



**Date** May 19, 2008

**APPROVAL OF AGREEMENT BETWEEN THE  
CITY OF DES MOINES AND BRAVO GREATER DES MOINES, INC.**

WHEREAS, Bravo Greater Des Moines, Inc. ("Bravo") has been organized for the purpose of assisting and increasing awareness, advocacy and funding of the cultural community and organizations in the Greater Des Moines Area and Bravo has become the funding entity of the various cultural organizations throughout the greater Des Moines area; and

WHEREAS, by Roll Call No. 05-1602 of July 6, 2005, the City Council approved an Iowa Code 28E Agreement between the City of Des Moines and Bravo wherein the City pledged hotel/motel tax revenues to be distributed and expended by Bravo for cultural organizations in accordance with the terms of the Chapter 28E Agreement; and

WHEREAS, the existing Iowa Code Chapter 28E Agreement expires June 30, 2008 and the City and Bravo desire to enter into a new agreement with similar terms; and

WHEREAS, a new Iowa Code Chapter 28E Agreement between the City and Bravo has been prepared which Agreement has a three-year initial term expiring June 30, 2011 and a potential three-year extension term; and

WHEREAS, Bravo will enter into new Chapter 28E Agreements with other cities within the Greater Des Moines Area with substantially similar terms and funding obligations; and

WHEREAS, it is in the best interests of the City of Des Moines to enter into the new Chapter 28E Agreement with Bravo.

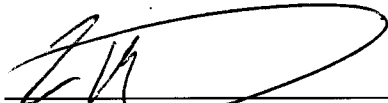
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the Chapter 28E Agreement between the City and Bravo, on file in the Office of the City Clerk is hereby approved and the Mayor is hereby authorized and directed to execute such Agreement on behalf of the City and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

Date May 19, 2008

BE IT FURTHER RESOLVED that the City Manager is authorized and directed to administer the terms of the 28E Agreement on behalf of the City.

APPROVED AS TO FORM:

Moved by \_\_\_\_\_ to adopt.

  
 \_\_\_\_\_  
 Lawrence R. McDowell  
 Deputy City Attorney

G:\Users\RD Lampki\LARRY\RC\Bravo Agreement.doc

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
<b>TOTAL</b>				
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

**AGREEMENT BETWEEN THE CITY OF DES MOINES AND  
BRAVO GREATER DES MOINES, INC.**

This Agreement is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, (the "Execution Date") by and between the City of Des Moines, Iowa (the "City of Des Moines"), and Bravo Greater Des Moines, Inc. ("Bravo") an Iowa not-for-profit corporation, pursuant to the provisions of Chapter 28E, Code of Iowa. The Agreement shall be effective with respect to Commitments beginning July 1, 2008 (the "Effective Date").

That inasmuch as Bravo is organized for the purpose of assisting the cultural community of Polk County and contiguous counties (the "Greater Des Moines Area") in providing an enriched quality of life by increasing cultural awareness, advocacy, and funding, as well as by fostering collaboration among cultural organizations.

That the City of Des Moines has as a goal the unification and coordination of monies for the use and benefit of the cultural community and specifically the cultural organizations eligible for funding by Bravo. The City of Des Moines is committed to the reasonable stewardship of monies for arts and cultural purposes.

That the City of Des Moines and Bravo entered into an agreement effective July 1, 2005 for a three year term, which agreement was filed in the Office of the Polk County Recorder commencing at Book 11307, Page 497 and at Book 11367, Page 644, and was filed in the Iowa Secretary of State Office on September 27, 2005 and October 31, 2005 and, in order to continue the underlying purpose of such prior agreement, the City of Des Moines and Bravo desire to enter into this Agreement.

That the City of Des Moines and Bravo agree as follows:

**I. DEFINITIONS**

- (1) "Hotel/Motel Tax" means a tax imposed in accordance with Chapter 423A of the Code of Iowa, 2007, or similar successor provisions.
- (2) "Hotel/Motel Tax Revenues" means the funds remitted to the City of Des Moines by the Treasurer of the State of Iowa from the local Transient Guest Tax Fund in accordance with provisions of Chapter 423A of the Code of Iowa, 2007, and the rules promulgated by the Director of the Iowa Department of Revenue thereunder, or similar successor provisions, representing the proceeds collected by the State of Iowa from the Hotel//Motel Tax imposed by the City of Des Moines.

**II. PRE-CONDITIONS TO OBLIGATIONS OF THE CITY OF DES MOINES**

- (1) The parties understand and intend that the City of Des Moines' obligation to make the payments hereunder shall be limited to the Hotel/Motel Tax Revenues available to the City of Des Moines and shall not constitute a legal indebtedness of the City of Des Moines within the meaning of any applicable constitutional or statutory debt limitation. In the event that any of the provisions of this Agreement are determined by a court of competent jurisdiction to create, or result in the

creation of, such a legal indebtedness of the City of Des Moines, the enforcement of the payment provisions of this Agreement shall be suspended and the Agreement shall at all times be construed and applied in such a manner as will preserve the foregoing intent of the parties.

### **III. COVENANT FROM CITY OF DES MOINES**

- (1) The City of Des Moines does hereby agree to pay Bravo for the promotion of arts and cultural activities in the Greater Des Moines Area for the entire term of this Agreement and all extensions thereof, 2/7 of its Hotel/Motel Tax Revenues (the "Commitment") to be distributed and expended by Bravo in the manner set forth in this Agreement. Each year the Commitment shall be reduced, but not below zero by the following amounts:

- a. the average contributions made to the Iowa Events Center and Principal Park by the Cities of West Des Moines, Clive, Urbandale, Altoona, Ankeny and Johnston. For the avoidance of doubt, the average contribution shall be determined by adding the contributions made by each of the identified Cities to each of the two identified projects during the year, then dividing that sum by 6.

- b. the \$290,000 contractually obligated by the City of Des Moines to the operation of the Blank Park Zoo.

Each year a portion of the Commitment shall be allocated as follows:

- c. Bravo will allocate, as contractually obligated by the City of Des Moines, on the date of this Agreement, a minimum of \$440,000 annually to the operation of Blank Park Zoo and a minimum of \$195,000 annually to the operation of the Botanical Center. Bravo shall not be required to make the minimum allocations under the terms of this Agreement in the event contractual arrangements between the City of Des Moines and the Blank Park Zoo and/or the Botanical Center are amended to reduce the City of Des Moines' contractual obligations to either entity during the term of this Agreement as defined in Section VII.1.

- (2) The City of Des Moines shall take all action necessary to implement disbursement of the Commitment. Payment of the Commitment to Bravo shall be made in quarterly installments, paid no later than 30 days following the date on which the City receives the quarterly remittance of Hotel/Motel Tax Revenues for the prior fiscal quarter, taking into account any reductions for such quarter as provided in paragraph (1) above.
- (3) If Chapter 423A of the Code of Iowa is amended to permit and the City of Des Moines subsequently imposes a Hotel/Motel Tax in excess of 7%, the Commitment shall be limited to 2/7 of Hotel/Motel Tax Revenues derived from the initial 7% of tax.

### **IV. PURPOSE**

The purpose of this Agreement is to facilitate and support the cultural community of the Greater Des Moines Area in providing an enriched quality of life by increasing

cultural awareness, advocacy and funding as well as by fostering collaboration among cultural organizations and increasing stability of Bravo in carrying out its goals for the benefit of the Greater Des Moines Area. This Agreement is not intended to establish a separate legal entity.

#### **V. ACCOUNTING OF BENEFITS**

- (1) Bravo shall administer the undertakings between the City of Des Moines and Bravo as described herein, and Bravo shall acquire, hold and disburse its assets, including the Commitment, in accordance with the purpose and terms stated herein and the governing documents of Bravo. The City of Des Moines hereby appoints its City Manager to administer this Agreement with Bravo, and Bravo hereby appoints its President to administer this Agreement with the City of Des Moines.
- (2) The City of Des Moines and Bravo acknowledge that the communities within the Greater Des Moines Area that make payment commitments to Bravo (“Participating Communities”) and not-for-profit cultural organizations within such Participating Communities may, as part of a cultural improvements capital campaign, apply for grant funding. Bravo shall establish a separate fund to provide matching funds to support the capital campaigns of not-for-profit cultural organizations within such Participating Communities (the “Fund”). Bravo shall allocate a portion of the Commitment payments from all Participating Communities to create a minimum required balance of \$150,000 (“Minimum Required Balance”) in the Fund prior to September 1, 2008. In order to increase the amount of funding available for cultural improvement capital campaigns, an additional \$150,000 shall be added to the fund in fiscal years 2009-10 and 2010-11. For a not-for-profit cultural organization to be eligible to receive a disbursement from the Fund, the not-for-profit cultural organization must make a presentation regarding its capital campaign to Bravo before the not-for-profit cultural organization approaches any of the Participating Communities for a contribution. Bravo, in its reasonable discretion shall make determinations on Fund disbursements for proposed cultural capital campaigns within the Participating Communities in such manner that will enhance the competitiveness of the grant funding applications and further the purpose of this Agreement. The City of Des Moines and Bravo acknowledge that any matching funds provided by Bravo for a not-for-profit cultural organization’s capital campaign shall not be intended or construed as the sole or exclusive capital funding source to be provided by Participating Communities for such project.
- (3) Bravo shall present to the City Manager of the City of Des Moines no later than 30 days after Bravo’s Board of Directors approves Bravo’s audited fiscal year financial statements, a full accounting of Bravo’s revenues, disbursements and operations for such year in a form reasonably acceptable to the City (“Financial Statements”). The Financial Statements will include a summary of the disbursement awards made by Bravo during the fiscal year, including for each recipient of an award the amount awarded and a brief description of the approved uses for the award. The fiscal year of Bravo ends each June 30.

- (4) The Financial Statements shall be prepared by Bravo and certified by an independent auditor selected by Bravo.

## **VI. OPERATIONS AND FINANCES**

Bravo shall prepare and submit to the Des Moines City Council prior to the commencement of each of Bravo's fiscal years a distribution plan for public funds (the "Plan"). The Plan for the 2008-09 fiscal year shall be submitted to the Des Moines City Council prior to the Effective Date. All expenditures of public funds by Bravo shall be made pursuant to the Plan.

## **VII. DURATION AND TERMINATION**

- (1) The initial term of this Agreement shall begin on the Effective Date and expire on June 30, 2011.
- (2) Upon the expiration of such initial term and any extension thereof, this Agreement may be extended for an additional term of 3 years if such extension is affirmed in writing by both parties.
- (3) This Agreement shall terminate if Chapter 423A of the Code of Iowa is either: (a) repealed or amended to remove the authority of the City of Des Moines to collect the Hotel/Motel Tax at a rate of at least 7% or (b) so modified that the purpose of the Agreement can no longer be carried out. If the Agreement terminates pursuant to the previous sentence, the termination date shall be the June 30 coinciding with or next following the effective date of the statutory change that causes the termination.
- (4) This Agreement shall terminate if an alternative, reliable funding source is secured for Bravo that provides funding to Bravo, in the reasonable determination of the Bravo board of directors, that is comparable in amount to the annual funding streams Bravo has secured in the aggregate through 28E agreements with the cities, counties and municipalities of the Greater Des Moines Area (for example, if Chapter 423A of the Code of Iowa were amended to increase the Hotel/Motel tax and to direct a portion of the increase to Bravo in an amount comparable to the annual funding streams expected from 28E agreements already in place). If a reliable alternative funding source is secured for Bravo, which partially replaces the funds provided by the City of Des Moines to Bravo, the amount of annual funding provided to Bravo pursuant to this Agreement shall be reduced proportionately in such amount as the parties may reasonably determine. If the Agreement terminates pursuant to this paragraph, the termination date shall be the June 30 coinciding with or next following the effective date of the alternative funding source that causes the termination.
- (5) Any notice or demand required or desired to be given hereunder shall be in writing and deemed given when personally delivered or when deposited in the United States mail, postage prepaid, sent certified or registered, and addressed as follows:

If to the City of Des Moines, to:

City of Des Moines  
City Manager's Office  
400 Robert D. Ray Drive  
Des Moines, IA 50309  
Attention: City Manager

If to Bravo, to:

Bravo Greater Des Moines, Inc.  
Kathleen K. Law  
Nyemaster Goode Law Firm  
700 Walnut Street, Suite 1600  
Des Moines, Iowa 50309

With a copy to:

Bravo Greater Des Moines, Inc.  
Attn: Leisha Barcus  
1915 Grand Avenue  
Des Moines, IA 50309

or to such other address or person as hereafter shall be designated in writing by the applicable party.

### **VIII. AMENDMENT OF AGREEMENT**

Any amendment to this Agreement shall be made in writing upon agreement of the City of Des Moines and Bravo and after appropriate discussion and public dialogue, and such amendment has been approved by resolution of the City of Des Moines Council.

### **IX. MISCELLANEOUS**

- (1) This Agreement has been made and entered into solely for the benefit of the goals and objectives of the City of Des Moines and Bravo as expressly provided herein and is not intended to create any rights in any other person.
- (2) Notwithstanding anything in this Agreement to the contrary, any liabilities, debts, or other obligations experienced by Bravo as a corporation/body or its members shall not be the responsibility of the City of Des Moines.
- (3) While this Agreement is in effect, the City of Des Moines shall have the right to designate one person to serve on the Board of Directors of Bravo.
- (4) It is the intention and expectation of Bravo and the City of Des Moines that no organization that receives funding from Bravo during the term of this Agreement will approach the City of Des Moines for additional operational funding during the term of this Agreement. This expectation does not apply to: (1) any member of Bravo that is owned, managed or operated by the City of Des Moines or a political subdivision of the City; or (2) capital campaigns.

- (5) Each of the City of Des Moines and Bravo shall pay its own costs incurred to negotiate, amend, abide by or terminate this Agreement.
- (6) After execution by the parties, this Agreement shall be filed with the Iowa Secretary of State in an electronic format in accordance with the provisions of Iowa Code § 28E.8.
- (7) As of the Effective Date, this Agreement is intended to replace the prior agreement referred to in paragraph four of the preamble to this document.

BRAVO GREATER DES MOINES, INC.

CITY OF DES MOINES

By:  
 Print Name: Sally Pederson  
 Print Title: Chair

By:  
 Print Name: T.M. Franklin Cownie  
 Print Title: Mayor

Attest:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 City Clerk

STATE OF IOWA    )  
                                   ) ss:  
 COUNTY OF POLK )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me a Notary Public in and for said County, personally appeared \_\_\_\_\_ and \_\_\_\_\_ to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of \_\_\_\_\_, Iowa, a Municipal Corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipal Corporation, and that said instrument was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

\_\_\_\_\_  
 Notary Public for State of Iowa