

DDA FINANCING CONTRACT

(CITY OF ANN ARBOR SERIES 2018 LTGO CAPITAL IMPROVEMENT BONDS)

THIS DDA FINANCING CONTRACT (the “**Contract**”), made and entered into as of _____, 2018, between the CITY OF ANN ARBOR, a Michigan municipal corporation (the “**City**”), and the ANN ARBOR DOWNTOWN DEVELOPMENT AUTHORITY, a public body corporate organized and existing pursuant to Act 197, Michigan Public Acts, 1975, as amended (the “**DDA**”).

RECITALS

A. The Downtown Development Authority Act, Act 197, Michigan Public Acts, 1975, as amended (“**Act 197**”), authorizes the City and the DDA to adopt and implement a development plan and tax increment financing plan in order to plan and implement public improvements in a development area designated in the plan.

B. A Development Plan & Tax Increment Financing Plan was prepared by the DDA, for the DDA’s development area, which was approved by the City Council by Ordinance No. 55-82 and subsequently amended by the DDA, and adopted, as amended, by the City Council by Ordinance No. 26-03 (as amended, the “**Plan**”).

C. The Plan designates a DDA District (the “**Development Area**”) and identifies a number of proposed public improvements contemplated to be made by the DDA and the City within the Development Area.

D. Pursuant to the Plan, the DDA has been capturing tax increment revenues (as defined in Act 197 and the Plan, the “**Tax Increment Revenues**”) generated by properties located in the Development Area.

E. The DDA represents and warrants that: the statement of Tax Increment Revenues for the fiscal year that ended June 30, 2018 is accurate and correct to the best of its knowledge (such statement is attached hereto as **Exhibit A**); and that the table of projected annual Tax Increment Revenues for the remainder of the term of the Plan (attached as **Exhibit B**) accurately reflects the DDA projections for collection of the same, as of the date the DDA executes this Contract.

F. Tax Increment Revenues have been and will be available to effectuate the various purposes and objectives of the Plan, but only to the extent of Tax Increment Revenues available after the payment of the DDA's necessary and reasonable administrative expenses (i.e., DDA salaries and fringe benefits, office space, insurance, and related legal expenses), which expenses shall be exclusive of capital projects included in or contemplated by the Plan ("**Net Tax Increment Revenues**"). Net Tax Increment Revenues as so defined shall be determined each fiscal year on the basis of the relevant information set forth in the Annual Report prepared by the DDA and submitted to the City Council and the State Tax Commission pursuant to Section 15(3) of Act 197 (the "**DDA Annual Report**").

G. Pursuant to the Parking Agreement with the City, dated July 1, 2011 and last amended on or about February 21, 2018 ("**Parking Agreement**"), the DDA manages and maintains the Municipal Parking System in accordance with the Parking Agreement. The Parking Agreement provides that the DDA is entitled to collect certain parking revenues in exchange for its obligations under the Parking Agreement ("**Parking Revenues**"). The DDA is required to remit 20% of the "**Gross Parking Revenues**", as defined under the Parking Agreement to mean, Parking Revenues received, "less rents or other obligations paid to public and/or private owners for use of their property as Facilities," to the City each quarter. The Plan allows for Parking

Revenues to be expended on construction projects, such as the Project (identified herein). The term Gross Parking Revenues shall have the same meaning under this Contract as it does in the Parking Agreement, but such Gross Parking Revenues (and the City's right thereto hereunder) are exclusive of and in addition to all fees, expenses, and consideration the DDA is required to pay the City under the Parking Agreement.

H. The City and the DDA have determined that it is necessary and appropriate at this time to finance certain capital project costs pursuant to and consistent with the goals of the Plan, consisting of various street, bikeway, sidewalk, utility and infrastructure improvements, more particularly described in **Exhibit C** (collectively, the "**Project**"), with an estimated total cost of \$17,000,000, including legal, engineering and financing costs (the "**LTGO Project**").

I. The Plan authorizes certain projects to be financed by the issuance of bonds by either the DDA or the City, and the use of Tax Increment Revenues and Parking Revenues to pay Debt Service on such bonds. "**Debt Service**" shall mean interest and/or principal, as may become due.

J. The City has published a notice of intent to issue capital improvement bonds to finance the LTGO Project and has adopted a bond authorizing resolution (the "**Bond Resolution**") approving the City's issuance of limited tax general obligation capital improvement bonds in a principal amount not exceeding \$15,500,000, having a term not exceeding the remaining duration of the Plan (the "**LTGO Bonds**"), for the purpose of financing the costs of the LTGO Project and related bond issuance costs.

K. The LTGO Bonds will be issued under Act 34, Public Acts of Michigan, 2001, as amended ("**Act 34**").

L. The DDA shall reimburse the City for the full cost of financing the development of the LTGO Project by remitting its Net Tax Increment Revenues and Gross Parking Revenues in amounts sufficient to pay all Debt Service on the LTGO Bonds as the same become due for the full term of the LTGO Bonds.

M. To maturity or earlier redemption of the LTGO Bonds, interest on the LTGO Bonds will be payable semi-annually and principal will be paid annually, in each case on the dates determined at the time of sale of the LTGO Bonds. For purposes of this Contract, (i) the date on which each required annual principal and/or semi-annual interest payment on the LTGO Bonds is due is hereinafter referred to as a “**Bond Payment Date**” and (ii) each required annual or semi-annual Debt Service payment on the LTGO Bonds is hereinafter referred to as an “**LTGO Bond Payment.**”

AGREEMENT

The parties hereto agree as follows:

1. The above-stated Recitals are incorporated herein including, without limitation, the Parties’ agreements, undertakings, representations, and warranties, set forth therein.
2. If the LTGO Bonds are issued, the DDA shall finance the LTGO Project through the City’s issuance of the LTGO Bonds in a principal amount not exceeding \$15,500,000.
3. The City agrees that, if the LTGO Bonds are issued, the proceeds of the LTGO Bonds shall be used solely to pay the costs of the LTGO Project, which costs may include the reimbursement of costs of the LTGO Project incurred and paid by the DDA prior to the date of issuance of the LTGO Bonds. Upon completion of the LTGO Project, any remaining proceeds of the LTGO Bonds may be used by the DDA for other capital projects of the DDA, subject to the City's receipt of an opinion of the City's bond counsel that such

use of surplus bond proceeds will not adversely affect the tax-exempt status of the LTGO Bonds and is permitted under the Plan, Act 197, and other applicable law.

4. The DDA agrees that its Net Tax Increment Revenues and Gross Parking Revenues shall be used, as outlined herein, to make the LTGO Bond Payments when due in each fiscal year, beginning no later than the first Bond Payment Date in fiscal year 2019, through the fiscal year ending June 30, 2033 or until the earlier repayment in full of the LTGO Bonds (the “**LTGO Project DDA Debt Service Payments**”) by the DDA. The DDA shall make all LTGO Project DDA Debt Service Payments in accordance with applicable City policies (including but not limited to the City’s Debt Policy, it being understood that it is a requirement herein that the DDA fund 15% of the LTGO Project with DDA funds not acquired from the LTGO Bonds). Further, in making the LTGO Project DDA Debt Service Payments, the DDA shall use available Net Tax Increment Revenues to the extent they are sufficient to make such payments, and may use Gross Parking Revenues to the extent the DDA determines such use is allowed under the Plan.

For all purposes under this Contract, the Net Tax Increment Revenues shall include any and all reimbursements or payments of any description provided to the DDA or to any taxing unit for the account of the DDA by the State of Michigan or any fund or account of the State of Michigan by reason of any reduction in millage leviable by any taxing unit, or by reason of any reduction in the valuation of property or percentage of true cash value of property subject to ad valorem taxation, or by reason of the reduction of any special tax imposed on property in lieu of ad valorem taxation, or any credit against taxation, resulting directly or indirectly from any change in the constitution or laws of the State of Michigan in effect on the date hereof.

Notwithstanding anything to the contrary here, in the event the City issues bonds to refund all or part of the outstanding LTGO Bonds to achieve Debt Service savings, the DDA’s LTGO

Bond Payments shall be adjusted to equal the required annual or semi-annual Debt Service payments with respect to the bonds issued to refund the LTGO Bonds, plus the required annual or semi-annual Debt Service payments with respect to any LTGO Bonds that remain outstanding following such refunding.

If the DDA fails to make a LTGO Bond Payment within ninety (90) days of the Bond Payment Date, the DDA authorizes the City to withhold on behalf of the DDA from the Net Tax Increment Revenues collected by the City in each fiscal year (i) the annual amount set forth above to pay a portion of each LTGO Bond Payment due on each Bond Payment Date occurring in such fiscal year during the term of the DDA's obligations hereunder, and (ii) all or any portion of an LTGO Bond Payment or Payments not funded by the DDA in a prior fiscal year until the DDA's delinquent funding of such LTGO Bond Payment or Payments is funded in full as provided in Section 6 below; provided, that any Net Tax Increment Revenues so withheld by the City shall be disbursed promptly to the DDA upon the written certification of the DDA that the amounts specified by the DDA in such certification are then required by the DDA for the payment of its current reasonably necessary administrative expenses as reflected in the DDA Annual Report for such fiscal year. Any remaining Tax Increment Revenues collected by the City shall be promptly disbursed to the DDA each fiscal year after its obligations under (i) and (ii) have been satisfied. The DDA's foregoing contractual obligation to contribute Net Tax Increment Revenues to the City to fund a portion of the LTGO Bond Payments shall not constitute a third party guaranty of the LTGO Bonds.

5. In the event that the City shall for any reason be unable or fail to withhold the LTGO Project DDA Debt Service Payments from its collections of Tax Increment Revenues as provided hereunder, the DDA shall upon the City's request immediately pay the amount of the

deficiency to the City from other legally available Tax Increment Revenues of the DDA not currently required for the DDA's reasonable and necessary current administrative expenses. In the absence of such payment by the DDA, the City shall have all rights and remedies provided by law to enforce the obligations of the DDA hereunder.

6. In the event that Net Tax Increment Revenues and Gross Parking Revenues in any given fiscal year are insufficient to satisfy the LTGO Bonds DDA Debt Service Payments pursuant to this Contract, and the City has made such payments from its own funds pursuant to its limited tax general obligation pledge, the DDA shall reimburse the City for such payments in whole, together with interest at a rate equal to the Michigan Cooperative Liquid Assets Securities System (CLASS) Investment Pool daily variable rate, from the next Net Tax Increment Revenues and/or Gross Parking Revenues collected that exceed current LTGO Bonds DDA Debt Service Payments required hereunder. Delinquent payments shall be paid from such excess Net Tax Increment Revenues (or if the full payment amount is not available, such remaining portion that is available) as soon as the same are collected (and may be withheld by the City as provided in Section 4 above).

7. Any other provision of this Contract to the contrary notwithstanding, it is understood and agreed by the parties hereto that the DDA's obligation to make LTGO Project DDA Debt Service Payments, as well as all other current and future DDA payment obligations to the City (whether structured as a bond payment, grant, Parking Revenue payment due under the Parking Agreement, or other form of financial obligation) are in all respects senior to any current and future DDA obligations of Net Tax Increment Revenues and/or Gross Parking Revenues to third parties.

8. The DDA hereby acknowledges that the City will issue the LTGO Bonds in reliance upon this Contract and the promise of the DDA to make or cause to be made the LTGO Project DDA Debt Service Payments from Net Tax Increment Revenues and Gross Parking Revenues in

accordance with this Contract. The DDA agrees that it will not amend any existing agreement, enter into any agreements, approve the issuance of any note, bond or other evidence of indebtedness, or approve any amendments to the Plan or its Ten-Year Financial Plan, or take any other action that grants a priority or lien on the Tax Increment Revenues or Gross Parking Revenues that is not subordinate to the priority of the City hereunder, or that would impair, or have the effect of impairing, the ability of the DDA to make the LTGO Project DDA Debt Service Payments. The DDA may, however, issue tax increment revenue bonds, parking revenue bonds, or enter into contractual Tax Increment Revenues or Gross Parking Revenues payment obligations in accordance with the Plan and Act 197 after the date of this Contract payable and secured on a basis that is fully subordinate to the LTGO Project DDA Debt Service Payments to the City hereunder, to the extent permitted under Act 197.

9. This is the entire agreement among the parties and it supersedes and replaces all prior agreements between the parties regarding its subject matter. It may not be modified except in writing, signed by all parties. It shall not be affected by any course of dealing.

10. This Contract shall be effective upon the City issuing the LTGO Bonds.

11. Except as otherwise specifically provided herein, all notices, certificates, requests or other communications under this Contract shall be sufficiently given and shall be deemed given (i) upon receipt when transmitting using electronic means other than telecopy/facsimile, (ii) when mailed by registered or certified mail postage prepaid, to the applicable address set forth below, or (iii) upon delivery by overnight courier service, telecopy or hand delivery to the applicable address set forth below:

If to the City:

City of Ann Arbor
301 E. Huron Street
Ann Arbor, Michigan 48107
Attention: _____

Email: _____
Telephone: _____

If to the DDA:

Ann Arbor Downtown Development Authority
301 E. Huron Street
Ann Arbor, Michigan 48107
Attention: _____

Email: _____
Telephone: (____) ____-_____

The parties hereto may by notice given hereunder in writing designate any further or different addresses to which subsequent notices, certificates, requests, complaints, demands or other communications hereunder shall be sent.

12. If any one or more sections, clauses or provisions of this Contract shall be determined by a court of competent jurisdiction to be invalid or ineffective for any reason, such determination shall in no way affect the validity and effectiveness of the remaining sections, clauses and provisions of this Contract.

13. This Contract may be executed in several counterparts, each of which shall be deemed an original, and such counterparts together shall and will constitute one and the same instrument.

14. This Contract shall be governed by and construed in accordance with the laws of the State of Michigan.

15. Nothing in this Contract expressed or implied is intended or shall be construed to confer upon, or to give any person or entity, other than the parties hereto, any right, remedy or claim under or by reason of this Contract or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Contract contained by and on behalf of the City and the DDA shall be for the sole and exclusive benefit of the parties hereto.

16. This Contract shall terminate upon the payment in full by the DDA of the LTGO Bonds DDA Debt Service Payments owing (including the DDA funding any delinquencies of such payments as set forth in Section 4) or upon the earlier defeasance of all of the LTGO Bonds as provided for in the Bond Resolution, but shall remain in effect with respect to any refundings of the LTGO Bonds as set forth in Section 4 hereof. Upon termination, any amounts in funds and accounts established under the Bond Resolution or any trust indenture related to the LTGO Bonds (or refundings of the LTGO Bonds) and derived from the Tax Increment Revenues, which are not required to satisfy the LTGO Project DDA Debt Service Payments, shall be promptly remitted to the DDA. The obligation of the City and any agent of the City to make such transfer shall survive the termination of this Contract.

17. Absent an express and specific written waiver, no act, failure, or delay by a party to pursue or enforce any rights or remedies under this Contract shall constitute a waiver of those rights/remedies with regard to any existing or subsequent breach of this Contract. No waiver of any term, condition, or provision of this Contract, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Contract. No waiver by either party shall subsequently affect its right to require strict performance of this Contract.

The parties have executed this Agreement as of the date first written above.

CITY OF ANN ARBOR

ANN ARBOR DOWNTOWN
DEVELOPMENT AUTHORITY

By: _____

By: _____

Its: _____
Mayor

Its: _____

By: _____

Its: _____
Clerk

Approved as to form and content:

By: _____

Stephen Postema, City Attorney

Approved as to substance:

By: _____

Howard Lazarus, City Administrator

EXHIBIT A

**STATEMENT OF TAX INCREMENT REVENUES
(FISCAL YEAR ENDED JUNE 30, 2018)**

Fiscal Year	Actual/Est. SEV "B"	SEV Cap	Actual Prop. Tax Millage Rate	Actual Tax Capture
2018	\$253,780,289	\$231,840,000	27.8589	\$6,460,184

EXHIBIT B
PROJECTED FUTURE TAX INCREMENT REVENUES

Fiscal Year	Actual/Est. SEV "B"	SEV Cap	Actual Prop. Tax Millage Rate	Projected TIF Revenues Capture
2019	\$262,662,599	\$239,954,400	27.8589	\$6,684,866
2020	\$271,855,790	\$248,352,804	27.8589	\$6,918,836
2021	\$281,370,743	\$257,045,152	27.8589	\$7,160,995
2022	\$291,218,719	\$266,041,732	27.8589	\$7,411,630
2023	\$301,411,374	\$275,353,193	27.8589	\$7,671,037
2024	\$311,960,772	\$284,990,555	27.8589	\$7,939,523
2025	\$322,879,399	\$294,965,224	27.8589	\$8,217,407
2026	\$334,180,178	\$305,289,007	27.8589	\$8,505,016
2027	\$345,876,484	\$315,974,122	27.8589	\$8,802,691
2028	\$357,982,161	\$327,033,217	27.8589	\$9,110,786
2029	\$370,511,537	\$338,479,379	27.8589	\$9,429,663
2030	\$383,479,441	\$350,326,158	27.8589	\$9,759,701
2031	\$396,901,221	\$362,587,573	27.8589	\$10,101,291
2032	\$410,792,764	\$375,278,138	27.8589	\$10,454,836
2033	\$425,170,510	\$388,412,873	27.8589	\$10,820,755

EXHIBIT C

PROJECT DESCRIPTION

Project goals include improving pedestrian and bicyclist safety and comfort, and addressing infrastructure needs. The projects will include installation of new street and sidewalk improvements on Huron Street (between Chapin/Third and Division), First and Ashley Streets (between Madison and Kingsley), and William Street (between Third and State Streets). Project elements will include protected on-street bikeways, new sidewalks, streetlights, utilities, landscaping and other pedestrian amenities.