

**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 ~~meet not less than thirty (30) days 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 shall be submitted in such a form as to 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 successive fifteen (15) business day periods 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. 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 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. ~~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 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. ~~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" 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, ~~quarterly customer service surveys, volunteer citizen inspections,~~ 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