

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

Item No. 8
For Meeting of 04/19/10

ITEM TITLE: Consideration of a resolution approving a 28M agreement with DART.

CONTACT PERSON: Marketa George Oliver, City Administrator


SUMMARY EXPLANATION

Attached for your consideration is a resolution approving a 28M agreement for the Des Moines Regional Transit Authority. In summary, the amendment permits DART a one-time authority to issue lower-cost limited tax obligation bonds to pay off extraordinary accident liability expenses from major accidents that occurred over the last three years in a maximum amount of \$3,500,000. DART is requesting this amendment to save taxpayer money and preserve at least \$300,000 in regional public transit service.

There will be no increase in taxes as a result of this action. DART and its legal resources remain committed to aggressively managing DART's liability actions and seek to achieve the fairest and lowest cost outcomes. Also, DART has recently taken several safety measures to prevent future accidents.

Finally, the maximum debt issuance of this agreement is \$3.5 million. If DART's liability needs turn out to be lower, DART will work to issue less debt or pay off the debt earlier. No additional property taxes or other taxes will be raised to pay for this debt service. The agreement and a letter from the DART chair is included in your packet.

You may have read recently that the jury's verdict on the "George Mogensen" pedestrian accident trial found that 92% of the liability for the July 2007 accident at East 6th & Grand Avenue was the pedestrian, Mr. Mogensen who attempted to cross the street when the signal said "Don't Walk" and the DART Bus had the green arrow. Therefore, DART will not pay any damages for this accident where the pedestrian was seriously injured. This positive verdict has little impact on our continued need to issue \$3.5M in bonds but it provides more confidence that DART won't need to seek a 2nd Amendment for additional debt authorization after this first amendment approved.

<input checked="" type="checkbox"/> Resolution _____ Ordinance ____ Contract _____ Other (Specify) _____
Funding Source _____ NA _____
APPROVED FOR SUBMITTAL _____ <div style="text-align: center;"> _____ City Administrator</div>

STAFF RECOMMENDATION: Pass resolution on a roll call vote.

COUNCIL ACTION:

RESOLUTION NO. 10-0419/

CONSIDERATION OF A RESOLUTION APPROVING A 28M AGREEMENT WITH DART

WHEREAS, the city Windsor Heights has been a member of DART since 2006; and

WHEREAS, the city Windsor Heights values modes of alternative public transportation for its citizens; and

WHEREAS, DART wishes to have the one-time authority to issue lower-cost limited tax obligation bonds to pay off extraordinary accident liability expenses from several major accidents; and

WHEREAS, this will not raise taxes and in fact should save money;

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 28M agreement for Windsor Heights' for the Des Moines Regional Transit Authority.

PASSED AND APPROVED THIS 19th DAY OF April 2010.

David J. Sullivan, Mayor

ATTEST:

Marketa George Oliver, City Administrator/Clerk



April 2, 2010

The Honorable Jerry Sullivan, Mayor
City of Windsor Heights
City Hall
1133 66th St.
Windsor Heights, IA 50311

Dear Mayor Sullivan and Honorable Council Members:

On behalf of the Des Moines Area Regional Transit Authority Commission, I write to you thank you, your City Council, and your City staff for working with DART on the proposed amendment to the DART 28M Agreement that your community joined with the remaining other 17 cities in Polk County plus the Polk County Board of Supervisors in signing in 2006. The specific amendment is attached with this letter and has been reviewed by your City staff and unanimously recommended by DART member government staffs for approval by your Council.

Purpose of the Amendment

In summary, the amendment permits DART a one-time authority to issue lower-cost limited tax obligation bonds to pay off extraordinary accident liability expenses from several major accidents that occurred over the last three years in a maximum amount of \$3,500,000. DART is requesting this amendment to save taxpayer money and preserve more at least \$300,000 in regional public transit service.

While I am sure you will agree this is an acceptable goal, I want to assure you and your Council that:

1. **No Increase in Taxes** - In no way does the request for this amendment imply a direct or indirect intent by the Commission to raise property taxes or to enable DART to issue new property taxes. DART's Commissioners have committed to maintaining the levy rate where it is – the lowest transit levy in the state. Taxes will not be raised as part of this action.
2. **Lower Liability Costs** - DART and its legal resources remain committed to aggressively managing DART's liability actions and seek to achieve the fairest and lowest cost outcomes.
3. **Ongoing Commitment to Safety** - DART remains focused on improving our safety record and reducing the risk of additional catastrophic accidents occurring in the future. Now with additional insurance in place, a higher liability fund set aside, and a preventable accident rate that is half of what it was just two years ago, DART is in much better position to not be in the situation it finds itself in today when dealing with such significant accident liabilities.
4. **Maximum Debt Issuance of \$3.5 million** – The amendment specifically limits this lowest-cost debt issuance in purpose (for prior accident liabilities) and amount (a maximum of \$3.5 million). If DART's liability needs turn out to be lower, DART will work to issue less debt or pay off the debt earlier. No additional property taxes or other taxes will be raised to pay for this debt service.

While I am confident that DART's safety improvements provide a much stronger foundation for the future, I want to thank you and your staff and all the DART member governments for unanimously agreeing that should unforeseen, additional, justified needs for additional limited tax obligation debt are

Mayor Jerry Sullivan
April 2, 2010

Page 2

identified by the DART Commission, that the member Cities all agree to be willing to meet and consider additional debt authorizations again.

I know of your Council's strong support for increasing our region's public transit options for our future. To that end, I invite your community to join DART as it launches a significant, comprehensive 2035 Transit Services Planning study that will help define the future alternative transportation services for our region. DART will soon be notifying your community of how you and your citizens can get involved later this spring.

Thank you again for approving this important DART 28M Agreement amendment and for your continued support of improving public transit.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela Connolly". The signature is fluid and cursive, with a large loop at the end.

Angela Connolly, Chair
Des Moines Area Regional Transit Authority

cc: DART Commission
Brad Miller, General Manager

FIRST AMENDMENT TO THE
AMENDED AND RESTATED
AGREEMENT

for the

DES MOINES REGIONAL TRANSIT AUTHORITY

Dated as of April 1, 2010

FIRST AMENDMENT TO THE
AMENDED AND RESTATED AGREEMENT FOR THE
DES MOINES REGIONAL TRANSIT AUTHORITY

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED AGREEMENT FOR THE DES MOINES REGIONAL TRANSIT AUTHORITY (this “First Amendment”), is entered into as of the date set forth in Section 102 hereof, by and between the Participating Communities (as defined in the Amended and Restated Agreement for the Des Moines Regional Transit Authority (the “Original Amended and Restated Agreement”)).

WITNESSETH:

WHEREAS, the Des Moines Regional Transit Authority (“DART”) operates under the Original Amended and Restated Agreement, and pursuant to Chapter 28E and Chapter 28M of the Code of Iowa, 2009, as amended (collectively, the “Act”); and

WHEREAS, to better serve the citizens of the Participating Communities and to provide DART with the ability to manage its operations to the full extent permitted by the Act, the Participating Communities desire to amend the Original Amended and Restated Agreement; and

WHEREAS, this First Amendment is entered into pursuant to Article XIV, Section 1, of the Original Amended and Restated Agreement, to amend Section 2 of Article XI, as set forth below; and

WHEREAS, by their respective execution hereof, each of the Participating Communities adopts the changes set forth in this First Amendment; and

WHEREAS, all acts, conditions and things have been done and performed which are necessary to make this First Amendment a valid and binding agreement.

Section 101. Amendment to Article XI, Section 2. Pursuant to Article XIV, Section 1 of the Original Amended and Restated Agreement, the Participating Communities hereby agree to delete Section 2 of Article XI of the Original Amended and Restated Agreement in its entirety and replace said section with the following:

“Section 2. Obligations of RTA. Notwithstanding anything to the contrary contained herein, the RTA may issue its bonds in the types, for the purposes, and in the manner permitted by Chapter 28M of the Code, as amended; provided however, that general obligation bonds may only be issued (i) if the proceeds thereof are used to pay (whether directly or through refinancing of existing debt) obligations arising from accidents occurring on or prior to March 1, 2010, together with costs of issuance, (ii) with a term of not longer than ten years and (iii) in an aggregate principal amount which, when added to the principal amount of all other general obligation bonds issued pursuant to this provision, does not exceed \$3,500,000. Any excess proceeds from general obligation bonds remaining after paying or providing for the payment of such accident obligations shall be applied to the payment of debt service on the bonds.”

Section 102. Effective Date. This First Amendment is effective as of its date of execution by the last of the Participating Communities, which date shall be manually entered on the line set forth below.

Effective Date of First Amendment: _____

Attest:

City of Windsor Heights, Iowa

By: _____
City Administrator

By: _____
Mayor

STATE OF IOWA, COUNTY OF POLK, ss:

On this ____ day of _____, 2010, before a Notary Public in and for the City, personally appeared _____ and _____, to me personally known, who being duly sworn, did say that they are the Mayor and City Administrator, respectively of the City of Windsor Heights, Iowa, a Municipality, 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 Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council and said Mayor and City Administrator acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

4822-4323-9685\2