



Date ..... June 22, 2020 .....

RESOLUTION APPROVING OPERATING AGREEMENT WITH INGERSOLL GRAND  
SELF-SUPPORTED MUNICIPAL IMPROVEMENT DISTRICT FOR THE PROVISION OF  
SERVICES AND ACTIVITIES WITHIN THE INGERSOLL GRAND SSMID  
THROUGH JUNE 30, 2025

WHEREAS, on November 5, 2012, by Roll Call No. 12-1719, the City Council received the Petition to Establish the Ingersoll Grand Self-Supported Municipal Improvement District (the "Petition") which requested the creation of the Ingersoll Grand Self-Supported Municipal Improvement District (the "SSMID District") to provide funding for the delivery of enhanced public improvements and services within the SSMID District; and,

WHEREAS, on November 5, 2012, by Roll Call No. 12-1720, the City Council adopted a declaration of the City Council's intentions regarding the use of the proceeds from the tax levies within the proposed SSMID District, if such district was established; and,

WHEREAS, after notice and hearing as required by law, the City Council enacted Ordinance No. 14,157 on January 28, 2013, establishing the Ingersoll Grand Self-Supported Municipal Improvement District, and authorizing the annual levy of a Combined Capital Improvement and Operation Tax and a Debt Service Tax, not to exceed an aggregate rate of \$2.25 per thousand dollars (\$1,000) of taxable value to finance the delivery of the enhanced public improvements and services; and,

WHEREAS, the Petition and the declaration by the City Council both anticipate the designation of an organization to serve as the Ingersoll Grand Self-Supported Municipal Improvement District Advisory Board to annually recommend a budget for the provision of enhanced services and public improvements within the SSMID District in the next fiscal year, and to contract with the City for the provision of the enhanced services; and,

WHEREAS, Ingersoll Grand Self-Supported Municipal Improvement District (the "Corporation") was established as an Iowa not-for-profit corporation separate and independent from the SSMID District of the same name established by the City; and,

WHEREAS, on August 26, 2013, the City Council approved an Operating Agreement with the Corporation whereby the Corporation has agreed to serve as the Ingersoll Grand Self-Supported Municipal Improvement District Advisory Board to annually recommend a budget for the provision of enhanced services and public improvements within the SSMID District in the next fiscal year, and to provide those services in accordance with the budget approved by the City Council for the SSMID District for a term expiring on December 31, 2015, which was extended to June 30, 2020 on December 1, 2015; and,



**Roll Call Number**

**Agenda Item Number**

53

Date June 22, 2020

WHEREAS, the City Manager has negotiated a new Operating Agreement with the Corporation for a term ending June 30, 2025; and,

WHEREAS, the amended Operating Agreement is on file and available for inspection by the public in the office of the City Clerk.

NOW THEREFORE, be it resolved by the City Council of the City of Des Moines, Iowa, as follows:

1. The Operating Agreement with the Corporation is hereby approved. The Mayor is hereby authorized and directed to execute the amended Operating Agreement on behalf of the City of Des Moines, and the City Clerk are hereby authorized and directed to execute the Operating Agreement.

2. The City Manager or his designee is hereby authorized and directed to administer the Operating Agreement in accordance with its terms.

( Council Communication No. 20- 290 )

MOVED by \_\_\_\_\_ to adopt.

FORM APPROVED:

Thomas G. Fisher Jr.

Thomas G. Fisher Jr.  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED

APPROVED

\_\_\_\_\_  
Mayor

**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.

\_\_\_\_\_  
City Clerk

# OPERATING AGREEMENT

## Ingersoll Grand Self-Supported Municipal Improvement District

THIS AGREEMENT is made on, or as of, the \_\_\_\_ day of June, 2020 by and between the City of Des Moines, Iowa, a municipal corporation (hereinafter the "City") and Ingersoll Grand Self-Supported Municipal Improvement District, an Iowa not-for-profit corporation (hereinafter "Operator"), which is a legal entity separate and distinct from the Ingersoll Grand Self-Supported Municipal Improvement District (hereinafter the "SSMID District") created by City Ordinance No. 15,157, passed January 28, 2013, in response to the Petition to Establish the Ingersoll Grand Self-Supported Municipal Improvement District (hereinafter the "Petition").

WHEREAS, the SSMID District was created to serve the following purposes within an area (hereinafter the "District") along the Ingersoll Avenue corridor between Martin Luther King Jr. Parkway and 40th Street and along the Grand Avenue corridor between Martin Luther King Jr. Parkway and 28th Street and the intervening north/south streets, as shown by the map attached hereto as Exhibit "A":

- 1) To undertake the acquisition, construction, installation, operation, maintenance and repair within the public rights-of-way of Ingersoll and Grand Avenues within the District of 'improvements' as defined in the Act, consisting of improved sidewalks, curbs and cross-walks, landscaping, planters, decorative lighting, utility relocation, traffic signals, and related pedestrian improvements (hereinafter collectively referred to as the "Improvements").
- 2) To undertake the administration and provision of the following services within the District (hereinafter collectively referred to as the "Services"):
  - i) Enhanced maintenance and cleaning of public spaces, including:
    - Sidewalk sweeping and power wash cleaning;
    - Cleaning public alleys and developed public spaces;
    - Removal of illegal graffiti, signs and stickers from public spaces and improvements; and,
    - Maintenance of seasonal plantings.
  - ii) Activities and programs to enhance the safety of persons and property within the District, including establishment of a "Goodwill Ambassador" program to provide uniformed and unarmed civilians on streets within the District who can provide public information, hospitality service, assistance to persons within the District and cleaning services.
  - iii) Development and management of activities in support of marketing, business retention and attraction, including:
    - Conduct market analyses, business retention surveys and image surveys;
    - Establish databases of information relevant to marketing, business retention and attraction;
    - Space referrals and assistance;
    - Business-to-business communications programs;
    - Business marketing materials;
    - Miscellaneous business support services;

- Marketing activities, including media and advertising campaigns and communication pieces (calendar of events, newsletters, shopping directories, maps, holiday brochures);
  - Establishment and promotion of special events, festivals, and holiday activities in public spaces; and,
  - Transportation programs.
- iv) Capital, physical or other improvements designed to enhance the image and appearance of the District, including:
- Seasonal and holiday decorations;
  - Signage and banners;
  - Installation of seasonal plant materials and trees; and,
  - Transportation infrastructure.
- 3) Paying the administrative expenses for the provision of the Improvements and Services identified above, including but not limited to legal and engineering fees.

WHEREAS, pursuant to City Ordinance No. 15,157, the City is authorized to use the proceeds of the Combined Capital Improvement and Operation Tax from the SSMID District for the purposes of paying (or reimbursing the City with respect thereto) all or part of the costs incurred by the City in connection with:

- a) The acquisition, construction, installation, operation, maintenance and repair of the Improvements as described above;
- b) The provision of the Services as described above;
- c) The administrative expenses for the provision of the Improvements and Services; and,
- d) Any other expenses reasonably incurred in fulfilling the purposes of the District.

WHEREAS, on November 5, 2012, by Resolution and Roll Call No. 12-1720, the City Council approved and adopted the following statements as a declaration of the City Council's intentions regarding the use of the Combined Capital Improvement and Operation Tax and the Debt Service Tax levied within the Ingersoll Grand Self-Supported Municipal Improvement District (the following statements are hereinafter referred to as the "City Council's Declaration of Intent"):

- a) While a maximum aggregate levy rate of \$2.25 per thousand dollars (\$1,000) of taxable value is permitted by the Petition, the City Council will endeavor to minimize the levy annually upon review of the budget submitted by the Ingersoll Grand Self-Supported Municipal Improvement District Advisory Board.
- b) As required by the terms of the Petition, priority will be given to the use of the proceeds of the Combined Capital Improvement and Operation Tax for the payment of, or reimbursement of the City for the payment of, the incremental costs incurred by the City for the operation, maintenance and repair of the existing and planned future streetscape improvements, above the costs the City would otherwise have incurred for the operation, maintenance and repair of standard sidewalks and streetscape improvements.
- c) The City will not diminish the type and extent of governmental services provided within the Ingersoll Grand SSMID, nor will it seek to transfer the cost of providing such services from the general fund or the Capital Improvement Program to the Combined Capital Improvement and Operation Tax or the Debt Service Tax.
- d) The total amount of funds which would be derived from the annual levy of the Combined Capital Improvement and Operation Tax if the Ingersoll Grand SSMID were

not located within the Ingersoll-Grand Commercial Urban Renewal Area tax increment financing district will be made available annually for the undertakings authorized by the Petition, notwithstanding the fact that a portion of the Combined Capital Improvement and Operation Tax revenues may be captured by tax increment financing district. The City Council will take all actions necessary to accomplish this intent, including, if necessary, allocation to those undertakings of a portion of the incremental property taxes captured by such tax increment financing district, but only to the extent permitted by applicable law.

WHEREAS, Operator was established to serve as the Ingersoll Grand Self-Supported Municipal Improvement District Advisory Board described in the Petition and the City Council's Declaration of Intent; and,

WHEREAS, as anticipated by the Petition, the City desires to contract with Operator to serve as the Ingersoll Grand Self-Supported Municipal Improvement District Advisory Board and to provide the Improvements and Services for the SSMID District, exclusive of that portion of the Improvements consisting of the acquisition, construction and installation of public improvements.

NOW THEREFORE, in accordance with the intent of the Petition, the City Council's Statement of Intent, and City Ordinance No. 15,157, and in consideration of the respective agreements, undertakings and mutual covenants herein contained, the parties mutually agree as follows:

1. Designation of Operator, Administration. A. The City hereby engages Operator to provide the following services and activities to the SSMID District (hereinafter collectively referred to as the "SSMID Services and Activities"):

- a) To serve as the Ingersoll Grand Self-Supported Municipal Improvement District Advisory Board and annually submit a recommended budget by October 1st for the Improvements and Services to be provided in the next fiscal year.
- b) To operate, maintain and repair the existent Improvements as described above;
- c) To provide the Services as described above; and,
- d) To provide the necessary administrative and supervisory activities for the provision of the Improvements and Services (exclusive of that portion of the Improvements consisting of the acquisition, construction and installation of public improvements).

B. Operator shall subcontract with a qualified Certified Public Accountant for the performance of all financial accounting obligations under this agreement. Operator shall self-perform or subcontract for the performance of Operator's other administrative obligations under this Agreement. Operator and its subcontractors shall conduct the SSMID Services and Activities in strict accordance with the current annual SSMID budget approved by the Des Moines City Council, including all SSMID program descriptions, terms and conditions contained therein. The annual SSMID budget approved by the City Council for each fiscal year, including all attached descriptions, terms and conditions are hereby incorporated in and made a part of this Agreement effective upon the commencement of that fiscal year .

C. The City shall not use this Agreement or the SSMID Services and Activities provided by Operator to diminish the type and extent of governmental services that are provided by the City within the District, except that those enhanced services previously funded from the Ingersoll

Avenue Self-Supported Municipal Improvement District are intended to be included in the SSMID Services and Activities to be provided by Operator under this Agreement.

2. Term of Agreement. This Agreement shall operate as an amendment to and restatement of the existing Operating Agreement between the parties, for a term commencing upon the execution of this Agreement by City, and terminating on June 30, 2025. This Agreement shall 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 in the event of default as specified in Section 15. In the event the boundaries of the SSMID District are amended, then subject to the approved SSMID Budget, Operator shall adjust the Services and Activities provided pursuant to this Agreement to match the new boundaries effective July 1st of the fiscal year in which the SSMID Combined Capital Improvement and Operation Tax is first collected within the amended boundaries of the SSMID District.

3. Licensing; Compliance with Laws. Operator and any subcontractor of Operator shall obtain and maintain for the entire term of this Agreement all required licenses or permits required by the federal government, the state of Iowa or any agency or applicable subdivision thereof for the SSMID Services and Activities to be performed in accordance with this Agreement. Operator and any subcontractor of Operator shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations in performing the SSMID Services and Activities in accordance with this Agreement.

4. Director, Personnel. Operator shall employ a full time Director with adequate qualifications and experience, and shall obtain the services of all additional management personnel as necessary to supervise the operation, management and undertaking of SSMID Services and Activities in accordance with this Agreement. Operator shall cause any non-City subcontractor of Operator to employ, train and supervise employees in sufficient numbers and with appropriate qualifications, certifications and experience in order to adequately provide the SSMID Services and Activities. Operator shall cause any non-City subcontractor of Operator to ensure that all employees and agents observe all applicable safety rules and procedures. Operator shall also require that all current and prospective employees and agents of Operator and any other non-City subcontractor who perform cleaning, maintenance or security services are subject to a criminal records check and other appropriate background check procedures. All employees and agents of Operator or any other non-City subcontractor will be deemed employees or agents exclusively of Operator or other non-City subcontractor respectively and will not for any purpose be considered employees or agents and of the City. Operator assumes full responsibility for the actions of its employees and agents and of other non-City subcontractor's employees and agents, and Operator shall be solely responsible for their supervision, daily direction and control.

5. Employee Training. Operator shall ensure that any non-City subcontractor of Operator causes each employee to be given the training, supervision, and development necessary for safe and optimal provision of the SSMID Services and Activities. All staff training shall be performed by adequately trained and qualified personnel.

6. Clean and Safe Subcontract, Ingersoll and Grand Subcontracts. The parties acknowledge that Operator may choose to provide the SSMID Services and Activities consisting of enhanced maintenance and cleaning of public spaces, and of activities and programs to enhance the safety of persons and property within the District (hereinafter collectively referred to as the

"Clean and Safe SSMID Services") through a subcontractor, subject to approval by the City Manager, which approval shall not be unreasonably withheld.

7. Assignment, Subcontractor. Operator acknowledges that except for the subcontracts referred to in Section 1 and Section 6, Operator is prohibited from assigning or otherwise disposing of its interest and obligations under this Agreement to any other entity without the prior written consent of the City Manager, which approval shall not be unreasonably withheld. Operator shall ensure that all subcontractors comply with the terms of this Agreement and Operator shall remain responsible to the City for all provisions of this Agreement which pertain to the SSMID Services and Activities performed by a subcontractor. Operator shall exercise its rights to terminate the contract with any subcontractor whose background and performance are reasonably deemed by the City not to be in the best interests of the SSMID District.

8. Quarterly Reports. Operator shall submit quarterly reports prior to September 30, December 31, March 31 and June 30 of each fiscal year (July 1 - June 30) during the term of this Agreement which quarterly reports shall include, but not be limited to, information on SSMID Services and Activities actually rendered, goals and performance objectives wholly or partially attained, other relevant performance measurement data and information on the costs and expenses incurred by Operator in accordance with the current annual approved SSMID budget. Operator and its subcontractors shall maintain and provide to the City upon request properly executed payroll and time records, invoices, contracts, vouchers, or other acceptable accounting documents evidencing the nature and propriety of the costs and expenses incurred by Operator and its subcontractors in conformance with the Petition, this Agreement, and the current annual approved SSMID budget.

9. Payment, Limitation on Use of Funds. A. The estimated amount of funds available to be paid to Operator for its undertakings pursuant to this Agreement during each fiscal year (hereinafter referred to as the "Allocated Revenue") is equal to the amount in the adopted City budget designated for the SSMID District in that fiscal year, exclusive of any amounts specifically designated in such budget for reserves or contingencies, or other subaccounts to be retained by the City for undertakings outside the scope of this Agreement. If the revenue actually generated by the Combined Capital Improvement and Operation Tax from the SSMID District in any fiscal year is different than the anticipated tax revenue collections used in the City budget for the SSMID District, any difference shall be carried over into the budget for the next fiscal year.

B. Subject to Operator entering into appropriate subcontracts as referenced in Sections 1 and 6 and Operator's continued submittal of the appropriate quarterly reports and delivery of a request for payment to the City Finance Department prior to each payment date, the City shall pay to Operator for the SSMID Services and Activities undertaken and performed by Operator in strict compliance with this Agreement and the current approved SSMID budget, One-Twelfth of the Allocated Revenue on the 10th of each month. The City may apply any payment then due the City from the Operator as an offset against any payment due the Operator from the City pursuant to this section.

C. All funds paid to Operation by City pursuant to this Agreement shall be used by Operator to pay for the reasonable and necessary costs and expenses of providing the SSMID Services and Activities in conformance with the approved budget and shall not be used to pay the general expenses incurred by Operator or its subcontractors for carrying out other non-SSMID Services and Activities, responsibilities and City contracts. If the annual audit required by section

12 demonstrates that the total amount of all payments made by the City for any fiscal year exceed the reasonable and necessary costs and expenses of providing the SSMID Services and Activities in conformance with the approved budget during that fiscal year, the excess shall at City's option either be promptly refunded to City or treated as an advance by City to Operator on the installments due Operator for the next fiscal year.

D. City intends to establish a Repair and Maintenance Reserve for unexpected future costs arising from the operation, maintenance and repair of the Improvements and the provision of that portion of the Services consisting of the enhanced maintenance and cleaning of public spaces and installation and maintenance of seasonal plant materials (collectively "Basic Operation and Maintenance Costs"). The City further intends to annually allocate the sum of \$10,000 from the proceeds of the Combined Capital Improvement and Operation Tax to such reserve until the balance of the reserve is equal to one-half of the estimated annual Basic Operation and Maintenance Costs, and to thereafter annually allocate a portion of the proceeds of the Combined Capital Improvement and Operation Tax to such reserve to maintain the balance of the reserve at one-half of the estimated annual Basic Operation and Maintenance Costs.

E. Funds within the Repair and Maintenance Reserve or any other contingency or reserve fund retained by the City may be released by the City to reimburse the Operator for unexpected costs or expenses within the scope of activities secured by such contingency or reserve fund, upon demonstrating to the City Council's reasonable satisfaction that such unexpected costs or expenses were reasonably and necessarily incurred by the Operator, and that the release of such funds furthers the purpose of the SSMID District and is consistent with the City Council's Declaration of Intent regarding the use of the Combined Capital Improvement and Operation Tax.

F. City shall periodically bill the Operator for the cost incurred by the City to procure electricity for the enhanced pedestrian scale lighting within the SSMID District, and for any electrical outlets incorporated into such pedestrian scale lighting system. It is understood and agreed that the electricity for the enhanced pedestrian scale lighting within the SSMID District may not all be separately metered, in which case the City shall make a reasonable allocation of the electricity measured by each meter, and the costs thereof.

10. Procurement. In the procurement of goods and services to be financed in whole or in part with funds paid to Operation by City pursuant to this Agreement, Operator shall comply with the following requirements:

- a) *Competitive Bids*. To encourage open and fair competition, advertisement for and receipt of competitive bids shall be used whenever practicable in the procurement of goods and services.
- b) *Prohibited Conflicts of Interest*. No employee, officer or agent of the Operator shall participate in selection, award or administration of a contract or purchase agreement for the procurement of goods and/or services by Operator if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the following has a financial or other interest in the firm or contractor selected for award:
  - 1) The employee, officer or agent;
  - 2) Any member of his or her immediate family;
  - 3) His or her partner; or

- 4) An organization which employs or is about to employ any of the persons listed in subsections (a)(1) through (3) of this section.
- c) *Records.* Operator shall maintain records of its procurement activities, including but not limited to the solicitation of competitive bids and proposals for a period of at least three years following the end of the applicable fiscal year.
- d) *Limitation on Public Improvement Contracts.* Operator shall not contract for, or provide any financial assistance for the construction of public improvements where the total cost for labor, materials, equipment and supplies (exclusive of professional design and inspection services) to construct such public improvement exceeds the competitive bid threshold under the Iowa Construction Bidding Procedures Act (currently \$72,000), except the Operator may contract with the City to have the City construct any such public improvement. If the estimated cost of a public improvement project exceeds the competitive bid threshold, Operator shall not divide a public improvement project into separate parts, regardless of intent.

11. Equipment. A. Except as specifically allowed in a subsequent written agreement approved by the City Manager of City, all equipment purchased by Operator with funds pursuant to this Agreement shall be utilized only in conjunction with SSMID Services and Activities undertaken pursuant to this Agreement. Upon expiration of the useful life of such equipment, all proceeds from the sale of such equipment shall be considered as an additional City payment to Developer. Upon termination of this Agreement, all such remaining equipment shall be transferred to the City for the benefit of the SSMID District.

B. The City Manager of City may approve an agreement entered into pursuant to this section to allow a reasonable portion of the costs for the purchase, operation and maintenance of equipment, and any proceeds from the sale or disposition of the equipment, to be allocated to the SSMID Services and Activities undertaken by Operator pursuant to this Agreement, when such equipment is also used for other purposes.

12. Audit, Records Inspection and Retention. Operator and its subcontractors shall maintain on a current basis accurate books and records of the expenses, income, revenues, contingent liabilities, and general operation of the SSMID services, improvements and activities. At the end of each fiscal year and at termination of this Agreement, Operator, at its sole expense, shall cause an annual audit of the books, records, and operation of the SSMID services, improvements and activities, to be performed by a certified public accountant experienced with the audit of public funds. Such completed audit for the prior fiscal year shall be submitted to the City Manager prior to October 31 of each year. Upon termination of this Agreement, the completed audit for the prior final year or part thereof shall be submitted to the City Manager within one hundred twenty (120) days of termination. Operator and its subcontractors will permit the City to examine all their books and records, including contracts, invoices, vouchers, payroll and time records, and other documentation of costs and expenses related to SSMID services, improvements and activities. Such books and records will be available for examination and inspection by the City at a commercially reasonable location within the City of Des Moines during normal business hours. All such books and records shall be retained by Operator and its subcontractors for a period of at least three years following the end of the applicable fiscal year.

13. Insurance, Indemnification. Operator shall purchase and maintain insurance in accordance with the insurance requirements set forth in Attachment 1 to protect Operator and the City throughout the duration of this Agreement. If Operator fails to comply with such insurance requirements, City may obtain such insurance with funds from the SSMID District Operation Fund and keep same in effect, and Operator shall pay City the premium cost thereof plus interest upon demand. Operator shall not commit any act which shall invalidate any policy of insurance. Operator shall defend, indemnify and hold harmless the City in accordance with the indemnification requirements set forth in Attachment 1. Operator shall be subject to all terms and provisions set forth in Attachment 1 and the exhibits thereto.

14. Non-Discrimination. Operator and any subcontractor of Operator shall not discriminate against any employee or applicant for employment because of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status. Applicants to Operator and any subcontractor of Operator will be evaluated and considered, and employees will be treated without regard to their age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status. Operator and any subcontractor of Operator shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Operator and any subcontractor of Operator will implement and follow a policy that all qualified applicants will receive consideration for employment without regard to age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status.

15. Default. A. Operator acknowledges that its rights as Operator are subject to its satisfactory compliance with the terms, conditions and obligations of this Agreement. Therefore, the City may terminate this Agreement in the event Operator or any subcontractor of Operator has failed to comply with any of the terms, conditions and obligations of the Agreement and such breach has not been remedied within thirty (30) days of receipt of written notice thereof from the City (or 5 days in the event the breach is for nonpayment of money). If Operator has not remedied such breach of this Agreement within such time period, the City may by written notice to Operator declare a default and terminate this Agreement. Upon such termination, Operator shall without further notice transfer to the City all equipment used in conjunction with SSMID Services and Activities in accordance with Section 11. Also, upon such termination, the City with the input of Operator will itself administer or will proceed to contract with another operator for the provision of SSMID Services and Activities. Such termination of this Agreement shall not constitute a release of Operator from liability for payment of any outstanding expenses for which it is responsible under the terms of this Agreement or for the refund of any unearned payments. No waiver of the breach of any of the terms or conditions of this Agreement shall constitute a waiver of any other or succeeding breach of any other provision of this Agreement.

16. Notices. All notices herein provided to be given shall be in writing and delivered personally or by registered or certified United States mail. The address of each party, until further notification in writing is as follows:

For the City:      City Manager  
                          City Hall  
                          400 Robert D. Ray Drive  
                          Des Moines, IA 50309-1891

For the Operator: David Haas, President  
Ingersoll Grand Self Supported Municipal Improvement District  
558 28TH Street  
Des Moines, IA 50312

If notice is given by registered or certified mail, then the notice shall be deemed to have been given when the envelope containing the notice, properly addressed, is deposited in the United States mail at Des Moines, Iowa, postage prepaid.

17. Disclaimer. It is mutually understood by the parties that nothing in this Agreement is intended or shall be construed as in any way creating or establishing the relationship of copartners between the parties or as constituting Operator or any of its subcontractors as an agent or representative of the City for any purpose whatsoever. It is further mutually understood by the parties that the employees of Operator or any of its subcontractors are not to be considered employees of the City.

18. No Third Party Beneficiaries. No third party beneficiaries are contemplated by the parties to this Agreement and no third party shall claim or be entitled to any benefits from any of the provisions hereof or the obligations imposed herein.

19. Provisions Binding. Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successors, heirs, administrators, executors and assigns of the parties hereto.

20. Amendments. No oral or written statements, representations or promises with reference to this Agreement shall be binding unless made in writing and signed and properly executed by the respective parties hereto.

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

INGERSOLL GRAND SELF-SUPPORTED  
MUNICIPAL IMPROVEMENT DISTRICT,  
an Iowa not-for-profit corporation

By: \_\_\_\_\_  
David Haas, President

STATE OF IOWA )  
 ) ss:  
COUNTY OF POLK )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned, a Notary Public, personally appeared **David Haas**, to me personally known, who, being by me duly sworn, did state that he is the President of INGERSOLL GRAND SELF-SUPPORTED MUNICIPAL IMPROVEMENT DISTRICT, an Iowa not-for-profit corporation; that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that he 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

**CITY OF DES MOINES, IOWA**

ATTEST:

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

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Thomas G. Fisher Jr.  
Assistant City Attorney

STATE OF IOWA )  
 ) ss:  
COUNTY OF POLK )

On this \_\_\_ day of June, 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 the City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by the City Council under Roll Call No. 20-\_\_\_\_\_ of the City Council on the \_\_\_ day of June, 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 the State of Iowa  
My commission expires: \_\_\_\_\_

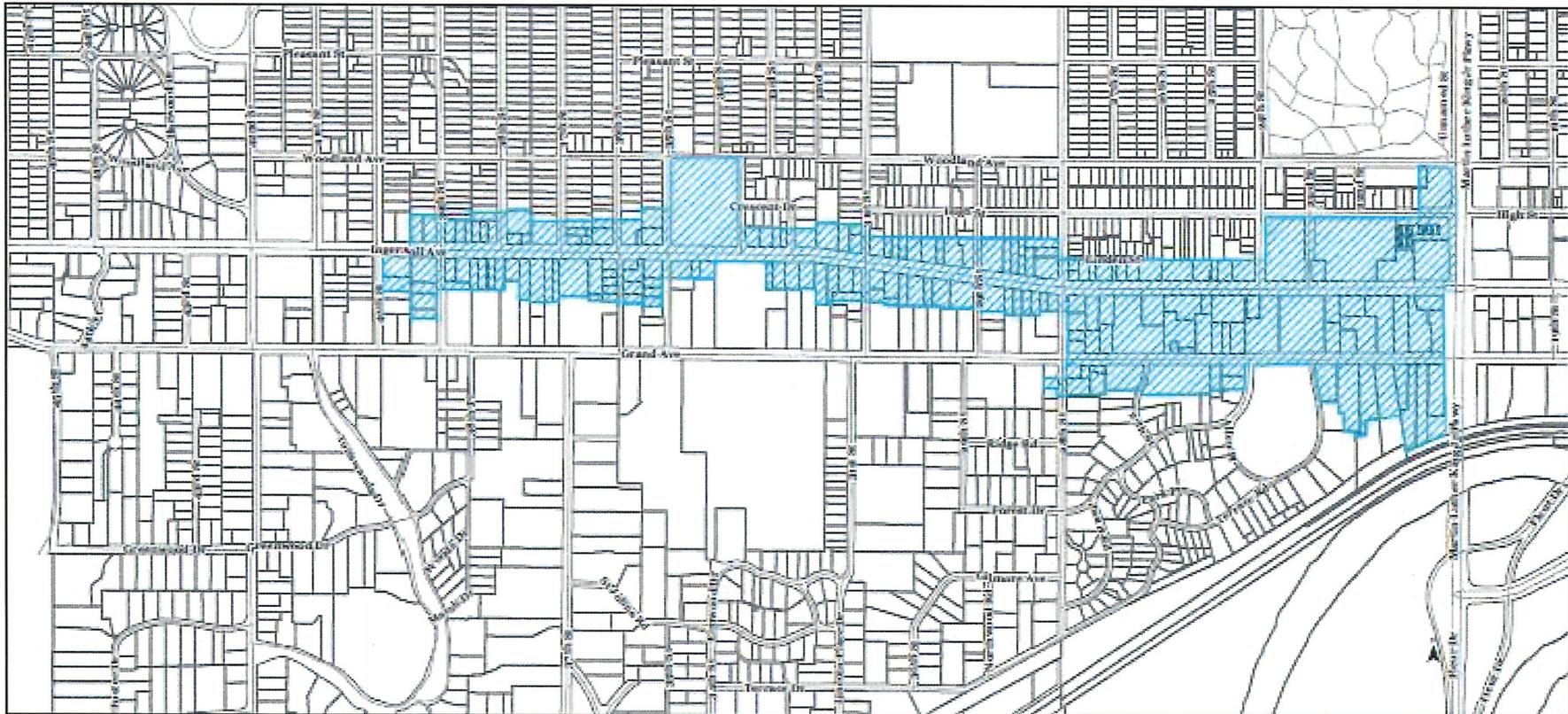
Exhibits & Attachments:

Exhibit "A" - Map of the District

Attachment "1" - Insurance and Indemnity Requirements

# Exhibit "A"

## Ingersoll Grand Self-Supported Municipal Improvement District



 Ingersoll Grand SSMID Boundary



Map prepared by:  
City of Des Moines  
Community Development Department  
Planning and Urban Design Division  
Approved: January 28, 2013  
Revised:

## ATTACHMENT 1

### STANDARD INSURANCE REQUIREMENTS INSURANCE AND INDEMNIFICATION REQUIREMENTS

#### 1. GENERAL

The Operator shall purchase and maintain insurance to protect the Operator 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: The Operator 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, the Operator is not required to carry such coverage.

B. COMMERCIAL GENERAL LIABILITY INSURANCE: The Operator 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 with standard exclusions 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: The Operator 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 the Operator 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: The Operator 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 the Operator acting alone or in collusion with others who are not employees of the Operator. 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 the Operator. The City's third-party interest shall be covered through the inclusion of a "Joint Loss Payee" endorsement. The Operator 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: The Operator 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: The Operator 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 the Operator.

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: The Operator 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: For purposes of this section, City shall mean the City of Des Moines, Iowa, its elected and appointed officials, employees, volunteers and others working on behalf of the City of Des Moines. To the fullest extent permitted by law, the Operator agrees to defend, pay on behalf of, indemnify, and hold harmless the City against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, including but not limited to attorney's 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, including bodily injury or death, property damages, including loss of use thereof, and economic damages arising out of or in any connected or associated with Operator's work or services.

Operator'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 worker's compensation acts, disability benefit acts, or other employee benefit acts.

The City shall not be liable or in any way responsible for any injury, damage, liability, claim loss or expense incurred by Operator, its officers, employees, subcontractors, and others affiliated with Operator, arising out of or in any way connected or associated with Operator's work or services, except for and only to the extent caused by the negligence of the City of Des Moines, Iowa.

Operator expressly assumes full responsibility for any and all damages to City Property arising out of or in any way connected or associated with Operator's work or services, including but not limited to, the activities of Operator, its officers, employees, subcontractors, and others affiliated with Operator.

Operator shall ensure that its activities on City Property will be performed and supervised by adequately trained and qualified personnel, and Operator will observe, and cause its officers, employees, subcontractors and others affiliated with Operator to observe all applicable safety rules.

### **4. WAIVER OF SUBROGATION**

A. WAIVER OF SUBROGATION: To the fullest extent permitted by law, Operator hereby releases the City, its elected and appointed officials, its agents, employees and volunteers and others working on its behalf from and against any and all liability or responsibility to the Operator or anyone claiming through or under the Operator 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. The Operator'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 the Operator 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, ten (10) days Written Notice of Cancellation due to non-payment of premium and forty-five (45) days Advance Written Notification of Non-Renewal shall be sent to: Purchasing Division, 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.