



Roll Call Number

Agenda Item Number

39 II

Date May 5, 2025

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

WHEREAS, the City of Des Moines has entered into multiple agreements under the provisions of Iowa Code Chapter 28E with Bravo Greater Des Moines, Inc. ("Bravo"), the most recent one dated July 1, 2011, along with other municipalities in the Greater Des Moines Area for 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; and,

WHEREAS, the City desires to enter a new agreement replacing the old one for the purpose of changing funding, in coordination with the other municipalities, each having separate agreements with Bravo.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that the attached Agreement Between the City of Des Moines and Bravo Greater Des Moines, Inc. is hereby approved. The Mayor and City Clerk are hereby authorized and directed to execute the agreement on behalf of the City of Des Moines.

MOVED by _____ to adopt. Second by _____.

FORM APPROVED:

/s/ Thomas G. Fisher Jr.

Thomas G. Fisher Jr.

Deputy City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN				
SIMONSON				
VOSS				
COLEMAN				
WESTERGAARD				
MANDELBAUM				
GATTO				
TOTAL				
MOTION CARRIED		APPROVED		

CERTIFICATE

I, LAURA BAUMGARTNER, 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.

Mayor

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 _____, 2025, (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, 2025 (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 effective Agreement on July 1, 2011, 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 to replace the prior Agreement and all subsequent amendments and addendums as of the Effective Date.

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, 2023, 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, 2023, 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

The parties understand and intend that the obligation of the City of Des Moines 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 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, will 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, 25% of its Hotel/Motel Tax Revenues attributable after the Effective Date (the "Commitment") to be distributed and expended by Bravo in the manner set forth in this Agreement and the bylaws of Bravo. Each year a portion of the Commitment shall be allocated as follows: Bravo will allocate a minimum of \$600,000 annually to the operation of Blank Park Zoo. Bravo will also allocate a minimum of \$195,000 annually to the Operation of the Greater Des Moines Botanical Garden.
- (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 installments, paid no later than 30 days following the date on which the City receives the remittance of Hotel/Motel Tax Revenues, taking into account any reductions as provided in paragraph (1) above. If Bravo fails to distribute sufficient prorated funds from any disbursement to the operation of the Blank Park Zoo and the Greater Des Moines Botanical Garden to meet the annual allocation requirements as provided in subparagraph (1) above, the City may reduce subsequent disbursements in such amounts to ensure full annual allocations to the Blank Park Zoo and the Greater Des Moines Botanical Garden.
- (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 25% 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. Upon request, Bravo shall provide to the City of Des Moines copies of the governing documents, including applicable bylaws and policy guidelines. 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. Bravo shall post on its website and send via email to the city manager or its designee advance notice of the time, location and agenda for its board meetings and shall provide minutes of action taken via email to the City Manager or its designee.

- (2) The City of Des Moines and Bravo acknowledge that Polk County and the communities within the Greater Des Moines Area that make payment commitments to Bravo (Polk County and the described communities are together the "Participating Communities") and not-for-profit cultural organizations within such Participating Communities may, as part of a cultural improvement capital campaign, apply for grant funding. Bravo shall establish a separate fund to provide matching funds to support the capital campaigns for cultural improvements of Participating Communities and of not-for-profit cultural organizations within such Participating Communities (the "Fund"). Each fiscal year, Bravo shall allocate a minimum of \$150,000 and a maximum of \$450,000 of the Commitment payments from all Participating Communities for such cultural improvement capital campaigns. 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 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. Upon request, Bravo shall provide the City of Des Moines with copies of recipient funding Agreements. 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 2025-26 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. Notwithstanding anything to the contrary, Bravo may, once each fiscal year, submit a revised plan to the Des Moines City Council and the governing bodies of the other Participating Communities to reallocate up to 10% of the Commitment payments from the city of Des Moines and contributions by other Participating Communities for the fiscal year.

VII. DURATION AND TERMINATION

- (1) This Agreement shall continue in effect from the Effective Date until terminated in accordance with the terms of this Article VII.
- (2) This Agreement may be terminated by either party as provided in this paragraph. Any such termination may be accomplished only by delivery of notice to the other party not later than January 1 of any given year after the year ending December 31, 2026 and shall be effective on July 1 occurring eighteen (18) months after January 1 following the giving of the required notice.
- (3) Notwithstanding paragraphs (2) or (3) above, in the event that any part of the commitment is dispersed or expended by Bravo in violation of the terms of this Agreement the City may deliver to Bravo a notice to cure or remedy such default or breach within sixty (60) days and if such default or breach is not remedied within such cure period, this Agreement shall promptly terminate.
- (4) 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 June 30 coinciding with or next following the effective date of the statutory change that causes the termination.
- (5) 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.

- (6) 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
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: Sally Dix
801 Grand Avenue, Suite 250
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.

By:

Print Name: _____

Print Title: _____

State of Iowa)
) ss.
County of Polk)

This instrument was acknowledged before me on _____, 2025, by
_____ as _____ of Bravo Greater Des Moines, Inc.

Notary Public in and for the State of Iowa

THE CITY OF DES MOINES, IOWA

Connie Boesen, Mayor

ATTEST:

Laura Baumgartner, City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this _____ day of _____, 2025, before me, the undersigned, a Notary Public, personally appeared CONNIE BOESEN and LAURA BAUMGARTNER, to me personally known, who, being by me duly sworn, did state that they are the Mayor and City Clerk, respectively, of the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as Roll Call No. _____ on the _____ day of _____, 2025, and that Connie Boesen and Laura Baumgartner acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

Notary Public for the State of Iowa