



Roll Call Number

20-1451

Agenda Item Number

43

Date September 14, 2020

**RESOLUTION APPROVING FIRST AMENDMENT TO
INITIAL OPERATING CONTRACT BETWEEN THE CITY AND INVEST DSM, INC.**

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

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

WHEREAS, on August 19, 2019, by Roll Call No. 19-1346, the City Council approved a Chapter 28E Agreement by and between the City, Polk County, and Invest DSM, Inc. to facilitate the amount and use of funding to be provided by the City and County to Invest DSM from August 1, 2019 until July 31, 2022, including a commitment by the City and County to provide \$2,500,000.00 each in fiscal year 2020, with the City providing an additional \$500,000.00 of either cash or in-kind support to Invest DSM for operations in fiscal year 2020, and with the City providing \$5,000,000.00 in fiscal year 2021 and in fiscal year 2022, with the County making an annual decision on funding during said years and with County representation on the Invest DSM, Inc. Board of Directors dependent upon the level of funding provided, and outlining appropriate uses of said funding by Invest DSM, Inc.; and

WHEREAS, on September 9, 2019, by Roll Call No. 19-1436, the City Council approved an Initial Operating Contract by and between the City and Invest DSM, Inc. for operation and management of Invest DSM, Inc., whereby the City has provided an executive director, financial and accounting, information technology, human resources, risk management services and support, including assistance with procurement of independent contractor services, and courier and postal services, workspace, equipment and supplies for use by Invest DSM, Inc., with such City services constituting the "in-kind services" set forth in the Chapter 28E Agreement for fiscal year 2020 as described above and to be compensated by Invest DSM, Inc. if said services exceed \$500,000.00 in fiscal year 2020; and

WHEREAS, in accordance with the Initial Operating Contract, Invest DSM has requested and the City has consented to a renewal of said Contract until July 31, 2021, with relocation of the Invest DSM office to occur no later than December 31, 2020; and

WHEREAS, Invest DSM does not require the extent of City services as set forth in the Initial Operating Contract for the duration of the renewal term, and the City Manager and Invest DSM have negotiated a First Amendment to the Initial Operating Contract, on file in the office of the City Clerk, to reflect the reduction in services to be provided by the City and the deadline for office relocation of December 31, 2020.



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

1. The First Amendment to the Initial Operating Contract by and between the City of Des Moines, Iowa, and Invest DSM, Inc. for Operation and Management of Invest DSM, Inc. is hereby approved, subject to approval by the Board of Directors of Invest DSM, Inc., and the Mayor and City Clerk are directed to execute and attest, respectively, said First Amendment on behalf of the City.
2. The City Manager or his designee are authorized and directed to administer the Initial Operating Contract, as amended, on behalf of the City, and the City Departments identified in said Contract, as amended, are authorized and directed to provide services to Invest DSM, Inc. as stated therein and to issue payment in accordance therewith when applicable.

MOVED BY Gatto TO ADOPT.

(Council Communication No. 20-412)

FORM APPROVED:

/s/ Glenna K. Frank

Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			
MOTION CARRIED	APPROVED			

J. M. Franklin Cownie 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.

P. Kay Cmelik

City Clerk

**FIRST AMENDMENT TO INITIAL OPERATING CONTRACT BY AND BETWEEN
CITY OF DES MOINES, IOWA AND INVEST DSM, INC.
FOR OPERATION AND MANAGEMENT OF INVEST DSM, INC.**

THIS FIRST AMENDMENT to Initial Operating Contract by and between City of Des Moines, Iowa and Invest DSM, Inc. for Operation and Management of Invest DSM, Inc. (hereinafter "First Amendment") is entered into this 28 day of September, 2020, by and between the City of Des Moines, Iowa ("City") and Invest DSM, Inc. ("Invest DSM").

It is agreed by and between City and Invest DSM that:

1. The above-referenced Initial Operating Contract (herein referred to as "Contract"), as authorized by the Des Moines City Council on September 9, 2019, by Roll Call No. 19-1436, is hereby amended in accordance with the terms set forth in this First Amendment for the pending first renewal term of the Contract and any renewal terms thereafter.

2. Article I, Section 2, "Finance Support Services", is hereby deleted in its entirety and replaced with the following:

2. Finance Support Services. The City shall provide, through the City's Finance Department, certain financial and accounting services to Invest DSM until fiscal year 2020 has been closed out and Invest DSM has successfully transitioned to independent accounting services, in accordance with the Invest DSM Articles of Incorporation and Bylaws and including:

- (a) Establish and maintain a system of segregated Invest DSM accounts, for the purpose of recording and accounting for all funds received by or on behalf of Invest DSM, and for the purpose of recording and accounting for the expenditure of Invest DSM funds pursuant to this Contract;
- (b) Perform fiscal year-end accounting, including preparing year-end statements, reports, journal entries, fund reconciliation, work papers, etc.;
- (c) Process payments authorized by Invest DSM to Invest DSM vendors and to parties such as developers, homeowners, contractors, mortgage lenders, or similar entities with whom Invest DSM has contracted;
- (d) Upon request by Invest DSM, assist in establishing interest bearing accounts in the name of Invest DSM for the deposit of funds collected by Invest DSM from all sources;
- (e) Manage funds deposited in Invest DSM accounts in accordance with the City's Investment Policy;
- (f) Make periodic reports as requested by the Invest DSM Board of Directors; and
- (g) Provide and return any and all of the above documents and funds, minus any outstanding expenses owed to City as described in Article III below, to Invest DSM at the date of termination or expiration of this Contract.

3. Article I, Section 3, "Information Technology Support and Procurement Services", is hereby deleted in its entirety and replaced with the following:

3. Information Technology Support and Procurement Services. The City shall provide, through the City's Information Technology (IT) Department, or through such independent contractors as it shall select, information technology services to Invest DSM, including:

- (a) Use of City computers, telephones, network, internet connection, wireless facility (WiFi), and printers for use including but not limited to printing Board agendas, resolutions and related documents, and minutes of Board proceedings upon request of Invest DSM, and use of City telephone services and Help Desk call center until such time as Invest DSM relocates to its own leased or owned office space;
- (b) Installation, management, and technical support of computers, telephones, network user accounts, and printers assigned to Invest DSM personnel; Help Desk call center; network administration, operation, and maintenance; internet access; and email administration (hereafter referred to as "City IT Services") until the date on which Invest DSM relocates to its own leased or owned office space;
- (c) Development of standard operating procedures for the delivery of City IT Services to Invest DSM;
- (d) Consulting services for procurement by Invest DSM of an independent IT contractor to establish and serve the Invest DSM network and computer operations, including RFP and contract development and evaluation and implementation assistance if applicable;
- (e) Consulting services for selection of other technological services and equipment, and all licenses related thereto, such as software, website, computers and audio-visual equipment, to be purchased and used by Invest DSM;
- (f) Consulting services for assessment of Geographic Information System (GIS) application and data needs for startup of Invest DSM and assistance creating production GIS applications, data, and analysis for transfer to Invest DSM on or before the termination of this Contract;
- (g) Consulting services for procurement or hire by Invest DSM of GIS services, technology, and support, including RFP and contract development and evaluation, and implementation assistance if applicable; and
- (h) Other IT application support tasks needed for the startup of Invest DSM and mutually agreed to by the Invest DSM Executive Director and City Chief Information Officer including but not limited to: Permit, License, and Land Records Management system ("Tidemark"); Financial and Human Resources Management system ("Munis"); and database management and data manipulation.

4. Article I, Section 4, "Human Resources Support Services", is hereby deleted in its entirety and replaced with the following:

4. Human Resources Support Services. The City shall provide, through the City's Human Resources Department, human resources services to Invest DSM, including:

- (a) Human resources for the Executive Director of Invest DSM for so long as she remains an employee of the City rather than an employee of Invest DSM.

5. Article I, Section 5, “Risk Management Services”, is hereby deleted in its entirety and replaced with the following:

5. RESERVED.

6. Article I, Section 7, “Workspace, Equipment and Supplies; Miscellaneous Support”, Subsection (A), is hereby deleted in its entirety and replaced with the following:

7. Workspace, Equipment and Supplies; Miscellaneous Support. A. The City shall provide, within City building(s) as identified by the City and in the form and quantity determined by the City, office space, including office furniture, telephone(s), computer(s), and standard office supplies, to be used by the Invest DSM Executive Director and up to three other Invest DSM employees. Invest DSM may make additional reasonable requests for workspace, equipment and supplies for City consideration. No lease, rental, or similar agreement separate from this Contract shall be required for the use by Invest DSM of such workspace or equipment. Such workspace, equipment and supplies shall be provided until the date on which Invest DSM relocates to its own leased or owned office space, which date shall be no later than December 31, 2020. The parties agree and acknowledge that such workspace, equipment and supplies are owned by the City, may not be removed by Invest DSM from City property during the relocation of Invest DSM, and shall remain the property of the City following the relocation of Invest DSM, and that Invest DSM shall return to the City all City equipment and/or supplies that Invest DSM, or its Executive Director or employees, have in their possession at the time of such relocation.

7. Article IV, Section 18, “Audit”, is hereby deleted in its entirety and replaced with the following:

18. Audit. In the event that Invest DSM is not utilizing the services of the City Finance Department in accordance with this Contract, Invest DSM shall conduct, at its sole expense, an independent audit of costs and expenses paid or to be paid pursuant to this Contract. City shall provide access to Invest DSM and its independent auditor to the City’s records sought for audit, which records shall pertain solely to the Services rendered under this Contract, within thirty (30) calendar days after receipt of a written audit request from Invest DSM identifying the records sought for audit. A copy of the audit findings shall be promptly provided to City.

8. Article IV, Section 20, “Termination”, is hereby deleted in its entirety and replaced with the following:

20. Termination.

A. Either party may terminate this Contract for default by the other party by giving written notice of termination, following notice and right to cure as set forth in Section 19 above. In such event, termination shall be effective upon the giving of notice thereof.

B. In the event that Invest DSM determines that it no longer requires the City's services to be provided hereunder, Invest DSM may terminate this Contract following 30-days' notice to City.

C. The parties agree that upon such termination, this Contract and all obligations of all parties hereunder will terminate and cease.

9. All other terms, provisions, and conditions originally set forth in the Contract, including all exhibits thereto, remain effective and binding upon City and Invest DSM.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Initial Operating Contract as of the 28 day of September, 2020.

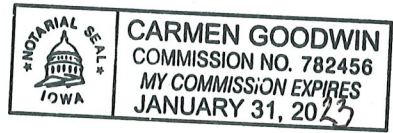
INVEST DSM, INC.

Amber Lynch
Amber Lynch, Executive Director

State of IOWA)
)
County of POLK) ss.

On this 28th day of September, 2020, before me, a Notary Public in and for said State and county, personally appeared Amber Lynch, to me personally known, who being by me duly sworn or affirmed did say that the person is the Executive Director of said Invest DSM, Inc., and that said instrument was signed on behalf of the said corporation by authority of its board and the said Amber Lynch acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

Carmen Goodwin
Notary Signature
Notary Public in the State of Iowa



CITY OF DES MOINES, IOWA

ATTEST:

By: *P. Kay Cmelik*
P. Kay Cmelik, City Clerk

By: *T.M. Franklin Cownie*
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

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

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 14th day of September, 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- 1451 of City Council on the 14th day of September, 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.

Sandi L. Deery
Notary Public in the State of Iowa

