

Date June 23, 2008

APPROVAL OF AGREEMENT BETWEEN THE CITY OF DES MOINES AND THE DES MOINES AREA REGIONAL TRANSIT AUTHORITY (DART) REGARDING DART'S UNLIMITED ACCESS TRANSIT FARE PROGRAM

WHEREAS, the Des Moines Area Transit Authority ("DART") has an objective to increase public transportation ridership in the Des Moines metropolitan area and the City of Des Moines supports transit ridership to alleviate parking shortages and commuting congestion; and

WHEREAS, to further the interests of DART and the City of Des Moines, an agreement has been prepared to provide unlimited employee and retiree access to DART'S transportation services; and

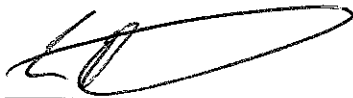
WHEREAS, said agreement, on file in the Office of the City Clerk provides for an initial one-year term and four one-year option terms.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the agreement between the City of Des Moines and DART regarding DART'S unlimited access transit fare program is hereby approved and the Mayor is hereby authorized and directed to execute such document on behalf of the City and the City Clerk is hereby directed to attest to the Mayor's signature.

BE IT FURTHER RESOLVED that the City Manager or his designee is directed to administer the terms of the agreement on behalf of the City of Des Moines.

APPROVED AS TO FORM:

Moved by _____ to adopt.



Lawrence R. McDowell
Deputy City Attorney

(Council Communication No. 09-377)

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

**AGREEMENT BETWEEN THE CITY OF DES MOINES AND THE
DES MOINES AREA REGIONAL TRANSIT AUTHORITY REGARDING
DART'S UNLIMITED ACCESS TRANSIT FARE PROGRAM**

THIS AGREEMENT is made and entered into on this ___ day of June, 2008, by and between the Des Moines Area Regional Transit Authority (hereinafter referred to as "DART") and the City of Des Moines.

WHEREAS, DART has objective to increase public transportation ridership in the Greater Des Moines Region; and

WHEREAS, the City of Des Moines is an employer in the region that supports transit ridership by its employees; and

WHEREAS, both parties believe even more ridership can be achieved if the fare payment process for City of Des Moines employees and retirees can be simplified so that employees and retirees only have to show their City of Des Moines identification badge to ride DART's services;

NOW THEREFORE, IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. Services.

DART shall allow City of Des Moines employees and retirees to ride all DART Bus Services specifically defined as:

- All DART Local Route Bus Services.
- All DART Express Routes (including Ankeny and Altoona)
- All DART shuttles (On-Call routes, Link Shuttle, etc.)
- Bus Plus Paratransit Service for those City of Des Moines employees with a disability that prevents them from riding the regular bus.

and excluding:

- DART-sponsored vanpools.
- Special Event Shuttles (State Fair Shuttle, Arts Festival Shuttle, State Wrestling Tournament Shuttle, etc.).

at no cost to the employees and retirees when they show a valid City of Des Moines identification badge upon boarding. City of Des Moines employees and retirees shall comply with all existing and future regulations for using DART Bus Services, as established by DART or its member jurisdictions. DART reserves the right to require payment of the appropriate fare by or refuse service to City of Des Moines employees or retirees if a valid City of Des Moines identification badge is not presented upon boarding and/or DART regulations are violated.

2. Terms.

The initial term of this Agreement shall commence on July 1, 2008, and shall extend for a period of one year ending June 30, 2009.

The City of Des Moines shall have the options to extend the term for four (4) additional one (1) year periods by approval of its City Manager. Each option to extend may be exercised by the City by delivery of written notice to DART at least thirty (30) days prior to expiration of the current term or option term.

Notwithstanding the above, either party shall have the right to terminate the Agreement at any time without cause by delivery of sixty (60) days written notice of termination to the other party.

3. Notices.

All notices required to be delivered by one party to the other shall be given either by personal delivery, by fax, or by U.S. mail by certified mail return receipt requested. The names and addresses of the persons authorized to receive notice on behalf of each party are as follows:

For City of Des Moines: City of Des Moines
 Attn: City Manager
 400 Robert D. Ray Drive
 Des Moines, Iowa 50309
 Fax: 515-237-1706

For DART: Des Moines Regional Transit Authority
 Attn: Brad Miller
 1100 DART Way
 Des Moines, IA 50309
 Fax: 515-283-8135

Provided, however, that either party may change its designated person by delivery of written notice of such change to the other party.

4. Payments.

For the services outlined in Section 1, the City of Des Moines shall during the initial term pay DART the annual base rate of seven thousand eight hundred dollars (\$7,800.00) ("Base Rate"). The City of Des Moines shall during any option term pay DART the Base Rate subject to Adjustments as described below in Section 5. Payment made in the initial term or any option term shall be made through twelve (12) equal monthly payments starting with July 31 and ending with June 30.

DART shall deliver one (1) copy of an invoice on a monthly basis to the City of Des Moines. Each invoice will document details of the service provision in a format agreeable to both parties.

The City of Des Moines shall be expected to provide payment to DART within thirty (30) days of receipt of the invoice. Any charge disputed by the City of Des Moines shall be separated from the invoice and the undisputed portion shall be paid. The City of Des Moines shall promptly notify DART of the dispute and both parties shall agree to meet and resolve disputed charges within thirty (30) days after notification of the dispute.

5. Adjustments.

The City of Des Moines shall pay DART the Base Rate for the initial term. The Base Rate for each subsequent option term shall be subject to adjustments as follows:

- A. Overcrowding** – If it can be determined that as a result of use by City of Des Moines employees and retirees, overcrowding causing unsafe standing regularly occurs on a specific scheduled bus, DART may consider implementing additional buses and request an increase to the Base Rate to compensate for such increase in service. DART would have to provide evidence to the City of Des Moines that a growth in the City of Des Moines employee and retiree ridership caused the overcrowding and that reasonable alternative cost avoidance efforts were attempted to address the problem. The City of Des Moines reserves the right to approve any such adjustment to the Base Rate in advance.
- B. Service Delivery Unit Price Increases** - Should DART's documented actual annual total cost to provide the services to City of Des Moines employees and retirees increase or decrease by thirty-three percent (33%) or more, either party may request to renegotiate the Base Rate. Prior to making any such request to renegotiate an increase to the Base Rate, DART will make all reasonable efforts to offset increased costs with comparable savings in other aspects of the operation so that this adjustment may not be needed. DART shall provide written evidence that these efforts have been made prior to requesting a revised Base Rate amount under this paragraph.
- C. Annual Program Cost Adjustment** – At the commencement of each option term, the Base Rate paid to DART may be increased by up to five percent (5%) to cover documented increases to bus service operational costs over the prior year. DART shall provide notice of the Base Rate Annual Program Cost Adjustment and of any approved adjustments in accordance with paragraphs A and B for the upcoming option term not less than ninety (90) days prior to the end of the then current term or option term.

6. Reporting.

DART shall provide the City of Des Moines with periodic ridership reports throughout the term of this Agreement. Initially, DART shall provide the City of Des Moines monthly ridership reports. At such time where participation in DART's Unlimited Access Fare program by other companies may exceed the capacity of DART's automatic on-board farebox machines to individually track the City of Des Moines employee and retiree ridership, DART reserves the right to switch to a manual survey method of tracking the City of Des Moines employee and retiree ridership and reduce the ridership reporting to quarterly reports. This data will be used by DART to identify any overcrowding situations as identified in 5.A. above.

7. Program Promotion.

The City of Des Moines and DART will each fully coordinate and cooperate with reasonable efforts to promote this Unlimited Access Program so that it can be deemed successful and continue. Such efforts shall include the following specific initiatives:

- A. ID Badge Stickers** - DART will provide the City of Des Moines with an unlimited number of "Ride DART FREE" stickers to affix to City of Des Moines identification badges as a method of promoting and reminding employees and retirees of the availability of the program. If a City of Des Moines employee or retiree does not have a sticker on its badge, such person will still be allowed to ride for free, but the driver will encourage use of a sticker. The stickers may only be placed on valid City of Des Moines employee or retiree identification badges and are not transferable to City of Des Moines employee or retiree family members or other non-City of Des Moines employees. The City of Des Moines will make reasonable efforts to ensure that all City of Des Moines employees and retirees are given a sticker to affix to their badge in a reasonable timeframe from the start of the program. DART shall, for a cost of 95 cents per card, provide identification cards requested by the City of Des Moines for every City of Des Moines employee that does not possess an employee identification badge and for retirees. Such charge for identification cards provided shall be included in the next month invoice delivered to the City of Des Moines.
- B. Employee Orientation Meetings** - The City of Des Moines will allow DART to make presentations during the City of Des Moines new employee orientations and during periodic information sessions to existing employees. The City of Des Moines will work with DART to schedule orientation meetings with existing employees to introduce this Unlimited Access Program at the start of the program.
- C. Posters/Other Info** - DART will assist in production of other materials or ceremonial events launching the program subject to City of Des Moines approval.

8. Non-use of Name or Trademarks.

The City of Des Moines is the exclusive owner of all rights, title and interest in and to the City seal, trademarks, logos, service marks, trade names, and any other "City of Des Moines" marks, logos or insignias.

DART agrees that it will not, without the prior written consent of the City of Des Moines in each instance: (i) use in advertising, publicity, or otherwise the name or trademark of the City of Des Moines, or any employee of the City of Des Moines, nor any trade name, trademark, trade device, service mark, seal, symbol or any abbreviation, contraction or simulation thereof owned by the City of Des Moines, or (ii) represent, directly or indirectly, that any product or any service provided by DART has been approved or endorsed by the City of Des Moines. Such authorization or consent may be withdrawn at any time for any reason at the sole discretion of the City of Des Moines.

9. Indemnification.

The City of Des Moines will not be responsible for any claims by individuals or employees relating to the services provided by DART under this Agreement. Furthermore, DART shall indemnify, defend and hold harmless the City of Des Moines, its elected and appointed officials, employees, volunteers, agents, attorneys, and others

working on behalf of the City of Des Moines, and their successors and assigns from any liability, loss, claim, demand, damage, cost or expense, including but not limited to reasonable attorney's fees, that the City of Des Moines, its elected or appointed officials, employees, volunteers agents, attorneys, and others working on behalf of the City of Des Moines and their successors and assigns may incur arising from or in any way connected with the services provided by DART under this Agreement. IN NO EVENT WILL THE CITY OF DES MOINES BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.

10. Assignment.

The rights and duties of the parties hereunder shall not be assignable by either party without the written consent of the other. Said consent shall not be unreasonably withheld. The foregoing notwithstanding, this Agreement and any or all the rights or obligations hereunder may be assigned by the City of Des Moines to any entity affiliated with the City of Des Moines.

11. Waiver.

The failure of either party to require the performance of any term or condition of the Agreement, or the waiver by either party of any breach of the Agreement, shall not prevent a subsequent enforcement of any such term or any other term nor shall it to be deemed a waiver of any subsequent breach.

12. Section Headings.

The headings of the several sections are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of the Agreement.

13. Amendment.

In the event of a change in any state, federal, or local law that is directly related to any section of this Agreement, either party may request to renegotiate that section of the Agreement. This Agreement may be amended only by an instrument in writing executed by the City of Des Moines and DART.

14. Severability.

Should any valid federal or state law or final determination of any agency or court of competent jurisdiction affect any provision of this Agreement, the provision or provisions so affected will be automatically conformed to the law or determination and otherwise this Agreement shall continue in full force and effect.

15. Choice of Law/Venue.

Regardless of the place of contracting, place of performance, or otherwise, this Agreement and the rights of the parties hereunder shall be governed by, construed and enforced in accordance with the laws of the state of Iowa. The parties hereby submit themselves for the sole purpose of this Agreement and for any controversy arising hereunder to the jurisdiction of the courts located in Polk County, the state of Iowa, and any courts of appeal therefrom, and waives any objection (on the grounds of lack of jurisdiction, forum

non convenient, or otherwise) to the exercise of such jurisdiction over it by any such courts.

16. Miscellaneous.

This Agreement constitutes the entire Agreement among the parties regarding the subject matter hereof. If any party fails to perform its obligations under this Agreement or otherwise breaches this Agreement in any material respect, the non-breaching party shall give written notice of such breach to the breaching party. If the breaching party fails to cure the breach within thirty (30) days from the date of such notice, then the non-breaching party shall be entitled to pursue any and all rights and remedies it may have under this Agreement, at law or in equity, including, but not limited to, the right to terminate this Agreement. The breaching party shall be responsible to pay all costs and expenses, including, but not limited to, reasonable attorney's fees and expenses, incurred by the non-breaching party as a result of such breach, whether before, during or after any action or proceeding under this Agreement may have been commenced.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date indicated below.

Des Moines Area Regional Transit Authority

City of Des Moines

By: Brad Miller

By: _____

Title: General Manager

Title: _____

Signed:  _____

Signed: _____

Date: 6/20/08

Date: _____