



Date February 10, 2020

APPROVING EXTENSION OF 28E AGREEMENT BETWEEN THE NEIGHBORHOOD DEVELOPMENT COPRPORATION AND THE CITY OF DES MOINES

WHEREAS, a central part of the Neighborhood Revitalization Program was the creation of the Neighborhood Development Corporation (NDC) which plans, coordinates, and implements public and private redevelopment efforts within chartered and designated neighborhoods; and

WHEREAS, on December 17, 2007 by Roll Call No. 07-2422, the City Council of the City of Des Moines approved the initial Chapter 28E Intergovernmental Agreement with the NDC governing the use of government source monies contributed to the NDC; and

WHEREAS, on March 26, 2012 by Roll Call No. 12-0494, the City Council approved an extension of the Chapter 28E Agreement with NDC and on October 9, 2017 by Roll Call No. 17-1747, the City Council approved the current extension of the 28E Agreement with NDC, governing the use of government source monies contributed to the NDC; and

WHEREAS, NDC and the City wish to enter into a further extension to the Chapter 28E Agreement to and including December 31, 2024 which extended Chapter 28E Agreement provides for a contribution of \$1,850,000 in calendar year 2020, and annual contributions of \$1,000,000 of government source monies to NDC in calendar years 2021, 2022, 2023 and 2024.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that the Extension of Chapter 28E Agreement between the City of Des Moines and NDC, on file in the Office of the City Clerk, is hereby approved and the Mayor is authorized to execute the Extension of Chapter 28E Agreement on behalf of the City and the City Clerk is directed to attest to his signature.

BE IT FURTHER RESOLVED that:

- 1. Upon completed execution of the Extension of Chapter 28E Agreement, the City Clerk is directed to file executed counterparts of the Extension of Chapter 28E Agreement with the Secretary of State.

★ Roll Call Number

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- 2. Provided the Community Development Director verifies that all requirements contained in the Extension of Chapter 28E Agreement are satisfied, the Community Development Director is authorized to execute on behalf of the City any other documents necessary to implement the Extension of Chapter 28E Agreement and upon such verification the Finance Director is authorized to pay the annual contribution of government source monies to NDC in accordance with the terms of the Extension of Chapter 28E Agreement.

(Council Communication No. 20-064)

Moved by _____ to adopt.

Approved as to Form:

Lawrence R. McDowell
Deputy City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
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

**EXTENSION OF
28E AGREEMENT BETWEEN
NEIGHBORHOOD DEVELOPMENT CORPORATION
AND THE CITY OF DES MOINES, IOWA**

THIS 28E AGREEMENT ("Agreement") is made and entered into as of the 4th day of February, 2020 by and between the City of Des Moines, Iowa (hereinafter referred to as "City") and Neighborhood Development Corporation, 2331 University Avenue, Suite 202, Des Moines, Iowa 50311 (hereinafter referred to as "NDC") under and in accordance with Iowa Code Chapter 28E.

WHEREAS, the City is a municipal corporation established under the laws of the State of Iowa; and

WHEREAS, NDC is a non-profit corporation established under the Iowa Non-Profit Corporation Act, Chapter 504A of the Iowa Code; and

WHEREAS, the NDC was incorporated on February 17, 1999 and the underlying purpose of this Agreement is to plan, coordinate and implement public and private redevelopment efforts within Chartered and Designated Neighborhoods as approved by the Des Moines City Council in the City of Des Moines, Iowa; and

WHEREAS, this Agreement shall serve to further extend a 28E Agreement originally executed on December 17, 2007, extended by the parties on March 16, 2012 and further extended by the parties on October 4, 2017; and

WHEREAS, no legal or administrative entity is being created by this Agreement.

NOW, THEREFORE, the parties hereto in consideration of the mutual covenants herein, agree as follows:

1. This extension to Agreement shall extend the term through calendar year 2024 and shall supersede the prior extension dated October 4, 2017 with respect to the City contribution for calendar year 2020. The City shall contribute to NDC \$1,850,000 for calendar year 2020 and contribute to NDC \$1,000,000.00 annually for calendar years 2021, 2022, 2023 and 2024 (hereinafter called "government source monies") exclusively for the actual project costs of NDC redevelopment efforts within the City of Des Moines.

The City's obligation to pay the contribution of government source monies for any particular year shall be an annual obligation limited to currently budgeted funds and not a general obligation or other indebtedness of the City or a pledge of its full faith and credit under the meaning of any constitutional or statutory debt limitation, and such payment for any particular year shall in all respects be subject to the annual appropriation and the approval and issuance of any general obligation bonds

by the City Council of the City necessary to fund such payment for that particular year.

NDC specifically agrees that a minimum of 80% of all prior annual contributions of government source monies must be obligated pursuant to valid contracts, before additional government source monies may be contributed by the City.

2. NDC may expend from each City annual contribution of government source monies an amount not to exceed \$200,000 for NDC operating expenses.
3. During the five year extension term of this Agreement NDC may expend a total amount not to exceed \$250,000 from the City's contributions of governmental source monies to pay consultants for studies and plans which will advance NDC's efforts to redevelop property within the City of Des Moines.
4. NDC covenants that it will use its best efforts to take no action to cause any general obligation bonds issued by the City for the purpose of providing government source monies and funding for the NDC's activities to be classified as Private Activity Bonds under Section 141 of the Internal Revenue Code and regulations issued thereunder.
5. NDC further covenants as follows:
 - a. If the City determines to contribute government source monies to NDC with proceeds of tax exempt bonds, it shall notify NDC and provide a description of any use limitations required in connection with such contribution. NDC shall determine if such spending limitation will impair NDC's ability to support the programs referred in paragraph 7 herein. If the NDC accepts the contribution of bond proceeds, it will conform its operations and policies with respect to government source monies to such use limitations for so long as any of the bonds remain outstanding.
 - b. It will also abide by any advice communicated from time to time by the Finance Director or City Attorney of the City as may be necessary to maintain the tax exempt status of the bonds.
 - c. It will maintain accurate records of the monies received from the City including the types, amounts and yields of all investments of unexpended government source monies and earnings thereon in order to permit the City, if necessary, to confirm ultimate use and to calculate the yields and earnings thereon.
 - d. It will permit access to all investment information required or requested by the City.
 - e. It will provide an annual report for the prior year to the City, on or before each succeeding January 31, stating the date of deposit into the funds

described in paragraph 6, below, the date, amount and purpose of all expenditures, from such funds, and the balance of such funds as of the date of certification.

6. NDC shall place all government source monies contributed by the City to the NDC in segregated accounts. The NDC further agrees that all of the NDC's investments of government source monies shall be consistent with the NDC's Investment Policy currently in effect and forwarded to the City on the effective date of this Agreement. Any further amendments to the current NDC Investment Policy must be communicated by the NDC to the City.
7. NDC agrees to implement redevelopment projects designed to assist in the creation of housing and small business and employment opportunities in the City of Des Moines. Such activities to be conducted exclusively in the City of Des Moines may include the following:
 - a. The acquisition of commercial and residential properties for future development consistent with the Plan DSM: Creating Our Tomorrow Land Use Plan and other government-approved development plans.
 - b. The purchasing, leasing or selling of real property.
 - c. Participating in or sponsoring real estate development projects.
 - d. Entering into lawful contracts and agreements for the redevelopment of commercial and residential properties.
 - e. Entering into other cooperative efforts with public and private entities to support governmental unit revitalization and redevelopment efforts.
 - f. It is anticipated that NDC will obtain other financing to support the above efforts, above and beyond those government source monies contributed by the City for its operating budget, including without limitation the following sources:

- Commercial banks.
- Equity funds.
- County funds.
- Other City grant funds.
- Revenue bonds.
- Polk County Housing Trust Fund.
- Private funds.
- Neighborhood Finance Corporation loan funds.
- State grants.
- Income generated from commercial property.

- g. Participating in such other redevelopment projects approved by the Director of the City Community Development Department.
8. The City agrees that NDC may only use both the principal and interest earned on the government source monies contributed to the NDC by the City pursuant to this Agreement to fund redevelopment projects developed by the NDC and permitted under the terms of this Agreement.
9. NDC agrees that all actions taken by the NDC related in any way to the government source monies contributed by the City to NDC shall be consistent with the NDC's Procurement Policy and other related corporate policies in order to ensure that no NDC employee, volunteer, officer, director, Board Member (or any of their family members) receives any improper personal gain or benefit with respect to any agreement or activity funded in whole or in part with government source monies contributed by the City to the NDC. Any amendments to the current NDC Procurement Policy or other related corporate policies must be consistent with the terms of this paragraph and be communicated by the NDC to the City.
10. NDC will submit NDC's annual calendar year budget, as well as all amendments thereto, to the City within 30 days after adoption by the NDC's Board of Directors.
11. NDC will submit NDC's annual audited financial report, which will include an audit in accordance with OMB Circular A-133 when applicable, along with any additional audit communications addressed to NDC's management or NDC's Board of Directors, to the City within thirty (30) days after its issuance by the NDC's auditing firm.
12. NDC will submit to the City quarterly reports of the NDC's programs and activities funded using government source monies paid to NDC by the City pursuant to this Agreement within forty-five (45) days following the end of each three month period ending on March 31, June 30, September 30 and December 31 of each year during the term of this Agreement.
13. NDC will submit, upon request, such evidence of NDC's management and other policies, procedures, and practices to the City as the City may reasonably request from time to time in order to document that the NDC's management and other policies, procedures and practices comply with the management protocol established by the City dated May 28, 2007 for entities entering into 28E agreements with the City. A copy of this protocol is attached hereto as Exhibit A and is incorporated herein by this reference as if set out in full.
14. All documents and information to be submitted by the NDC to the City pursuant to this Agreement shall be delivered to the City Manager's Office.
15. Should any part of any provision contained in this Agreement be rendered or declared invalid by reason of any existing or subsequently enacted legislation, regulation or by any decree of a court of competent jurisdiction, the remaining

provisions shall nevertheless remain in full force and effect to the maximum extent permitted by law.

16. This Agreement may be terminated upon written notice from the City to NDC postmarked on or before July 1 of each year during the term of this Agreement, such termination to take effect on the following December 31. Following termination NDC shall timely file its final annual report and any and all government source monies which have not been expended by the date of such termination shall not be returned by the NDC to the City, but shall remain in trust for use for the purposes of this Agreement upon designation of a City-approved qualified non-profit administrator of programs created hereunder.
17. This Agreement shall in all respects be construed in accordance with and governed by all applicable laws and regulations of the Federal and Iowa governments.
18. Subject to the provisions contained in paragraph 16, the duration and term of this Agreement shall be from January 1, 2020 through December 31, 2024, unless further extended for a term certain by all parties.
19. That this Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements between them relating to the subject matter hereof and may not be amended except in writing signed by the parties and filed as set out below.
20. That this Agreement shall be in full force and effect upon the happening of all of the following:
 - a. Its execution by the parties to this Agreement after acceptance and approval by the Des Moines City Council.
 - b. An executed counterpart or photocopy of this Agreement is filed with the Secretary of State.

IN WITNESS WHEREOF, the parties have executed this Agreement on the ____ day of _____, 2020.

CITY OF DES MOINES, IOWA

ATTEST:

T.M. Franklin Cownie
Mayor

P. Kay Cmelik
City Clerk

APPROVED AS TO FORM:

Lawrence R. McDowell
Deputy City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2020, 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. 20-_____ of City Council on the ____ day of _____, 2020, 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 and for the State of Iowa

