

Date August 20, 2007

APPROVING AGREEMENT BETWEEN THE CITY OF DES MOINES,
STATE OF IOWA, DOWNTOWN COMMUNITY ALLIANCE AND
DES MOINES AREA REGIONAL TRANSIT FOR OPERATION OF A DOWNTOWN SHUTTLE

WHEREAS, a bus shuttle service has been proposed to connect the State Capitol Complex with the downtown area and such shuttle service will increase use of public transportation in the metropolitan area and will benefit downtown businesses and residences; and

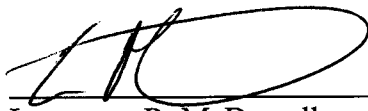
WHEREAS, an agreement has been prepared for the operation of the downtown Shuttle by the Des Moines Area Regional Transit ("DART") to be jointly funded by the City, State of Iowa and the Downtown Community Alliance.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the Agreement between the City, State of Iowa, Downtown Community Alliance and DART to provide for the operation of a downtown shuttle, on file in the Office of the City Clerk, with such revisions that do not impact the City's funding allocation and that are approved by the City Manager and reviewed as to form by the City Attorney, is hereby approved and the Mayor is hereby authorized and directed to sign said Agreement on behalf of the City of Des Moines.

BE IT FURTHER RESOLVED that the City Manager or his designee is hereby authorized and directed to administer the terms of the Agreement on behalf of the City and the Finance Department is hereby authorized and directed to make payments for the downtown shuttle service in accordance with the terms of the Agreement.

APPROVED AS TO FORM:

Moved by _____ to adopt.



Lawrence R. McDowell
Deputy City Attorney

G:\USERS\RD Lampki\LARRY\RC\Downtown Shuttle Agreement.doc

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

MOTION CARRIED

APPROVED

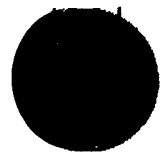
.....
Mayor

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



76

DRAFT

CONTRACT BETWEEN THE CITY OF DES MOINES, THE DOWNTOWN COMMUNITY ALLIANCE, THE STATE OF IOWA, AND THE DES MOINES AREA REGIONAL TRANSIT AUTHORITY REGARDING PROVISION OF A DOWNTOWN SHUTTLE OPERATION

THIS AGREEMENT is made and entered into on this _____ day of August, 2007, by and between the Des Moines Area Regional Transit Authority (hereinafter referred to as "DART"), the City of Des Moines (hereinafter referred to as "the City", the State of Iowa (hereinafter referred to as "the State") and the Downtown Community Alliance (hereinafter referred to as "the DCA").

WHEREAS, the City and the DCA have recently worked together to complete a "Movement" plan for improving accessibility throughout downtown Des Moines as a key component to the overall Downtown Des Moines Planning Project; and

WHEREAS, DART and the State recently partnered to operate a State Capitol Shuttle service during the 2007 Legislative Session that achieved extremely positive results and indicated an expanded version that connected the Capitol Complex with Downtown Des Moines was needed; and

WHEREAS, DART's objective to increase public transportation ridership in the Greater Des Moines Region is significantly complemented by a Downtown Shuttle providing connections within downtown, DART's top transit destination; and

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

1. Services.

DART shall provide a Downtown Shuttle service as further outlined in Appendix I beginning on or about February 1, 2008 subject to vehicle procurement and delivery schedules. The operating details of this service including routes and operating schedule for this service shall be developed and maintained by DART in consultation with the parties to this Agreement. The passenger fare for this Downtown Shuttle shall be free.

DART has purchased four (4) trolley buses to use on this Shuttle service at a cost of \$300,000 each or \$1,200,000 in total. The City, State, and DCA agree to jointly fund 1/12 of this amount annually as part of their payment referenced in Section 4.

DART, in consultation with the parties to this Agreement, reserves the right to evaluate and make minor modifications to Shuttle service in accordance with adopted DART Financial and Service Policies, as those policies may be amended.

2. Term.

The term of this Agreement shall commence on January 1, 2008, and shall extend for a three-year term ending December 31, 2010. At the completion of the Agreement term, unless this Agreement is extended in accordance with Section 8 or is replaced with a revised agreement, any vehicles purchased specifically for this Shuttle service shall be deemed the property of the DART free of any claim, lien or other encumbrance of the City, State, or DCA.

3. Administration/Notices.

Each party shall designate a project administrator to oversee the administration of this Agreement. The project administrators shall be responsible for the coordination, management and oversight necessary to accomplish the objectives of this Agreement. If this Agreement provides for consultation between the parties, such consultation shall be initiated by contact with the project administrator for each party

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 act as initial project administrator and to receive notice on behalf of each party are as follows:

For the City: City of Des Moines
 Attn: Mr. Gary Fox
 City Traffic Engineer
 Amory Building
 602 Robert D. Ray Drive
 Des Moines, Iowa 50309-1891
 Fax: 515-237-1640

For DART: Des Moines Regional Transit Authority
 Attn: Brian M Litchfield
 1100 DART Way
 Des Moines, IA 50309
 Fax: 515-283-8135

For DCA: Downtown Community Alliance
 Attn: Ms. Mary Lawyer
 President and CEO
 700 Locust # 100
 Des Moines, IA 50309
 Fax: (515) 243-6684

For State: Iowa Department of Administrative Services
Attn: Paul F. Carlson
Chief Operating Officer
Hoover State Office Building
Des Moines, IA 50319
Fax: (515) 242-5974

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

4. Payments.

For the first year that the Shuttle service is provided as outlined in Section 1 and Appendix I, the City, State, and DCA shall jointly pay DART the sum total of three-hundred and sixty thousand dollars (\$360,000) through twelve (12) monthly, equal payments starting with the last day of the first month of operating service, subject to Adjustments as described below in Section 5. This amount includes the capital and operating costs associated with one calendar year of the service as summarized in Appendix II.

The monthly payments shall be divided up between the City, State, and DCA in the following manner:

City of Des Moines:	50%
State of Iowa:	33.34%
DCA:	16.66%
Total	100%

Each party shall be responsible only for its respective percentage share of the monthly payments.

DART shall deliver one (1) copy of an invoice on a monthly basis to each party. Each invoice will document details of the Shuttle service provision and operating costs in a format agreeable to all parties.

The City, State, and DCA shall each be expected to provide their respective payment to DART within thirty (30) days of receipt of the invoice. Any charge disputed by any party shall be separated from the invoice and the undisputed portion shall be paid. The disputing party shall promptly notify DART of the dispute and the disputing party shall agree to meet with DART and such parties shall endeavor to resolve the disputed charges within thirty (30) days after notification of the dispute.

5. Adjustments

At the end of each year calendar year of Shuttle service, DART shall conduct a reconciliation of actual operating costs incurred for the Shuttle service compared to the estimated costs contained in the applicable annual operating budget. Should the variance between actual operating costs incurred and the estimated cost be equal or greater than plus or minus ten percent (10%), a reconciliation payment to cover any such overpayment will be made by DART and prorated to the City, State and DCA or a reconciliation payment to cover any such underpayment will be made by the City, State and DCA in prorated shares to DART.

Prior to October 1, 2010, the parties shall meet to consider extending this Agreement beyond the initial three-year term. Should the parties determine not to extend this Agreement and not to continue support of the Shuttle service, the parties will consider provision of alternative services, alternative use of vehicles, alternative funding and revised allocations for provision of services or other possible future options.

6. Operating Budget

DART shall submit an annual Shuttle service operating budget for each calendar year and accompanying service recommendations to the other parties prior to initiation of Shuttle service operations and prior to November 15 preceding each calendar year of operation. The operating budget shall include detailed data on costs for recommended service levels. The operating budget for each calendar year shall be subject to the approval of the project administrator for each party. DART shall not incur expenditures above amounts set forth in the approved current year annual Shuttle service operating budget unless such increased expenditures result from uncontrollable circumstances and are both reasonable and necessary for continued Shuttle service operations. DART shall calculate the costs directly incurred for operation of Shuttle service on a daily basis. DART shall further maintain on a current basis, accurate books and records of the expenses and contingent liabilities for the Shuttle service operation.

7. Capital Plan; Replacement Vehicles

It is the understanding of the City, State, and DCA that Shuttle service vehicles will not be utilized beyond their useful life, which is currently estimated at twelve (12) years. DART shall regularly update the parties to this Agreement on the status of the vehicles and a proposed schedule for the replacement of Shuttle service vehicles at the end of their useful life. DART shall submit the completed updated capital plan at the time it submits the annual Shuttle service operating budget to the parties to this Agreement and such updated capital plan shall be subject to the approval of the City, State, and DCA. DART shall make all reasonable efforts to secure Federal grant funding for the purchase of replacement Shuttle service vehicles in accordance with the approved updated capital plan.

DART shall make no additional capital purchases for the Downtown Shuttle service without prior consultation and agreement by the other parties in the form of an amendment to this Agreement.

8. Termination, Extension

This Agreement shall remain in effect until the last of the following occurs: (a) December 31, 2010; or (b) this Agreement has been properly terminated in accordance with the terms set forth herein, or as mutually agreed upon by the parties.

The Agreement shall be automatically extended on an annual basis unless: (1) if any party has not appropriated funds to cover its payment obligations for the upcoming year by December 1 of any year, any party may terminate their participation in the Agreement effective December 31 of the current year by providing notice to all other parties; or (2) any party provides notice to all other parties by October 1 of each year (commencing with October 1, 2009) of its intent to terminate the Agreement. All monthly payments shall continue until December 31 of the current year.

Notwithstanding any provisions to this Agreement relating to term and the extension thereof, the City, State, or DCA may terminate this Agreement at any time without cause upon ninety (90) days written notice to all other parties. In the event of such termination without cause by any party, the terminating party shall pay to DART a minimum of \$5,000.00 per vehicle "refurbishment" cost for all vehicles in service at the time of said termination and shall pay its share of monthly payments until the date of termination.

Should one or more parties exercise termination of this Agreement, any remaining parties shall jointly consider to either continue the Shuttle service pursuant to an amended agreement, including a revised allocation process, or discontinue the Shuttle service with complete termination of this Agreement

9. Remedies

DART may terminate this Agreement for default if the City, State, or DCA fail to pay any undisputed monthly invoice pursuant to this Agreement within twenty (20) days of receiving notice from DART that such payment is past due. In the event of such default, DART may terminate the Downtown Shuttle service as soon as reasonably practicable. DART may exercise the option to resume service upon such terms and conditions the parties may thereafter agree upon pursuant to an amended agreement; provided DART shall not be obligated to resume service terminated for default of this Agreement.

With the exception of default relating to non-payment of any undisputed monthly invoice, if any party fails to perform its obligations under this Agreement or otherwise breaches this Agreement in any material respect, the non-breaching party(ies) 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(ies) 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(ies) as a result of such breach, whether before, during or after any action or proceeding under this Agreement may have been commenced.

The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently.

10. Service Quality

The parties agree the objective of the Downtown Shuttle service is to operate in a manner that is (i) safe, reliable, efficient and effective and (ii) maximizes potential ridership in downtown Des Moines and to and from the Capitol Complex. To ensure the quality of service and to promote effective communications, the parties shall meet quarterly or on such other periodic basis as the parties may agree upon to discuss service related issues and to assess service effectiveness.

11. Reporting

DART shall maintain service related records in such formats as the parties may agree upon. Such records shall be provided to the City, State, and DCA on a quarterly basis or according to such other scheduled reporting periods the parties may agree upon. Such records shall further be made available for examination and inspection by any party upon request.

12. Program Promotion

Each party will fully coordinate and cooperate with the reasonable efforts of the other parties to promote the Downtown Shuttle service so that it can be deemed successful.

Such promotion efforts may include participation in promotional programs or events as well as development and distribution of posters and other advertising information about the Downtown Shuttle service.

13. Indemnification

The City, State and DCA will not be responsible for any claims by individuals or DART employees relating to the services provided by DART under this Agreement. Furthermore, DART shall indemnify, defend and hold harmless the City, State, and DCA, their officers, directors, employees, agents, attorneys, subsidiaries and affiliated entities and their successors and assigns from any liability, loss, claim, damage, cost or expense, including but not limited to reasonable attorney's fees, that the City, State, and DCA, their officers, directors, employees, agents, attorneys, subsidiaries and affiliated entities and their successors and assigns may incur arising from this Agreement.

14. Miscellaneous

(a) Entire Agreement - This Agreement constitutes the entire Agreement among the parties.

(b) Amendment - No amendment or change to this Agreement shall be valid unless in writing and signed by all the parties to this Agreement.

(c) Governing Law and Jurisdiction - Iowa law shall govern the interpretation and enforcement of this Agreement and any other matters relating to this Agreement. All legal actions or other proceedings relating to this Agreement shall be brought in a state of federal court sitting in Polk County, Iowa. By execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections that they may have with respect to venue in any court sitting in Polk County, Iowa.

(d) Binding Nature and Assignment - This Agreement shall bind the parties and their successors and permitted assigns. No party may assign this Agreement without the prior written consent of the other parties. Any assignment attempted without the written consent of the other parties shall be void.

(e) No Delay Damages Under no circumstances shall DART be liable to the City, State, and DCA for any damages arising from a delay in providing Shuttle service, whether caused by DART or not.

(f) Severability - The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If any provision of this Agreement is held to be unenforceable, then the parties shall be relieved of all obligations arising under such provision, but only to the

extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

(g) No Publicity - No advertising, sales promotion or other materials of the City, State, DCA, or DART or its agents or representations may identify or reference any of the individual parties to this Agreement in any manner without the prior consent of the identified parties.

(h) Waiver - No delay or omission by any party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any party of any covenant or breach of this Agreement shall not constitute or operate as waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving the rights.

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: _____ By: _____

Title: _____ Title: _____

Signed: _____ Signed: _____

Date: _____ Date: _____

State of Iowa

Downtown Community Alliance

By: _____ By: _____

Title: _____ Title: _____

Signed: _____ Signed: _____

Date: _____ Date: _____

Appendix I

Service Design

DART will operate a Downtown Shuttle service consisting of a single east-west route between approximate endpoints of the State Capitol and Meredith Corporation (17th Street) using 4 (four) in-service trolley buses. DART estimates that this service-design will allow for approximately 7-9 minute frequency in each direction.

The service will operate Monday through Friday from approximately 7 a.m. to 6:30 p.m.

DART will utilize 4 (four) new trolley buses on the route if they are available for service. DART will make reasonable efforts to utilize its two (2) 1999 trolleys as substitute vehicles when the new vehicles are needed for repair or preventative maintenance.

The exact east-west routing and marketing strategies shall be identified by DART prior to the start of Shuttle service after consultation with the City, State, and DCA.

DRAFT

Appendix II

Capital Cost

In order to provide the initial service the DART has purchased four (4) trolley buses for the Downtown Shuttle service at a cost of \$300,000 each, for a total of \$1,200,000. Each year, the City, State, and DCA shall reimburse DART a total of \$100,000, which amount is based on a 12-year amortization period for the acquired buses.

Operating Cost

Year 1 operations costs are budgeted at \$260,000. Years 2 and 3 operations costs are anticipated to rise approximately four percent (4%) each year.

Total Year 1 Cost

\$100,000 Capital + \$260,000 Operating

Payment Allocation

In accordance with Section 4 of the Agreement, the parties shall allocate Year 1 costs in the following manner:

City of Des Moines:	\$180,000
State of Iowa	\$120,000
<u>Downtown Community Alliance</u>	<u>\$60,000</u>
Total Year 1 Payments	\$360,000

Each party shall pay its respective annual allocation through equal pro-rated monthly payments.