

**BUSINESS OF THE CITY COUNCIL  
WINDSOR HEIGHTS, IOWA  
AGENDA STATEMENT**

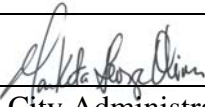
Item No. 8  
For Meeting of 04-07-08

**ITEM TITLE:** Consideration of Resolution of executing 28E Agreement with BRAVO for cultural services funding.

**CONTACT PERSON(S):** Marketa George Oliver, City Administrator

**SUMMARY EXPLANATION**

Attached for your consideration is a 28E agreement with BRAVO to provide cultural funding. The City originally entered into an agreement with Bravo in 2005. The attached resolution adopts a new agreement

Resolution _____ Ordinance _____ Contract _____ Other (Specify) _____
Funding Source _____ N/A
APPROVED FOR SUBMITTAL _____ <div style="text-align: right; margin-right: 100px;"> City Administrator</div>

**STAFF RECOMMENDATION:** Pass resolution on a roll call vote.

**COUNCIL ACTION:**

RESOLUTION 08-0407/

A RESOLUTION CONSIDERATION OF EXECUTING 28E AGREEMENT WITH  
BRAVO FOR CULTURAL SERVICES FUNDING

**WHEREAS**, BRAVO Greater Des Moines, Agreement to facilitate and support the cultural community of the Des Moines area in proving an enriched quality of life by increasing cultural awareness, advocacy and funding; and

**WHEREAS**, the agreement designates two-sevenths of the “Hotel/Motel Tax” for cultural activities; and

**WHEREAS**, coordination of monies for the use and benefit of cultural organizations and will be handled through BRAVO; and

**WHEREAS**, City of Windsor Heights will have a representative; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WINDSOR HEIGHTS, IOWA** that the Mayor is hereby authorized to execute the attached 28E agreement with the above-referenced entity.

**Passed and approved this 7th day of April, 2008.**

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Jerry Sullivan, Mayor

ATTEST:

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Marketa George Oliver, City Clerk

**AGREEMENT BETWEEN THE CITY OF WINDSOR HEIGHTS 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 Windsor Heights, Iowa, 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 Windsor Heights has as a goal the unification and coordination of monies for the use and benefit of the cultural community and specifically the cultural organizations which are members of Bravo. The City of Windsor Heights is committed to the reasonable stewardship of monies for arts and cultural purposes.

That the City of Windsor Heights 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 Windsor Heights 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 Windsor Height.

**II. PRE-CONDITIONS TO OBLIGATIONS OF THE CITY OF WINDSOR HEIGHTS**

The obligation of the City of Windsor Heights hereunder shall be subject to the fulfillment of the adoption of an appropriate resolution by the City Council of the City of Des Moines approving a substantially similar Agreement.

**III. COVENANT FROM CITY OF WINDSOR HEIGHTS**

- (1) The City of Windsor Heights does hereby irrevocably pledge and commit to 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:
- (2) The City of Windsor Heights 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 Windsor Heights 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 Windsor Heights 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 Windsor Heights hereby appoints its City Administrator to administer this Agreement with Bravo, and Bravo hereby appoints its President to administer this Agreement with the City of Windsor Heights.

(2) The City of Windsor Heights and Bravo acknowledge that the communities within the Greater Des Moines Area that make payment commitments to Bravo ("Participating Communities") and not-for-profit organizations within such Participating Communities may, as part of a capital campaign, apply for grant funding. Bravo shall establish a separate fund to provide matching funds to the Participating Communities and the not-for-profit 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. For a not-for-profit organization to be eligible to receive a disbursement from the Fund, the not-for-profit organization must make a presentation regarding its capital campaign to Bravo before the not-for-profit 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. Prior to January 1 of each year during the term of this Agreement, Bravo shall, if necessary, replenish the Fund to its Minimum Required Balance. If, as of January 1 of each year during the term of this Agreement, the funds in the Fund exceed the Minimum Required Balance, Bravo may withdraw such excess funds from the Fund and may use the withdrawn funds in accordance with the purpose of this Agreement. The City of Windsor Heights and Bravo acknowledge that any matching funds provided by Bravo for a not-for-profit 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 Administrator of the City of Windsor Heights 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 reviewed by a certified public accountant selected by Bravo.

## **VI. OPERATIONS AND FINANCES**

Bravo shall prepare and submit to the Windsor Heights’ City Council prior to the commencement of each of Bravo’s fiscal years beginning during the term of this Agreement a distribution plan for public funds (the “Plan”). The Plan for the 2008 fiscal year previously submitted to the Windsor Heights’ City Council, as amended, shall serve as the Plan for the remainder of the 2008 fiscal year. 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 Windsor Heights 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 Windsor Heights 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 Windsor Heights, to:

City of Windsor Heights  
1133 66<sup>th</sup> Street  
Windsor Heights, IA 50311  
Attention: Marketa Oliver, City Administrator

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.  
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 Windsor Heights and Bravo and after appropriate discussion and public dialogue, and such amendment has been approved by resolution of the City of Windsor Heights City 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 Windsor Heights 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 Windsor Heights.
- (3) While this Agreement is in effect, the City of Windsor Heights 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 Windsor Heights that no organization that receives funding from Bravo during the term of this Agreement will approach the City of Windsor Heights 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 or a political subdivision of the City; or (2) capital campaigns.



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Notary Public for State of Iowa