY INSURANCE: SSMID shall procure and maintain during the life of this Agreement, Commercial General Liability insurance on a per occurrence basis with limits of liability not less than \$5,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) deletion of Explosion, Collapse and Underground (XCU), where applicable.

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 0001, Ed 07/98 with standard exclusions “a” through “o” or any subsequent ISO equivalent or a non-ISO equivalent form). Any additional exclusions shall be clearly identified on the Certificate of Insurance and shall be subject to the review and approval of the City.

C. AUTOMOBILE LIABILITY INSURANCE: SSMID shall procure and maintain during the life of this Agreement, Automobile Liability Insurance with limits of liability of not less than \$5,000,000 per occurrence combined single limit including Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

If SSMID does not own any vehicles, coverage is required on non-owned and hired vehicles.

D. UMBRELLA/EXCESS INSURANCE: The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella/Excess Insurance. The Umbrella/Excess Insurance shall also be written on a per occurrence basis and shall include the same endorsements as required of the primary policy(ies).

E. CRIME INSURANCE: SSMID shall procure and maintain during the life of this Agreement, Crime Insurance on an occurrence bases covering Employee Dishonesty and Computer Fraud for each loss at a limit of not less than \$100,000. The insurance carrier shall be liable for direct losses of money, securities, and other property of the City caused by theft or forgery by any employee of SSMID acting alone or in collusion with others who are not employees of SSMID. In addition, the insurance shall include coverage for theft, disappearance and destruction for loss outside and inside the premises. Theft shall mean the unlawful taking of money, securities or other property to the deprivation of the City. The above are the minimum Crime Insurance requirements to be maintained, however, these limits may be adjusted at the City's discretion subject to changes in the total amount of money contributed by the City to SSMID. The City's third-party interest shall be covered through the inclusion of a "Joint Loss Payee" endorsement. SSMID agrees to (1) submit claims on behalf of the City to recover applicable City losses and (2) ensure that the City receives payment for those losses.

F. DIRECTORS AND OFFICERS INSURANCE: SSMID shall procure and maintain during the life of this Contract Directors and Officers Liability Insurance on a claims made basis and with limits of not less than \$1,000,000.

G. SUBCONTRACTORS: SSMID shall require that any of its agents and subcontractors who perform work and/or services pursuant to the provisions of this Agreement meet the same insurance requirements as are required of SSMID.

H. ADDITIONAL INSURED & GOVERNMENTAL IMMUNITY: The insurance policies providing the coverages specified in B, C, and D above shall include the City of Des Moines, Iowa Additional Insured and Governmental Immunities Endorsements. Copies of these endorsements are attached.

I. CANCELLATION & MATERIAL CHANGE ENDORSEMENT: The insurance policies providing the coverages specified in A, B, C, D and E above shall include the City of Des Moines, Iowa Cancellation & Material Change Endorsement. A copy of this endorsement is attached.

J. PROOF OF INSURANCE: SSMID shall provide to the City of Des Moines, Iowa a Certificate(s) of Insurance evidencing all required insurance coverage as provided in A through F above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify

under "Description of Operations/ Locations/ Vehicle/Special Items": (1) the title of the Agreement or permit or license, etc. and (2) the following statement, "*Where required, Additional Insured, Governmental Immunities, and Cancellation and Material Change endorsements have been included as per attached.*" These endorsements shall be attached to the Certificate(s) of Insurance so as to evidence their inclusion in the coverages required.

3. INDEMNIFICATION REQUIREMENTS

A. INDEMNIFICATION (HOLD HARMLESS) PROVISION: To the fullest extent permitted by law, SSMID agrees to 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 of Des Moines, Iowa against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Des Moines, Iowa, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Des Moines, Iowa, by reason of personal injury, including bodily injury or death, and property damages, including loss or use thereof, which arises out of or is in any way connected or associated with the work and/or services provided by SSMID and its subcontractors pursuant to the provisions of this Agreement. It is the intention of the parties that the City of Des Moines, Iowa, its elected and appointed officials, employees, volunteers or other working on behalf of the City of Des Moines, Iowa shall not be liable or in any way responsible for injury, damage, liability, loss or expense incurred by SSMID, its officers, employees, subcontractors, and others affiliated with SSMID due to accidents, mishaps, misconduct, negligence or injuries either in person or property resulting from the work and/or services performed by SSMID and its subcontractors pursuant to the provisions of this Agreement.

SSMID expressly assumes full responsibility for any and all damage or injuries which may result to any person or property by reason of or in connection with the work and/or services provided by SSMID and its subcontractors pursuant to this Agreement, and agrees to pay the City of Des Moines, Iowa for all damages caused to the City of Des Moines, Iowa premises resulting from the activities of SSMID, its officers, employees, subcontractors, and others affiliated with SSMID.

SSMID represents that its activities pursuant to the provisions of this Agreement will be performed and supervised by adequately trained and qualified personnel, and SSMID will observe, and cause its officers, employees, subcontractors and others affiliated with SSMID to observe all applicable safety rules.

4. WAIVER OF SUBROGATION

A. WAIVER OF SUBROGATION: To the extent permitted by law, SSMID hereby releases the City of Des Moines, Iowa, its elected and appointed officials, its agents, employees and volunteers and other working on behalf of the City of Des Moines, Iowa, from and against any and all liability or responsibility to SSMID or anyone claiming through or under SSMID by way of subrogation or otherwise, for any loss or damage to property caused by fire or any other casualty. 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. SSMID's policies of insurance shall contain a clause

or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of SSMID to recover thereunder.

EXHIBIT

CITY OF DES MOINES, IOWA ADDITIONAL INSURED ENDORSEMENT

The City of Des Moines, Iowa, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members, employees, and volunteers, are included as Additional Insureds. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage be primary, contributing or excess.

CITY OF DES MOINES, IOWA GOVERNMENTAL IMMUNITIES ENDORSEMENT (For use when *including* the City as an Additional Insured)

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 an 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.
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.

**CITY OF DES MOINES, IOWA CANCELLATION AND MATERIAL CHANGES
ENDORSEMENT**

Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction in coverage and/or limits and ten (10) days written notice of non-payment of premium shall be sent to: Risk Management Office, City of Des Moines, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309. This endorsement supersedes the standard cancellation statement on the Certificate of Insurance to which this endorsement is attached.