

## PARKING AGREEMENT

The City of Ann Arbor, a Michigan municipal corporation (hereinafter referred to as "City"), and the Downtown Development Authority of the City of Ann Arbor, a public corporation organized and existing pursuant to the authority of Act 197, Public Acts of Michigan, 1975, MCLA 125.1651 et seq (hereinafter referred to as "DDA"), in consideration of the mutual promises contained herein, do hereby agree as follows this 1<sup>st</sup> day of July, 2011 (the "Effective Date"):

WHEREAS, on April 9, 1992, the City entered into an agreement with the DDA to operate and maintain a parking system which was subsequently amended in 2002 and 2005;

WHEREAS, After due consideration, the City and DDA wish to address the continued management, operations, maintenance, capital and financial obligations of the City and the DDA with respect to the Ann Arbor municipal parking system by the adoption of a new parking agreement, which shall supersede all prior representations, negotiations, agreements or understandings whether written or oral; and

WHEREAS, this Parking Agreement (hereinafter "Agreement") is made as of the Effective Date.

0. Definitions.

- a. "Municipal Parking System" shall mean all Facilities and on-street, metered parking spaces (or their technological equivalents) owned or leased by the City or the DDA to provide parking to the public within the DDA Parking Area.
- b. "Facilities" shall mean the parking structures and public surface parking lots within the DDA Parking Area identified on Exhibit A. Lots and structures may be added or

deleted from DDA Parking Area and Exhibit A revised by written notice delivered by either party, which additions or subtractions shall become part of Exhibit A without further action unless within thirty (30) days of such notice the receiving party objects in writing delivered to the noticing party. In the event of an objection, the parties shall work together in good faith to determine the status of such structures or lots. Any revisions made pursuant to the foregoing shall be made a part of and incorporated into this Agreement subject to any additional terms or conditions specified by written agreement as of the date thereof.

- c. “DDA Parking Area” shall mean the area depicted in Exhibit B attached hereto which area may be altered at any time during the term of this Agreement after approval of the governing bodies of the DDA and the City. Any revisions thereof shall be made a part of and incorporated into this Agreement subject to any additional terms or conditions specified by written agreement as of the date thereof.
- d. “Gross Parking Revenues” shall mean the parking operations revenues received from operation of the Municipal Parking System as of the Effective Date of this Agreement, less rents or other obligations paid to public and/or private owners for use of their property as Facilities.
- e. “Standing Committee” shall mean a committee comprising of the DDA Executive Director, DDA Parking Manager, Deputy Police Chief, Community Standards Supervisor, the Public Services Area Administrator and their designees.

1. Termination of Existing Parking Agreement

- a. The April 9, 1992 agreement by and between the DDA and the City, renewed May 1, 2002, as amended shall be, and hereby is, terminated as of the Effective Date of this Agreement.

2. Operational Powers and Responsibilities Within DDA Parking Area.

- a. Subject to Article 8, applicable law, and City permitting regulations, within the DDA Parking Area, the DDA shall have sole authority to determine the addition or removal of meters, loading zones, or other curbside parking uses, subject to administrative approval of the City, which shall not be unreasonably withheld. In the instances where the DDA contemplates making such a request, staff of the DDA and City shall meet not less than thirty (30) days in advance of a submittal to review any potential traffic impacts, including traffic safety and operation. DDA requests to the City shall be submitted in such a form as to reference existing City traffic codes, and shall include distance markers and other pertinent information to assist City staff review. The City shall provide its review and approval or denial of proposed DDA actions within fifteen (15) business days from the receipt of DDA's delivery to the City of the City's completed Action Request Form, in a form attached hereto as Exhibit C and any required supplemental documentation necessary to complete the requested review. In extraordinary circumstances the foregoing review period may be extended for successive fifteen (15) business day periods by written notice from the City to DDA, which notice shall include the reason for the extension. Should the City determine that more than two successive extensions are necessary for review of an Action Request Form, all subsequent extension notices shall be signed by the City

Administrator. Notwithstanding anything in this Agreement to the contrary, DDA's authority to add meters outside of the DDA District within the DDA Parking Area in areas that are eligible for residential parking permits shall be subject to the City's prior written consent in accordance with current guidelines for residential parking districts

- b. Where the City acting on its own or through its agents must undertake any public infrastructure maintenance or/and improvements within the DDA Parking Area, including repairs or improvements to the streets or utility mains, the DDA will temporarily remove or prohibit on-street parking at no cost to the City as needed to accomplish the maintenance or improvements.
- c. Where the City has approved use of the public right-of-way, for a purpose other than community benefit, that results in the temporary removal of on-street parking, the party applying to use the public right-of-way will be required as a condition of the permit to pay directly to the DDA, or its management firm (if applicable), the current meter bag fee.
- d. Where the City requires use of the public right-of-way for a purpose benefitting the City or has approved the use of the right-of-way for a community benefit, the City will not pay DDA for the loss of revenue or the cost of removing the on-street parking. City agrees to provide reasonable notice of such use under this subsection. When needed the DDA will provide the City, or the applicable community organization, a sufficient number of meter bags for use in the temporarily occupied public right-of-way.

- e. The City shall work collaboratively with the DDA to develop and present for adoption by City Council a City policy regarding the permanent removal of on-street metered parking spaces. The purpose of this policy will be to identify whether a community benefit to the elimination of one or more metered parking spaces specific area(s) of the City exists, and the basis for such a determination. If no community benefit can be identified, it is understood and agreed by the parties that a replacement cost allocation methodology will need to be adopted concurrent with the approval of the City policy; which shall be used to make improvements to the public parking or transportation system.
- f. Should installed signs be necessary to delineate parking uses, the City shall be responsible for the manufacture and installation of said signage and the DDA shall reimburse the City for its actual costs (e.g. labor and materials) to provide this service if changes authorized by the DDA trigger the need for it. Where the City provides signage as requested by the DDA it will do so within 15 business days following the execution of a traffic control order ("TCO") for a request. The foregoing response period may be extended for successive fifteen (15) business day periods by written notice from the City to DDA, which notice shall include a reason for the extension. Should the City determine that more than two successive extensions are necessary for review of an Action Request Form, all subsequent extension notices shall be signed by the City Administrator. Alternatively, the DDA, after notice to and approval by the City, may contract, at its sole expense, the services of a MDOT prequalified private sign contractor for this purpose, but will ensure that any new signs meet MDOT standard specifications and the Michigan Manual on Uniform Traffic Control

Devices for content, materials, and installation, and the City is provided with detailed information about each sign for its record keeping purposes. If this alternative is selected, the City will assess the DDA with a cost for sign inspection. If the City is required to inventory, assess, or update signs to meet current Federal, State or local laws or regulations, the DDA will pay its proportionate annual share of this cost for public parking signage in the DDA Parking Area.

- g. If the DDA determines, after inspection and review of identified conditions by appropriate City officials and qualified contractors, that a Facility, in whole or in part, is no longer safe for parking operations, then DDA may suspend or terminate parking operations at such Facility, or a portion thereof, on notice to the City. DDA shall provide the Public Services Area Administrator written notice of its decision, as well as the reasons and supporting documentation therefore, within twenty-four hours of its determination. Should the DDA recommend the demolition of any City-owned parking structure, and after independent review of such recommendation by the City such recommendation is accepted and demolition is authorized by the City, the DDA will assume the demolition expense required to remove all or a portion of the parking facility to assure public safety, and will ensure that the ground surface is compacted and restored in accordance with current City standards. In this instance the City will determine the repurposing of the surface lot after demolition.
- h. The City reserves the right now and into the future to establish parking lots, on street spaces or structures to provide parking for its employees. These new parking facilities could be used for parking open to the public subject to the terms of this agreement.

- i. Except as otherwise provided in this Agreement, the DDA shall manage, maintain and collect all parking revenues (other than fines) resulting from operation the Municipal Parking System, provided, however, the City shall retain responsibility for managing the Residential Parking Permit Program and receiving the revenues from said program.
- j. Within the normal course of the provision of services to the public as, the City shall use reasonable efforts to provide public services, necessary for the operation of the Municipal Parking System, including but not necessarily limited to on-street snow and ice control, pothole repairs, crack filling, pavement replacement, and pavement marking, shall provide to the DDA reports within 15 business days of the end of each calendar quarter.
- k. Subject to Article 8, applicable law, and City permitting regulations, and after consultation with the City Administrator, City Council, and downtown stakeholders, which may from time to time be identified by either the City or the DDA, the DDA shall determine the rates and hours of parking in the Municipal Parking System and file such rates and hours with the City Clerk and otherwise publish such rates in the same manner as City ordinances, which rates and hours shall take effect thirty (30) days after said filing.
- l. Intentionally omitted.
- m. The City shall be responsible for enforcement of parking regulations in the Municipal Parking System and shall collect all fines resulting from such enforcement, which fines shall be set after consultation with the DDA. The DDA and City will coordinate the hours of parking enforcement and operations at the on-street parking meters. At

the DDA's request, the City will alter or extend the hours of parking enforcement within the limits determined by its employment contracts, available staffing or other applicable contractual or mutual aid agreements. It is acknowledged by the parties that not all parking available for public use is part of the Municipal Parking System. The DDA agrees to work collaboratively with the AAPD to optimize parking enforcement throughout the DDA Parking Area. The DDA shall have the right to allocate portions of Facilities to third party for long term parking usage and mutually agreed upon non-parking-related usage. The DDA shall provide an annual report to the City of any allocation identifying the specific Facility and the size, nature and term of the allocation.

- n. The DDA, at its own expense, shall operate, maintain, pay related debt service, and keep the Municipal Parking System in good repair and the total expense of routine maintenance and repair in connection therewith shall be borne and paid by the DDA. The DDA is authorized to make such further repairs, alterations, additions, and enhancements of the Facilities as are deemed reasonable and necessary by the DDA to operate the Facilities for the purposes set forth in this Agreement.
- o. The City shall not lease any portion of individual Facilities to third parties where such lease (either alone or cumulatively with other leases in such Facility) would reduce the number of usable parking spaces in such Facility by more than one percent (1%) or five (5) parking spaces, whichever is less, without first (i) providing DDA with thirty (30) days prior written notice; (ii) consulting with DDA about the location and terms of use of such leased spaces to reduce the impact of such use on DDA's use of the Facility; and (iii) upon DDA's written request delivered no more than fifteen (15)



days after notice of the proposed lease, executing a side letter between City and DDA, the sole purpose of which is to make DDA whole for the loss of Gross Parking Revenue associated with the reduced parking spaces. The City shall, in consultation with DDA and its designee, perform all necessary tasks to prepare the Facility for third-party use. The City shall reimburse DDA for any out-of-pocket costs associated with the third party use. Notwithstanding the above, the City's right to continue to provide parking for its employees as may be required by its collective bargaining agreements is retained and the City shall not be responsible for reimbursement of the DDA for any costs associated with the exercise of this right. The City shall endeavor through collective bargaining and other measures to reduce the provision of free or subsidized employee parking provided in structures, lots or parking meter locations operated by the DDA. In addition, the term "third party" under this agreement shall not apply to "juror parking" required to be provided under City/County contractual obligations.

3. Term.

- a. This Agreement shall commence on the Effective Date of this Agreement and terminate June 30, 2033, unless terminated pursuant to the following:
  - i. Each of the City and DDA may terminate this Agreement without cause, on June 30, 2022 and on the eleven (11) year anniversary thereafter, provided that written notice of termination is provided no less than three hundred and sixty five (365) days in advance of said termination.
  - ii. Either party may terminate this Agreement upon the breach of the other party, which breach remains uncured sixty (60) days after notice thereof.

iii. The City reserves the right of first refusal to purchase from the DDA for one dollar (\$1) any or all fixtures installed by the DDA in "as-is" condition at the termination of this agreement. No later than sixty (60) days prior to termination of this agreement the City shall notify the DDA in writing of its intent to exercise its option and identify with specificity in said notice what fixtures it wishes to acquire. Should the City not wish to exercise its rights under this provision or should its acquisition list be less than all such fixtures, the DDA shall have the right to sell or otherwise dispose of the remaining trade fixtures without further restriction.

4. Financial Obligations of the DDA.

- a. The DDA will pay the City within thirty one (31) days of the end of the each calendar quarter seventeen percent (17%) of Gross Parking Revenue received by the DDA during the prior quarter.
- b. Through Fiscal Year 2015-16, should the DDA's combined fund balance (excluding the Housing Fund) ("DDA Fund Balance") fall below ONE MILLION DOLLARS (\$1,000,000), as shown by the DDA's annual audited reports, then DDA may reduce amounts payable to the City under Section 4(a) by amounts equal to the difference between the DDA Fund Balance and ONE MILLION DOLLARS (\$1,000,000) ("Withheld Payments"), provided, however, that Withheld Payments shall not exceed (i) ONE MILLION DOLLARS (\$1,000,000) in any given fiscal year; or (ii) TWO MILLION DOLLARS (\$2,000,000) in the aggregate. The DDA agrees that prior to June 30, 2016, its discretionary grants and projects will not exceed the cost proposed in the DDA 10 Year Plan presented to the DDA Board at its meeting of May 20,

2011, unless otherwise approved by City Council. If at any time during the Term of this Agreement, the DDA Fund Balance exceeds FOUR MILLION DOLLARS (\$4,000,000), as shown by the DDA's annual audited reports, then the DDA shall pay to the City an amount equal to the aggregate Withheld Payments, provided, however, that DDA may delay any portion of such payments that would reduce the DDA Fund Balance below FOUR MILLION DOLLARS (\$4,000,000) until such time as the making of such payment would not reduce the DDA Fund Balance below FOUR MILLION DOLLARS (\$4,000,000).

- c. The DDA shall not be charged parking operations-related taxes, fees or any other amounts by the City except as specifically provided in this Agreement. Subject to Section 2(g), the City further agrees that during the term of this Agreement that it will not assess any parking operations-related fees or surcharges on users of the Facilities that are in addition to the parking rates as provided for in of this Agreement.
- d. The DDA shall not use tax increment financing revenue collected from taxing authorities to make any payments to the City described herein. The DDA agrees that all such payments shall be made exclusively from parking revenues in the DDA parking fund.
- e. The DDA shall take no action that it reasonably believes will have a material detrimental effect upon parking enforcement revenue collected by the City. In the event that the DDA wishes to take such an action, then DDA and the City will negotiate in good faith in an effort to accommodate DDA's contemplated action, while reducing to as close to zero as is practical, the overall detrimental revenue effect to the City.

- f. Each payment pursuant to Section 4(a) shall be accompanied by an accounting of Gross Parking Revenue and documentation reasonably requested by the City, which documentation shall be sufficient to justify the calculation of amounts paid. The DDA shall provide the City with written financial reports relating its operation of the Municipal Parking System on a monthly basis as part of its monthly meeting minutes, and a certified annual audit report.
- g. Notwithstanding anything in this Agreement to the contrary, in the event that City fails to provide DDA with reports required under this Agreement, and if City fails to provide such reports to DDA within thirty (30) days after written notice thereof by the DDA, then DDA shall be authorized to withhold five percent (5%) of amounts owed hereunder until such reports are delivered.

5. Indemnification and Liability Releases

- a. To the extent permitted by law, the DDA agrees to protect, defend and indemnify the City, its officers, agents, and employees from any and all liabilities, claims, liens, fines, demands and costs, including legal fees, of whatsoever kind and nature which may result in injury or death to any persons, including the respective parties own employees, and for loss or damage to any property, including property owned or in the care, custody or control of the DDA in connection with or in any way incident to or arising out of the occupancy, use, service, operations, performance or non-performance of work in connection with this Agreement resulting in whole or in part from the negligent acts or omissions of the DDA, its officers, agents, and employees. This provision is not intended, and shall not be construed, to waive or limit any immunity or other defense which the DDA may have in law or equity.

- b. The DDA agrees that it will not permit the use of the Facilities in any manner that would result in a violation of any local, state or federal laws, ordinances, rules, or regulations now or hereafter in force and applicable thereto. The DDA further warrants that its use and occupation of the Facilities is in compliance with and shall remain in compliance with all applicable environmental laws.
- c. However, nothing in this Agreement shall be construed to relieve the City from liability to DDA, its officers, agents, employees, invitees, guests and independent contractors for City's own negligence or negligence of City's employees, officials, and agents, and the City shall, hold harmless the DDA, its officers, agents and employees to the extent of such negligence. This provision is not intended, and shall not be construed to waive or limit any immunity defense which the City may have including governmental immunity or any other lawful defense in law or equity.

6. Insurance.

- a. The DDA will procure and maintain, at its cost and expense, during the term of this Agreement insurance satisfactory to the City, insuring the City from liability for damage to person or property or contractual liability arising in whole or in part from action or inaction by, or on behalf of, the DDA arising out of the rights or obligations of DDA under this Agreement. For the avoidance of doubt, as the operator of the City-owned Municipal Parking System, DDA does not have responsibility to obtain insurance for replacement of Facilities in the case of a catastrophic event, which coverage is the responsibility of the City.
- b. As of the Effective Date of this Agreement, and continuing without interruption during the term of this Agreement, DDA shall provide certificates of insurance to the

City on behalf of itself, and when necessary or requested the Management agent, DDA contractors or agents, or any person or entity to which the DDA has allocated a portion of the Facilities. The certificates of insurance shall meet the following minimum requirements.

- i. Workers' Compensation and Employers Liability insurance covering the statutory requirements of Michigan.
- ii. Directors and Officers Insurance covering acts or omissions of its Board of Directors.
- iii. Commercial General Liability insurance with limits of no less than \$2,000,000.00 per occurrence for bodily injury and property damage. Said insurance may be required to be provided by the contractor operating the Facilities. Limits shall be adjusted periodically, upon the reasonable request of the City. The City, its agents, officials and employees shall be named as additional insureds. In addition, the University of Michigan, its agents, officials and employees shall be named as additional insured with respect to the Forest Avenue Parking Structure per the terms of the City/University Agreement (a copy of which has been provided to and the terms and obligations thereunder acknowledged by the DDA). This insurance shall protect the DDA and the City, its agents, officials, and employees, to the extent noted above, against loss on account of damage or injury to persons or property imposed by reason of the ownership or control of the Facilities or resulting from any act of omission or commission on the part of the DDA, the management company, or the City, the University of Michigan, their agents, officers and employees to the extent noted above, in conjunction with the

operation, maintenance or repair of the Facilities or the furnishing of any service in connection therewith. The DDA shall also pay any premiums on fidelity bonds for any DDA employees or persons handling funds on behalf of the DDA for the Facilities. The City agrees to provide insurance coverage on the parking structures and City-owned parking lots equal to their replacement value. Information on the City's insurance coverage amounts on each facility will be provided to the DDA on an annual basis.

7. Management Contract.

- a. The DDA may subcontract management of the Facilities, provided that no agreement between DDA and any such subcontractor shall restrict the ability of the City to receive the services of such subcontractor. At any time during this agreement that a new contract is deemed necessary, the DDA will develop a request for proposals and a proposed management contract for the retention by the DDA of a manager for the Facilities. Information concerning the RFP will be widely circulated to regional and national operators of parking facilities through appropriate newspapers and professional publications. Prospective contractors will be evaluated upon prior and current experience, reputation, and plans for customer service. Prospective contractors will be asked to provide proposed annual operating budgets, monthly, quarterly, and annual maintenance schedules, and budgets for capital repair and improvements. The proposals shall detail hours of operation and staffing. The DDA will ensure that contractor's employees are paid at least a living wage as defined under the City of Ann Arbor Living Wage Ordinance. The DDA shall confirm that the contractor meets all other City requirements as set forward by the City for its own

vendors, such as not being in default to the City. The DDA shall be responsible for selection of and negotiation of terms of employment of the parking management firm. The parking management firm shall hire and supervise its own employees. The DDA shall file a copy of the selected parking management firm's contract, together with any amendments thereto, with the City. Any insurance coverage required of the parking management firm by the terms of its contract shall also be endorsed to include the City of Ann Arbor, its officers and employees as additional insured.

8. Public input.

- a. The DDA shall regularly seek advisory input on its parking operations through such means as its monthly DDA meetings and DDA committee meetings, quarterly customer service surveys, volunteer citizen inspections, and feedback from the downtown associations and Downtown Area Citizens Advisory Council (CAC).
- b. Notwithstanding the foregoing, DDA shall not implement any increase in the Municipal Parking System's hours of meter operation or parking rates intended to persist for more than three (3) months without first: (i) announcing, and providing written communication regarding, the details of such increase at a meeting of the DDA Board; (ii) providing all members of the public an opportunity to speak in a manner similar to a public hearing before the DDA Board at its next regularly scheduled meeting on the subject of the proposed increase ("Public Hearing"); and (iii) postponing any vote on the proposed increase until at least the regularly scheduled meeting of the DDA Board after the Public Hearing.



9. Periodic Consultation.

a. Standing Committee.

- i. The Standing Committee shall meet monthly (or with such other frequency as the Standing Committee may determine) to discuss parking enforcement schedules, Municipal Parking System maintenance and operations, and/or performance under this Agreement.
- ii. The parties agree and acknowledge that DDA representatives to the Standing Committee shall communicate DDA's desires regarding the City's parking enforcement emphasis within the DDA Parking Area. City shall use best efforts to emphasize areas, hours, and methods of parking enforcement within the DDA Parking Area per DDA's request. DDA agrees and acknowledges that its request for parking enforcement emphasis shall be subject to the City's need to allocate staff resources to accommodate special events, emergencies, and other unforeseen events of limited duration. For the avoidance of doubt, the Ann Arbor Police Department shall not be obligated to divert sworn-officer resources from normal on-duty assignments to provide personnel under this Agreement.
- iii. At each Standing Committee meeting, the City shall provide DDA with a report, in the form of Exhibit C (or as otherwise mutually agreed), which report (i) shall identify and quantify City's parking enforcement performance under Section 9(b); and (ii) identify in writing the reasons for any material failure to comply with DDA's parking emphasis requests.

- b. Joint Working Session. As part of the annual established calendar for City Council Working Sessions, City Council shall designate one working session in the fall of each calendar year as a joint working session with the DDA. The agenda for the working session shall be prepared by the City Administrator in accordance with Council Rules and in consultation with the Executive Director of the DDA, provided that such agenda shall include (i) the DDA's evaluation of any meter parking rate increases effected during the foregoing year, including, without limitation, the public input associated therewith; and (ii) a discussion regarding any then-contemplated future meter parking rate increases, which discussion shall satisfy the DDA's City Council consultation obligation under Section 2(k). It is recommended that a portion of such agenda be dedicated to a discussion of operations under this Agreement and the utility of creating a joint study committee to address areas of mutual interest.

#### 10. General Conditions

- a. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the Parties.
- b. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, 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 Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

- c. Whenever a party's consent is required, that consent shall not be unreasonably withheld or delayed.
- d. The following provision(s) shall survive the termination of this Agreement: Article 6 and 7.
- e. Nothing contained herein shall be construed as conferring upon the DDA, its officer, employees or agents, the authority to contract or otherwise act on the City's behalf, other than as expressly set forth herein.
- f. All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other.
- g. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the City, it shall be addressed and sent to:

City of Ann Arbor  
301 E. Huron St.  
Ann Arbor, MI 48107-8647  
Attn.: City Administrator

If Notice is sent to the DDA, it shall be addressed and sent to:

Ann Arbor Downtown Development Authority  
150 S. Fifth Ave., Suite 301  
Ann Arbor, MI 48104  
Attn.: Executive Director

- h. Except as provided for the benefit of the Parties, this Agreement does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to be indemnified, right to be subrogated to the Parties' rights in this Agreement, and/or any other right, in favor of any other person or entity.
- i. This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

- j. Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.
- k. This Agreement, or any part hereof, or the administration or performance of any activity or service performed by the DDA hereunder, cannot be assigned or sublet, contracted away, or in any manner transferred without the prior written consent and full approval of the City.
- l. This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the DDA with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. Other than pursuant to Section 0(b), this Agreement may be altered, amended or modified only by written amendment signed by the DDA and the City.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties agree to the foregoing:

CITY OF ANN ARBOR, a Michigan municipal corporation

By: \_\_\_\_\_

John Hieftje, Mayor

By: \_\_\_\_\_

Jacqueline Beaudry, City Clerk

DOWNTOWN DEVELOPMENT AUTHORITY, a Michigan municipal corporation

By: \_\_\_\_\_

Joan Lowenstein, DDA Chair

By: \_\_\_\_\_

Susan Pollay, Executive Director

Approved as to substance for the City

\_\_\_\_\_  
Tom Crawford

Tom Crawford, Interim City Administrator

Approved as to form for the City

\_\_\_\_\_  
Stephen K. Postema

Stephen K. Postema, City Attorney

## Exhibit A: Facilities

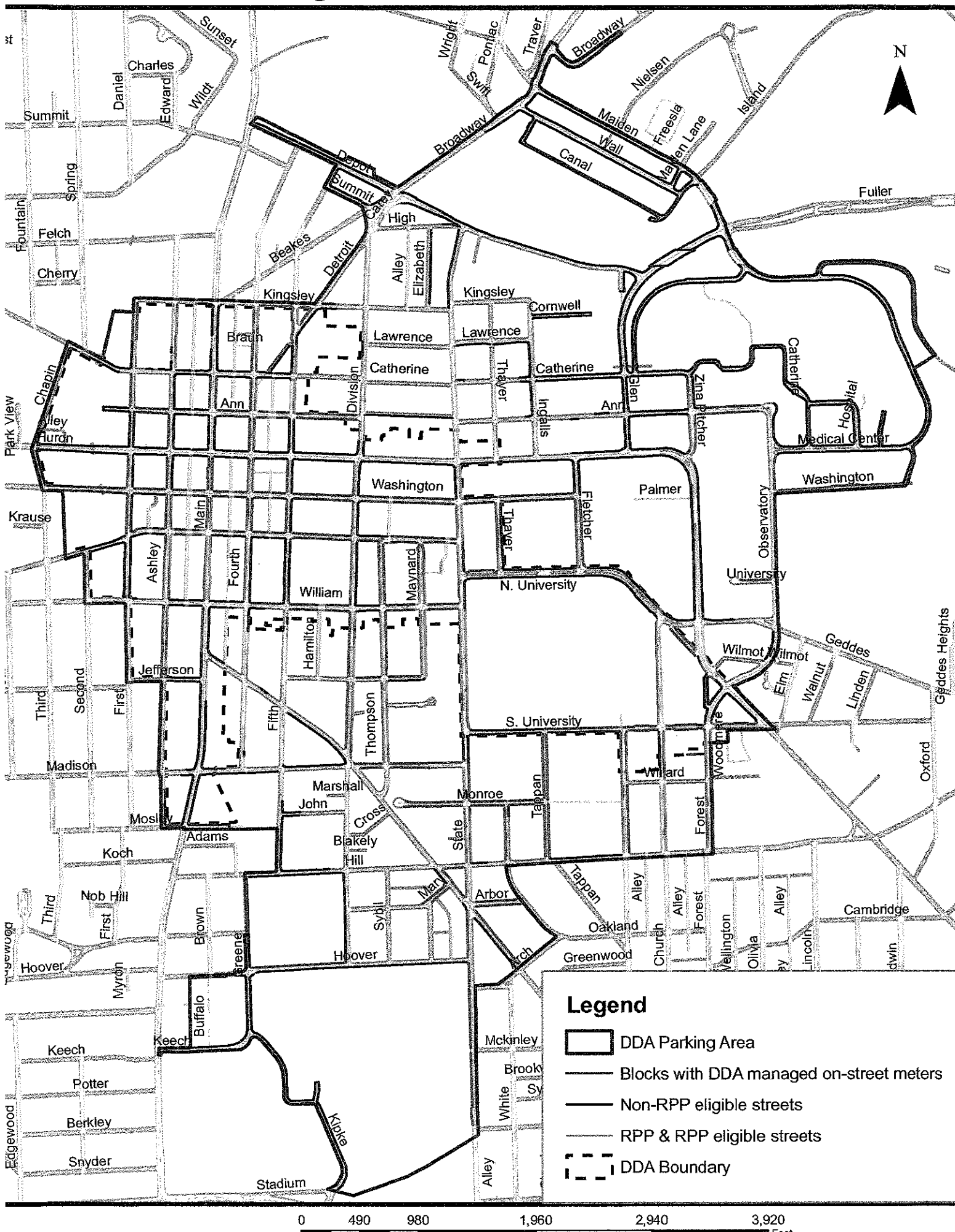
Facility	Ownership	# of Parking Spaces	Address	Notes
<u>Parking Structures</u>				
Ann & Ashley	City of Ann Arbor	839	120 W. Ann St.	
Fourth & Washington	City of Ann Arbor	281	123 E. Washington	
Fourth & William	City of Ann Arbor	994	115 E. William	
Forest	City of Ann Arbor/ University of Michigan	856	650 S. Forest	
Liberty Square	City of Ann Arbor	592	510 E. Washington	
Library Lane	City of Ann Arbor	677	351 S. Fifth Ave	Under Construction
Maynard	City of Ann Arbor	805	316 Maynard Street	
<u>Lots – City Owned</u>				
415 W. Washington	City of Ann Arbor	134	415 W. Washington	
Broadway Bridge	City of Ann Arbor	17		
City Hall	City of Ann Arbor	33	100 N. Fifth Ave	Spaces closed due to Constr.
Farmer's Market	City of Ann Arbor	76	343 Detroit Street	Shared with City Park's Dept.
Fifth and William	City of Ann Arbor	112	350 S. Fifth Ave	
First & William	City of Ann Arbor	112	216 W. William	
Fourth & Catherine	City of Ann Arbor	49	301 Fourth Ave	

## Exhibit A: Facilities

Patio Lot	City of Ann Arbor	21	corner of William and Main St	
South Ashley	City of Ann Arbor	134	305 S. Ashley	
<u>Lots -- Not City Owned</u>				
Community High	Ann Arbor Public Schools	74	401 N. Division	Shared with Community High School
Depot Street	Amtrak	37	325 Depot St.	
Fifth and Huron	City Hall LLC	56	115 S. Fifth Ave	
Fingerle Lot	Fingerle Lumber Co.	45	221 W. William	
First and Huron	Huron Ashley Limited Partnership	168	201 W. Huron	
Kerrytown	Kerrytown Associates LTD.	25		
Main & Ann	County of Washtenaw	24	101 W. Ann	
<u>Parking Meters</u>	City of Ann Arbor	1,793	Various	



# Exhibit B: DDA Parking Area



## **Exhibit C: City Reports - Tracking Enforcement and Street Maintenance in the DDA Parking Area**

Street maintenance and parking enforcement reports that enable the DDA to measure and better understand the level of services provided within the DDA Parking Management Area; ensuring service levels that are necessary for the successful operation of the Public Parking System.

### **Parking Area Street Maintenance Reports**

**Frequency:** Provided Quarterly

**Format:** An electronic database copy in either Microsoft Excel or Access.

#### **Report Content:**

1. On-street Maintenance Report – streets and indented on-street parking areas: Documentation summarized by the type of work performed (street sweeping, snow removal, and ice control, etc). Each work category should include dates conducted, number of staff or hours of staffing, geographic areas covered, and number of times each work-type (sweeping, etc) was performed in a given week. Snow removal data should also include the response time after each snow event.
2. Downtown Street Repair Report: Individual project documentation that includes the type of repair or inspection conducted (patching, potholes, street resurfacing, crosswalk repairs, pavement replacement, pavement marking, etc), date, number of staff or hours of staffing, and the street, block numbers, or intersection where the work was conducted. If an inspection was conducted in response to a complaint or observation, but no action was taken – the report should note this and also why no action was taken.

### **DDA Parking Area Parking Enforcement Reports**

**Frequency:** Monthly Data Provided Quarterly

**Format:** An electronic database copy in either Microsoft Excel or Access.

#### **Report Content:**

On-going Enforcement Documentation:

1. Ticket summary Report: Individual ticket documentation that includes date, meter space number, and ticket number (to allow for correlation with invalidations - we do not need license plate numbers or any other personal information). The street or block number can be provided in the case of a non-metered violation.
2. Referee Invalidation/Fee Reduction Report: A monthly report of total citations appealed to the City that includes number of citations contested, number of citations denied, number of citations reduced and number of citations voided with the reasons for the void.
3. Community Standards Staff Allocation Report: Monthly shift documentation that includes number of staff or hours of staffing, geographic area covered, and type of violations targeted. Data can be summarized further, if shifts have a set pattern.

## **Exhibit C: City Reports - Tracking Enforcement and Street Maintenance in the DDA Parking Area**

### **Special Assignment Response Documentation:**

1. **Community Standards Staff Allocation Report:** Monthly shift documentation that includes number of staff or hours of staffing, geographic area covered, and the specific DDA request being responded to.
2. **Focused Enforcement Report:** Individual ticket documentation that includes date, meter space number, ticket number, and the specific DDA request being responded to. The street or block number can be provided in the case of a non-metered violation.



# City of Ann Arbor

301 E. Huron St.  
Ann Arbor, MI 48104  
<http://a2gov.legistar.com/Calendar.aspx>

## Legislation Details (With Text)

**File #:** 18-0233      **Version:** 1      **Name:** 2/20/18 Amendment 2 City/DDA Parking Agreement  
**Type:** Resolution      **Status:** Passed  
**File created:** 2/20/2018      **In control:** City Council  
**On agenda:** 2/20/2018      **Final action:** 2/20/2018  
**Enactment date:** 2/20/2018      **Enactment #:** R-18-060

**Title:** Resolution to Approve Amendment No. 2 to the Parking Agreement between the City of Ann Arbor and the Downtown Development Authority of the City of Ann Arbor

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. City DDA Parking Agreement Amendment 2.pdf

Date	Ver.	Action By	Action	Result
2/20/2018	1	City Council		

Resolution to Approve Amendment No. 2 to the Parking Agreement between the City of Ann Arbor and the Downtown Development Authority of the City of Ann Arbor

Attached for your review and approval is a resolution to approve Amendment No. 2 to the Parking Agreement between the City and the Downtown Development Authority.

The City and the DDA initially entered into a Parking Agreement in 1992. Under that Agreement, the DDA assumed the management of the City's parking decks and lots. In response to the needs of the downtown community and on-going development in the area, a new Parking Agreement was approved by both entities in 2011.

In 2017, after the City/DDA joint work session, which included discussion of re-opening the Parking Agreement to address the potential needs of both parties, Amendment No. 1 to the City/DDA Agreement was adopted (R-17-050). That amendment increased the City's revenue share from 17% to 20% for FY2018 and FY2019. Staff discussion of other potential changes continued.

Based on those on-going discussions, the proposed Amendment No. 2 to the City/DDA Parking Agreement recommends:

- Administrative approval process for the addition/removal of parking meters has been streamlined.
- Coordination of parking fine adjustments with parking rate changes
- Code amendments to address current and future parking meter technology
- DDA review of City's Special Parking Districts Policy and recommendations to Council
- Retention of the DDA's payment of a percentage of gross parking revenue at 20% each quarter.

**DOWNTOWN DEVELOPMENT AUTHORITY  
OF THE CITY OF ANN ARBOR  
AND  
THE CITY OF ANN ARBOR**

**PARKING AGREEMENT  
AMENDMENT NUMBER ONE**

The City of Ann Arbor, a Michigan municipal corporation, with offices at 301 E. Huron St. Ann Arbor, Michigan 48107-8647 ("City") and the Downtown Development Authority of the City of Ann Arbor, a public corporation organized and existing pursuant to the authority of Act 197, Public Acts of Michigan, 1975 (MCL 125.1651 et seq.), with offices at 150 S. Fifth Avenue, Suite 301, Ann Arbor, Michigan 48104 ("DDA") agree to amend the Parking Agreement executed by the parties effective July 1, 2017, as follows:

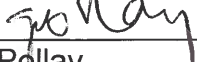
- 1) Article 4, Financial Obligations of the DDA, is amended in subsection (a) to read as follows with the remainder of the Article unaltered and restated in its entirety below:
  - a. The DDA will pay the City within thirty-one (31) days of the end of each calendar quarter twenty percent (20%) of Gross Parking Revenue received by the DDA during the prior quarter for the fiscal years FY2018 and FY2019. Thereafter for the remainder of the term of the Agreement, the DDA will pay the City within thirty-one (31) days of the end of each calendar quarter seventeen percent (17%) of Gross Parking Revenue received by the DDA during the prior quarter.
  - b. Through Fiscal Year 2015-16, should the DDA's combined fund balance (excluding the Housing Fund) ("DDA Fund Balance") fall below ONE MILLION DOLLARS (\$1,000,000), as shown by the DDA's annual audited reports, then DDA may reduce amounts payable to the City under Section 4(a) by amounts equal to the difference between the DDA Fund Balance and ONE MILLION DOLLARS (\$1,000,000) ("Withheld Payments"), provided, however, that Withheld Payments shall not exceed (i) ONE MILLION DOLLARS (\$1,000,000) in any given fiscal year; or (ii) TWO MILLION DOLLARS (\$2,000,000) in the aggregate. The DDA agrees that prior to June 30, 2016, its discretionary grants and projects will not exceed the cost proposed in the DDA Ten Year Plan presented to the DDA Board at its meeting of May 20, 2011, unless otherwise approved by City Council. If at any time during the Term of this Agreement, the DDA Fund Balance exceeds FOUR MILLION DOLLARS (\$4,000,000), as shown by the DDA's annual audited reports, the the DDA shall pay to the City an amount equal to the aggregate Withheld Payments, provided, however, that DDA may delay any portion of such payments that would reduce the DDA Fund Balance below FOUR MILLION DOLLARS (\$4,000,000) until such time as the making of such payment would not reduce the DDA Fund Balance below FOUR MILLION DOLLARS (\$4,000,000).
  - c. The DDA shall not be charged parking operations-related taxes, fees or any other amount by the City except as specifically provided in this Agreement. Subject to Section 2(g), the City further agrees that during the term of this

Agreement that it will not assess any parking operations-related fees or surcharges on users of the Facilities that are in addition to the parking rates as provided for in this Agreement.

- d. The DDA shall not use tax increment financing revenue collected from taxing authorities to make any payments to the City described herein. The DDA agrees that all such payments shall be made exclusively from parking revenues in the DDA parking fund.
- e. The DDA shall take no action that it reasonably believes will have a material detrimental effect upon parking enforcement revenue collected by the City. In the event that the DDA wishes to take such an action, then DDA and the City will negotiate in good faith in an effort to accommodate DDA's contemplated action, while reducing to as close to zero as is practical, the overall detrimental revenue effect on the City.
- f. Each payment pursuant to Section 4(a) shall be accompanied by an accounting of Gross Parking Revenue and documentation reasonably requested by the City, which documentation shall be sufficient to justify the calculation of amounts paid. The DDA shall provide the City with written financial reports relating its operation of the Municipal Parking System on a monthly basis as part of its monthly meeting minutes, and a certified annual audit report.
- g. Notwithstanding anything in this Agreement to the contrary, in the event the City fails to provide DDA with reports required under this Agreement, and if the City fails to provide such reports to DDA within thirty (30) days after written notice thereof by the DDA, then DDA shall be authorized to withhold five percent (5%) of amounts owed hereunder until such reports are delivered.

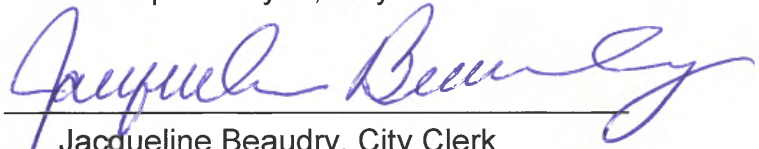
All terms, conditions, and provisions of the original agreement between the parties unless specifically amended above, are to apply to this amendment and are made a part of this amendment as though expressly rewritten, incorporated, and included herein. This amendment to the agreement between the parties shall be binding on the heirs, successors and assigns of the parties.

**For Downtown Development Authority  
of the City of Ann Arbor**

By   
Susan Pollay  
Its: Executive Director


**For City of Ann Arbor**

By   
Christopher Taylor, Mayor


  
Jacqueline Beaudry, City Clerk

[signatures continued on next page]

**Approved as to form and content**

  
\_\_\_\_\_  
Stephen K. Postema, City Attorney

**Approved as to substance**

  
\_\_\_\_\_  
Howard S. Lazarus, City Administrator



- Elimination of certain procedural requirements regarding DDA issued RFPs for management subcontractors.
- Directing all public input on parking operations to be processed through public meetings of the DDA and its committees.

City Administration recommends approval of the amendment.

Prepared by: Mary Joan Fales, Senior Assistant City Attorney

Reviewed by: Susan Pollay, Executive Director, DDA

Approved by: Howard S. Lazarus, City Administrator

Whereas, On July 1, 2011, the City of Ann Arbor ("City") and the Downtown Development Authority of the City of Ann Arbor ("DDA") entered into an agreement for the management, operations, maintenance, and capital and financial obligations of the City and the DDA with respect to the Ann Arbor municipal parking system ("Parking Agreement"), which was amended on February 21, 2017;

Whereas, The DDA has proposed and the City agrees with the following further amends to the Parking Agreement

- Administrative approval process for the addition/removal of parking meters has been streamlined.
- Coordination of parking fine adjustments with parking rate changes
- Code amendments to address current and future parking meter technology
- DDA review of City's Special Parking Districts Policy and recommendations to Council
- Retention of the DDA's payment of a percentage of gross parking revenue at 20% each quarter.
- Elimination of certain procedural requirements regarding DDA issued RFPs for management subcontractors.
- Directing all public input on parking operations to be processed through public meetings of the DDA and its committees

Whereas, The Parking Agreement requires such changes to be by written amendment approved by the governing bodies of both entities;

Whereas, No other changes to the Parking Agreement are proposed at this time;

RESOLVED, That City Council approve Amendment No. 2 to the Parking Agreement as described above;

RESOLVED, That the Mayor and City Clerk are authorized and directed to execute Amendment No. 2 to the Parking Agreement after approval as to substance by the City Administrator and approval as to form by the City Attorney; and

RESOLVED, That Amendment No. 2 to the Parking Agreement be forwarded to the DDA, after execution by the City, for its formal approval and execution.



**DOWNTOWN DEVELOPMENT AUTHORITY  
OF THE CITY OF ANN ARBOR  
AND  
THE CITY OF ANN ARBOR**

**PARKING AGREEMENT  
AMENDMENT NUMBER TWO**

The City of Ann Arbor, a Michigan municipal corporation, with offices at 301 E. Huron St. Ann Arbor, Michigan 48107-8647 ("City") and the Downtown Development Authority of the City of Ann Arbor, a public corporation organized and existing pursuant to the authority of Act 197, Public Acts of Michigan, 1975 (MCL 125.1651 et seq.), with offices at 150 S. Fifth Avenue, Suite 301, Ann Arbor, Michigan 48104 ("DDA") agree to amend the Parking Agreement executed by the parties and effective July 1, 2011, and subsequently amended effective July 1, 2017, as follows:

- 1) Article 2, Operational Powers and Responsibilities Within DDA Parking Area, subsections a and m are amended and new subsections p and q are added to read as follows with the remainder of the Article unaltered and restated in its entirety below::
  - a. Subject to Article 8, applicable law, and City permitting regulations, within the DDA Parking Area, the DDA shall have sole authority to determine the addition or removal of meters, loading zones, or other curbside parking uses, subject to administrative approval of the City, which shall not be unreasonably withheld. In the instances where the DDA contemplates making such a request, staff of the DDA and City shall talk in advance of a submittal to review any potential traffic impacts, including traffic safety and operation. DDA requests to the City in this subsection be submitted to the City Administrator and may include such information as a reference existing City traffic codes, and shall include distance markers and other pertinent information to assist City staff review. The City shall provide its review and approval or denial of proposed DDA actions within fifteen (15) business days from the receipt of DDA's delivery to the City of the City's completed Action Request Form, in a form attached hereto as Exhibit C and any required supplemental documentation necessary to complete the requested review. In extraordinary circumstances the foregoing review period may be extended for no more than a single fifteen (15) business day period by written notice from the City to DDA, which notice shall include the reason for the extension, after which a decision shall be made forthwith. If no decision is made the request shall be deemed approved. Notwithstanding anything in this Agreement to the contrary, DDA's authority to add meters outside of the DDA District within the DDA Parking Area in areas that are eligible for residential parking permits

shall be subject to the City's prior written consent in accordance with current guidelines for residential parking districts.

- b. Where the City acting on its own or through its agents must undertake any public infrastructure maintenance or/and improvements within the DDA Parking Area, including repairs or improvements to the streets or utility mains, the DDA will temporarily remove or prohibit on-street parking at no cost to the City as needed to accomplish the maintenance or improvements.
- c. Where the City has approved use of the public right-of-way, for a purpose other than community benefit, that results in the temporary removal of on-street parking, the party applying to use the public right-of-way will be required as a condition of the permit to pay directly to the DDA, or its management firm (if applicable), the current meter bag fee.
- d. Where the City requires use of the public right-of-way for a purpose benefitting the City or has approved the use of the right-of-way for a community benefit, the City will not pay DDA for the loss of revenue or the cost of removing the on-street parking. City agrees to provide reasonable notice of such use under this subsection. When needed the DDA will provide the City, or the applicable community organization, a sufficient number of meter bags for use in the temporarily occupied public right-of-way.
- e. The City shall work collaboratively with the DDA to develop and present for adoption by City Council a City policy regarding the permanent removal of on-street metered parking spaces. The purpose of this policy will be to identify whether a community benefit to the elimination of one or more metered parking spaces specific area(s) of the City exists, and the basis for such a determination. If no community benefit can be identified, it is understood and agreed by the parties that a replacement cost allocation methodology will need to be adopted concurrent with the approval of the City policy; which shall be used to make improvements to the public parking or transportation system.
- f. Should installed signs be necessary to delineate parking uses, the City shall be responsible for the manufacture and installation of said signage and the DDA shall reimburse the City for its actual costs (e.g. labor and materials) to provide this service if changes authorized by the DDA trigger the need for it. Where the City provides signage as requested by the DDA it will do so within fifteen (15) business days following the execution of a traffic control order ("TCO") for a request. The foregoing response period may be extended for successive fifteen (15) business days periods by written notice from the City to DDA, which notice shall include a reason for the extension. Should the City determine that more

than two successive extensions are necessary for review of an Action Request Form, all subsequent extension notices shall be signed by the City Administrator. Alternatively, the DDA, after notice to and approval by the City, may contract, at its sole expense, the services of a MDOT prequalified private sign contractor for this purpose, but will ensure that any new signs meet MDOT standard specifications and the Michigan Manual on Uniform Traffic Control Devices for content, materials, and installation, and the City is provided with detailed information about each sign for its record keeping purposes. If this alternative is selected, the City will assess the DDA with a cost for sign inspection. If the City is required to inventory, assess, or update signs to meet current Federal, State or local laws or regulations, the DDA will pay its proportionate annual share of this cost for public parking signage in the DDA Parking Area.

- g. If the DDA determines, after inspection and review of identified conditions by appropriate City officials and qualified contractors, that a Facility, in whole or in part, is no longer safe for parking operations, then DDA may suspend or terminate parking operations at such Facility, or a portion thereof, on notice to the City. DDA shall provide the Public Services Area Administrator written notice of its decision, as well as the reasons and supporting documentation therefore, within twenty-four hours of its determination. Should the DDA recommend the demolition of any City-owned parking structure, and after independent review of such recommendation by the City such recommendation is accepted and demolition is authorized by the City, the DDA will assume the demolition expense required to remove all or a portion of the parking facility to assure public safety, and will ensure that the ground surface is compacted and restored in accordance with current City standards. In this instance, the City will determine the repurposing of the surface lot after demolition.
- h. The City reserves the right now and into the future to establish parking lots, on street spaces or structures to provide parking for its employees. These new parking facilities could be used for parking open to the public subject to the terms of this agreement.
- i. Except as otherwise provided in this Agreement, the DDA shall manage, maintain and collect all parking revenues (other than fines) resulting from operation the Municipal Parking System, provided, however, the City shall retain responsibility for managing the Residential Parking Permit Program and receiving the revenues from said program.
- j. Within the normal course of the provision of services to the public as, the City shall use reasonable efforts to provide public services, necessary for the operation of the Municipal Parking System, including but not necessarily limited to on-street snow and ice control, pothole

repairs, crack filing, pavement replacement, and pavement marking, shall provide to the DDA reports within fifteen (15) business days of the end of each calendar quarter.

- k. Subject to Article 8, applicable law, and City permitting regulations, and after consultation with the City Administrator, City Council, and downtown stakeholders, which may from time to time be identified by either the City or the DDA, the DDA shall determine the rates and hours of parking in the Municipal Parking System and file such rates and hours with the City Clerk and otherwise publish such rates in the same manner as City ordinances, which rates and hours shall take effect thirty (30) days after said filing.
- l. Intentionally omitted.
- m. The City shall be responsible for enforcement of parking regulations in the Municipal Parking System and shall collect all fines resulting from such enforcement, which fines shall be set after consultation with the DDA. The DDA and City will coordinate the hours of parking enforcement and operations at the on-street parking meters. At the DDA's request, the City will alter or extend the hours of parking enforcement within the limits determined by its employment contracts, available staffing or other applicable contractual or mutual aid agreements. It is acknowledged by the parties that no all parking available for public use is part of the Municipal Parking System. The DDA agrees to work collaboratively with the AAPD to optimize parking enforcement throughout the DDA Parking Area. The DDA shall have the right to allocate portions of Facilities to third party for long term parking usage and mutually agreed upon non-parking-related usage. The DDA shall provide an annual report to the City of any allocation identifying the specific Facility and the size, nature and term of the allocation. With the goal of encouraging greater compliance, the City will coordinate its parking fine adjustments with the DDA hourly parking rate changes. DDA will notify the City Administrator of parking rate changes, and a recommendation for the modified parking fine amount for expired meter and over-the-limit fines, which shall generally at a minimum, be equal to two times the cost of parking for eight hours at a parking meter. This recommendation will be presented to City Council for its consideration within thirty (30) days. In addition, the City will investigate implementation of parking enforcement policies of "First Time Forgiveness" and escalating fine amounts for multiple fines received within a set period of time. The DDA will help communicate these policy changes.
- n. The DDA, at its own expense, shall operate, maintain, pay related debt service, and keep the Municipal Parking System in good repair and the

total expense of routine maintenance and repair in connection therewith shall be borne and paid by the DDA. The DDA is authorized to make such further repairs, alterations, additions, and enhancements of the Facilities as are deemed reasonable and necessary by the DDA to operate the Facilities for the purposes set forth in this Agreement.

- o. The City shall not lease any portion of individual Facilities to third parties where such lease (either alone or cumulatively with other leases in such Facility) would reduce the number of usable parking spaces in such Facility by more than one percent (1%) or five (5) parking spaces, whichever is less, without first (i) providing DDA with thirty (30) days prior written notice; (ii) consulting with DDA about the location and terms of use of such leased spaces to reduce the impact of such use on DDA's use of the Facility; and (iii) upon DDA's written request delivered no more than fifteen (15) days after notice of the proposed lease, executing a side letter between City and DDA, the sole purpose of which is to make DDA whole for the loss of Gross Parking Revenue associated with the reduced parking spaces. The City shall, in consultation with DDA and its designee, perform all necessary tasks to prepare the Facility for third-party use. The City shall reimburse the DDA for any out-of-pocket costs associated with the third party use. Notwithstanding the above, the City's right to continue to provide parking for its employees as may be required by its collective bargaining agreements is retained and the City shall not be responsible for reimbursement of the DDA for any costs associated with the exercise of this right. The City shall endeavor through collective bargaining and other measures to reduce the provision of free or subsidized employee parking provided in structures, lots or parking meter locations operated by the DDA. In addition, the term "third party" under this agreement shall not apply to "juror parking" required to be provided under City/County contractual obligation.
  - p. The Ann Arbor City Code, Chapter 108, will be amended to define the term "parking meter" to address changes in payment technology. The term "parking meter" shall include multi-space payment machines or payment using an app, or other new technology equivalents.
  - q. Within a reasonable period following approval of this Amendment, the DDA's recommendations for proposed changes to the Special Parking Districts Policy for Contribution in Lieu of Required Parking and parking requirements for downtown zoning districts shall be presented to City Council for action after consultation with City Planning Services and review by the Planning Commission.
- 2) Article 4, Financial Obligations of the DDA, subsection a is amended to read as follows with the remainder of the Article unaltered and restated in its



entity below::

- a. The DDA will pay the City within thirty-one (31) days of the end of each calendar quarter twenty percent (20%) of Gross Parking Revenue received by the DDA during the prior quarter.
- b. Through Fiscal Year 2015-16, should the DDA's combined fund balance (excluding the Housing Fund) ("DDA Fund Balance") fall below ONE MILLION DOLLARS (\$1,000,000), as shown by the DDA's annual audited reports, then DDA may reduce amounts payable to the City under Section 4(a) by amounts equal to the difference between the DDA Fund Balance and ONE MILLION DOLLARS (\$1,000,000) ("Withheld Payments"), provided, however, that Withheld Payments shall not exceed (i) ONE MILLION DOLLARS (\$1,000,000) in any given fiscal year; or (ii) TWO MILLION DOLLARS (\$2,000,000) in the aggregate. The DDA agrees that prior to June 30, 2016, its discretionary grants and projects will not exceed the cost proposed in the DDA Ten Year Plan presented to the DDA Board at its meeting of May 20, 2011, unless otherwise approved by City Council. If at any time during the Term of this Agreement, the DDA Fund Balance exceeds FOUR MILLION DOLLARS (\$4,000,000), as shown by the DDA's annual audited reports, the DDA shall pay to the City an amount equal to the aggregate Withheld Payments, provided, however, that DDA may delay any portion of such payments that would reduce the DDA Fund Balance below FOUR MILLION DOLLARS (\$4,000,000) until such time as the making of such payment would not reduce the DDA Fund Balance below FOUR MILLION DOLLARS (\$4,000,000).
- c. The DDA shall not be charged parking operations-related taxes, fees or any other amount by the City except as specifically provided in this Agreement. Subject to Section 2(g), the City further agrees that during the term of this Agreement that it will not assess any parking operations-related fees or surcharges on users of the Facilities that are in addition to the parking rates as provided for in this Agreement.
- d. The DDA shall not use tax increment financing revenue collected from taxing authorities to make any payments to the City described herein. The DDA agrees that all such payments shall be made exclusively from parking revenues in the DDA parking fund.
- e. The DDA shall take no action that it reasonably believes will have a material detrimental effect upon parking enforcement revenue collected by the City. In the event that the DDA wishes to take such an action, then DDA and the City will negotiate in good faith in an effort to accommodate DDA's contemplated action, while reducing to as close to zero as is practical, the overall detrimental revenue effect on the City.

- f. Each payment pursuant to Section 4(a) shall be accompanied by an accounting of Gross Parking Revenue and documentation reasonably requested by the City, which documentation shall be sufficient to justify the calculation of amounts paid. The DDA shall provide the City with written financial reports relating its operation of the Municipal Parking System on a monthly basis as part of its monthly meeting minutes, and a certified annual audit report.
  - g. Notwithstanding anything in this Agreement to the contrary, in the event the City fails to provide DDA with reports required under this Agreement, and if the City fails to provide such reports to DDA within thirty (30) days after written notice thereof by the DDA, then DDA shall be authorized to withhold five percent (5%) of amounts owed hereunder until such reports are delivered.
- 3) Article 7, Management Contract, is amended to read as follows: the following:
  - a. The DDA may subcontract management of the Facilities, provided that no agreement between DDA and any such subcontractor shall restrict the ability of the City to receive the services of such subcontractor. At any time during this agreement at a new contract is deemed necessary, the DDA will develop a request for proposals and a proposed management contract for the retention by the DDA of a manager for the Facilities. Information concerning the RFP will be widely circulated to regional and national operators of parking facilities. Prospective contractors will be evaluated upon prior and current experience, reputation, and plans for customer service. The DDA will ensure that contractor's employees are paid at least a living wage as defined under the City of Ann Arbor Living Wage Ordinance. The DDA shall confirm that the contractor meets all other City requirements as set forward by the City for its own vendors, such as not being in default to the City. The DDA shall be responsible for selection of and negotiation of terms of employment of the parking management firm. The parking management firm shall hire and supervise its own employees. The DDA shall file a copy of the selected parking management firm" contract, together with any amendments thereto, with the City. Any insurance coverage required of the parking management firm by the terms of its contract shall also be endorsed to include the City of Ann Arbor, its officers and employees as additional insured.
- 4) Article 8, Public Input, subsection a, is amended to read as follows:
  - a. The DDA shall regularly seek advisory input on its parking operations through such means as its monthly DDA meetings and DDA committee

meetings, and feedback from the downtown associations and Downtown Area Citizens Advisory Council (CAC).

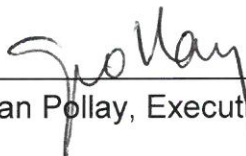
All terms, conditions, and provisions of the original agreement between the parties unless specifically amended above, are to apply to this amendment and are made a part of this amendment as though expressly rewritten, incorporated, and included herein. This amendment to the agreement between the parties shall be binding on the heirs, successors and assigns of the parties.

Dated this \_\_\_\_\_, 2018

**For Downtown Development Authority  
of the City of Ann Arbor**

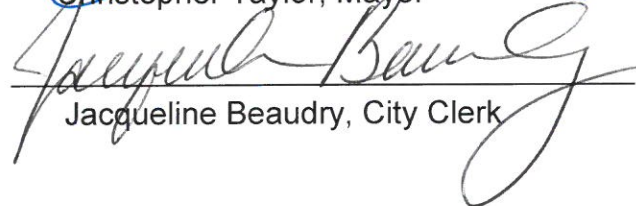
By: 

Its: DDA Chair

By:   
Susan Pollay, Executive Director

**For City of Ann Arbor**

By:   
Christopher Taylor, Mayor

  
Jacqueline Beaudry, City Clerk

**Approved as to form and content**

  
Stephen K. Postema, City Attorney

**Approved as to substance**

  
Howard S. Lazarus, City Administrator