

FULLER PARK PARKING LOT LAND LEASE

THIS LAND LEASE ("Lease") made and entered into this ____ day of _____, 2020, by and between **REGENTS OF THE UNIVERSITY OF MICHIGAN**, a Michigan constitutional corporation, whose address is 326 E. Hoover Street, Mail Stop B, Ann Arbor, Michigan 48109, Attention: Real Estate Office (the "University"), and the **CITY OF ANN ARBOR**, a Michigan municipal corporation, whose address is 301 E. Huron, Ann Arbor, Michigan 48107-867 (the "City"). The City and the University are referred to collectively herein as the "Parties." This Lease replaces the previous lease between the Parties that was dated December 13, 2018.

PRELIMINARY STATEMENT

University proposes to use a portion of the land owned by City and currently used by City as a parking area for Fuller Park described in Exhibit A, attached hereto and made a part hereof by reference ("Property") for the purpose of using and operating the Property as a parking lot for University.

City's lease of the Property and its retained rights under the lease for use of the Property as specified in Exhibit A are consistent with the use of the Property for public purposes.

NOW, THEREFORE, in consideration of the lease payments and mutual promises contained herein University and City hereby confirm the terms and conditions upon which they individually and collectively will use and occupy the Property and their respective responsibilities for operation and maintenance of the Property as follows:

1. Duration/Rent. Subject to the conditions specified in Exhibit A and University's duty to use the Property in accordance with applicable law, City will make the Property available upon the following terms and conditions:

(a) The term during which the Property will be made available (the "Term") will be for a period of one year, beginning on September 1, 2020 and terminating August 31, 2021, unless terminated earlier pursuant to the terms of this Lease.

The parties may renew this Lease, or a portion thereof, upon mutual written agreement by their authorized agents at least ninety (90) days in advance of the Lease's expiration (August 31), for two one-year periods upon the same terms and conditions herein. Such options to renew are on the condition that the annual Lease payment amounts (identified in Exhibit B) increases 3% annually.

(b) University shall make the annual Lease payment to the City for every year this Lease is in effect (i.e., the Term and any subsequent renewal(s)) in the amount specified in Exhibit B, which is attached and made a part of this Lease.

The annual Lease payment amount (as the same may be increased due to renewal of this Lease) shall be due and payable not later than the first day of November for each year this Lease or any renewal(s) are in effect. If University fails to pay any amount it owes to City under this Lease when that amount is due, the amount shall be assessed a one-time late charge in the amount of 5 percent of the late rental payment amount and shall be subject to a service charge until it is paid at the lesser of the rate of 2 percent per month or the highest rate permitted by law.

(c) To the extent permitted by law, each party agrees to be responsible for any and all liabilities, claims, liens, fines, demands and costs, including legal fees, of whatsoever kind and nature that 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 respective party in connection with or in any way incident to or arising out of the occupancy, use, operations, performance or non-performance of work in connection with this Lease resulting in whole or in part from the negligent acts or omissions of the respective party, its officers, agents, and employees. This provision is not intended, and shall not be construed, to waive or limit any immunity defense which the respective governmental entity may have including but not limited to governmental immunity. In the event of joint or concurrent negligence of University and City, each shall pay its own costs and expenses incurred in defending against the action and each shall pay that portion of the loss or expense that its share bears to the total negligence by a court of competent jurisdiction.

It is acknowledged that each party self-insures its general liability exposures through a permanently funded non-cancelable program. During the Term, each party will procure and maintain such insurance policies or self-insurance coverage as will protect itself from all claims for bodily injuries, death or property damage which may arise in connection with their respective use of the Property under the terms of this Lease. Each party agrees name the other as an "additional insured" on the policies with respect to any action taken in connection with uses or requirements stated in Exhibit A, but only to the extent of the negligence of the insured party. The respective parties shall be responsible to each other or the insurance companies insuring the respective parties for all costs resulting from both financially unsound insurance companies selected and their inadequate insurance coverage. If requested, a party shall furnish the requesting party with satisfactory certificates of self-insurance/insurance or a certified copy of the policy.

2. [Intentionally Left Blank]

3. Default/Termination. The following will constitute events of default by University under this Lease:

(a) The failure by University to pay the applicable annual Lease payment within 30 days after the date for payment specified in Section 1(b); or

(b) The breach by University of any commitment under this Lease and the failure to remedy that breach within 30 days after the date that City delivers written notice identifying such breach and demanding such remedial action.

Upon the occurrence of an event of default, City, by further written notice to University, may terminate this Lease effective 30 days following the day of delivery of such notice. In such event, the obligation of City will terminate as of the effective date of such termination, University will remain liable to City for the annual Lease payment owing under this Lease (and any related renewals) through the effective date of termination and any damages incurred by City as a result of such default.

This lease will terminate if, at any time prior to the termination by expiration (Section 1), default (Section 3) or the parties mutually agree, in writing executed by an authorized official of the parties, to terminate the Lease.

4. [Intentionally Left Blank]

5. Right of Entry/Access. City, its employees, contractors, or other agents may from time to time during the term of this lease enter the Property to perform site inspections or due diligence activities, including but not limited to activities in connection with future public transportation use of the Property, so long as in doing so, the University's use of the Property is not interfered with by City without the consent of University. University agrees to fully cooperate with, subject to advanced notice and at times mutually agreeable, the City to expedite the performance of any due diligence activities. The City, its employees, agents and contractors, shall use all reasonable efforts to minimize any disturbance of the Property.

6. Assignment. University shall make no assignment under this Lease.

7. Binding Effect/No Third-Party Benefits. This Lease is binding upon and shall inure to the benefit of the parties hereto. This Lease shall not be construed to create in any person or entity not a party hereto, any right, claim, benefit or defense with respect to the parties, or in any party claiming by, through or under either of them, with respect to any loss, cost, damage, claim or cause of action arising under or pursuant to the terms of this Lease.

8. Notices. All notices permitted or required under this Lease shall be in writing and addressed to the parties at their addresses set forth below. Any such notice shall be sent by certified mail, return receipt requested, express overnight delivery requiring a signed delivery receipt, delivered personally or sent by facsimile or email. Any notice sent by certified mail, return receipt requested, will be deemed delivered on the third business day after mailing. Any notice sent by express overnight delivery will be deemed delivered on the following business day after delivering such notice to the carrier. Any notice given by personal delivery, by facsimile, or by email, prior to 5:00 p.m. will be deemed delivered on the date of such delivery or, if 5:00 p.m. or later, on the next business day. Any notice which a party fails or refuses to accept will be deemed delivered on the date of such failure or refusal. The parties hereto may change their addresses for notice purposes by a notice sent in accordance with the provisions of this Lease, but no such address shall be a post office box.

For the City:

City of Ann Arbor

ATTN: Josh Landefeld, Deputy Parks and Recreation Services Manager

301 East Huron Street

1st Floor

Ann Arbor, MI 48104

EMAIL: jlandefeld@a2gov.org

For the University:

ATTN:

[ADDRESS]

[ADDRESS]

[EMAIL ADDRESS]

9. Authority. The signatories on behalf of the parties hereto hereby represent and warrant to the other parties hereto that they are duly authorized to execute and deliver this Lease on behalf of such party and that this Lease is binding upon and enforceable against such party.

10. Applicable Law. This Lease shall be interpreted and construed in accordance with the laws of the State of Michigan. If any provision of this Lease is in conflict with any statute or rule of any law in the state of Michigan or is otherwise unenforceable for any reason whatsoever, that provision shall be deemed severable from or enforceable to the maximum extent permitted by law, as the case may be, and that provision shall not invalidate any other provision of this Lease. Any claims, demands, or actions asserted against University shall be brought in the Michigan Court of Claims as it is the only court of exclusive jurisdiction over claims against the University of Michigan, a Michigan constitutional corporation. Venue for any action brought against the City under this agreement shall lie in Washtenaw County, Michigan.

11. Counterparts. This Lease may be executed in one or more counterparts, each of which will be deemed an original but all of which together shall constitute but one and the same Lease.

12. Amendments. No amendment, change or modification of any of the terms, provisions or conditions of this Lease will be effective unless made in writing and signed or initialed on behalf of the parties hereto by their duly authorized representatives.

13. Entire Agreement. This Lease, inclusive of Exhibits A and B, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and prior to contemporaneous discussions and understandings of the parties hereto in connection with the subject matter hereto.

14. Electronic Transactions. The parties agree that signatures on this Lease may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this Lease. This Lease may be executed and delivered by facsimile and upon such delivery, the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

15. Absent an express and specific written waiver, no act, failure, or delay by a party to pursue or enforce any rights or remedies under this Lease shall constitute a waiver of those rights/remedies with regard to any existing or subsequent breach of this Lease. No waiver of any term, condition, or provision of this Lease, 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 Lease. No waiver by either party shall subsequently affect its right to require strict performance of this Lease.

REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

REGENTS OF THE UNIVERSITY OF MICHIGAN

A Michigan constitutional corporation

By: _____
Henry Baier, Associate Vice President for
Facilities and Operations

CITY OF ANN ARBOR

A Michigan municipal corporation

By: _____
Christopher Taylor, Mayor

By: _____
Jacqueline Beaudry, Clerk

APPROVED AS TO SUBSTANCE:

By: _____
Derek Delacourt, Community Services Area
Administrator

By: _____
Tom Crawford, Interim City Administrator

APPROVED AS TO FORM:

By: _____
Stephen K. Postema, City Attorney

EXHIBIT A

A. Property

Property for purposes of this Lease shall mean the following parking areas delineated for illustrative purposes on the attached map, identified as Exhibit A-1, during the specified days and times and subject to the Property Use Restrictions and City's Use of Lots rights, identified below:

- I. **Lot A; South Parking Lot** - 1504 Fuller Road: City agrees to lease to University the entire South parking lot twenty-four hours a day, seven days a week for the Term of this Lease.
- II. **Lot B; North Pool Parking Lot (Paved Lot)** – 1519 Fuller Road: City agrees to lease to University the entire North Pool paved parking lot Monday through Friday from 5:00 am to 5:00 pm beginning 2 weeks after Labor Day and continuing through the Friday before Memorial Day, excluding holidays. For the two weeks following Labor Day, City agrees to lease University the 2 southern most rows of the North Pool Parking lot.
- III. **Lot C; North Pool Parking Lot (Unpaved Lot)** – 1519 Fuller Road: City agrees to lease to University the North Pool dirt parking lot Monday through Friday from 5:00 am to 5:00 pm, excluding holidays.

B. Property Use Restrictions

I. Maintenance

Lot A; South Parking Lot – University, at its own expense, shall provide all winter maintenance for snow and ice removal concerning the parking lot. City will pay for all other maintenance of the parking lot including, without limitation, asphalt repair and replacement and lighting costs.

Lots B & C; North Pool Parking Lots (Paved and Unpaved Lots) – City, at its own expense, shall provide all winter maintenance for snow and ice removal concerning the parking lots. City will pay for all other maintenance of the parking lots including, without limitation, asphalt repair and replacement and lighting costs. City will periodically inspect the unpaved lot for pedestrian hazards due to drainage issues and provide mitigation when possible. University will provide, if needed, and with prior approval by City, temporary lighting in the dirt portion of the parking lot. Temporary lighting shall be provided, as needed, by 5:00 am until 6:00 pm, Monday through Friday.

Maintenance of Lot C will include one annual grading application as conditions allow. If additional maintenance on Lot C, other than one annual grading application, is performed by either City or University, there will be no change in the Lot C rental fee paid by or due from University. It shall be the option of University to provide additional surface grading on Lot C as deemed suitable; however, University shall not, under any circumstance, add new material to Lot C, without prior approval from the City. If the annual assessment identifies anything other than general maintenance requirements for Lot B, the University may at its option, and at its cost, elect to perform the maintenance. No change in the Lot B rental fee paid by or due from the University will be made as a result of the University's maintenance activities.

The City Parks Deputy Manager of Maintenance or designee will work with City and University representatives to coordinate annual inspections, as well as other inspections as needed. If both parties are unable to coordinate a meeting in April or are unable to mutually agree upon a maintenance program and schedule for any reason, both parties shall accept the maintenance program and schedule currently in place until such time as a new maintenance program and schedule is mutually agreed upon.

The contact information for both City and University is as follows:

City

- Maintenance Issues – Parks and Recreation Deputy Manager - Maintenance or designee
- Lease Issues – Parks and Recreation Deputy Manager or designee

University

- Maintenance Issues – Parking Maintenance Manager or Designee (Parking & Transportation Services)
- Lease Issues – Parking Customer Services Manager (Parking & Transportation Services)

If, during the term of this Agreement, renovations or repairs are required to any of the parking lots (Lots A, B or C), City shall use its best efforts to minimize the effect of such repairs or renovations upon the utilization of the parking lots by University. If, despite such best efforts, the utilization of some or all of the designated parking lot(s) must be temporarily suspended, University acknowledges and agrees that City will not be responsible for providing alternate parking arrangements for affected University users. City will provide University with 30 days minimum advance written notification of necessary repairs, unless it is determined by City that emergency repairs are required. University shall remain liable to City for all Lease payment amounts and fees accrued under this Agreement during any on-going repairs or restoration unless otherwise waived in writing by the City. If City and University mutually agree that all or a portion of Lots A, B or C are unusable due to conditions other than scheduled ongoing repair or restoration, the City may, at its sole discretion, reimburse the University for a portion of the annual Lease payment for the impacted Lot paid by University. Such reimbursement, if the City determines one is to be provided, will be a pro-rated calculation based on the rental fee paid for Monday-Friday usage for the parking lot(s), or portion thereof, and determined to be unusable.

II. Security

Lot A; South Parking Lot – City and University will cooperate in providing police security and parking enforcement for this parking lot.

Lots B & C; North Pool Parking Lots (Paved and Unpaved Lots) - City and University will cooperate in providing police security and parking enforcement for these parking lots.

City Parks and Recreation Deputy Manager or designee will work with representatives of the Ann Arbor Police Services (AAPS) and University of Michigan Public Safety (UMDPS) to establish an appropriate policing procedure for all lots..

III. Signage

University will be responsible for providing and installing proper signage, at University's sole expense, for use of all lots. University shall have full authority as to the use of the leased spaces and may restrict the use of any space for University users. These restrictions will be added to existing signage and conveyed to City in writing prior to installation. University shall be responsible for obtaining any permits required for the installation of the signage.

C. City Use of Lot

- I. Lot A; South Parking Lot** – 10 parking spots in Lot A shall be designated for Fuller Park use only after 5pm on weekday's and weekends and shall be open to the public at no cost. The City shall have the right to use Lot A for up to 10 special events days a year, subject to 14 days' notice to University of the same.

II. Lots B and C; North Pool Parking Lots (Paved and Unpaved Lots)

A. Lot B (Paved Lot)

1. Beginning the Saturday before Memorial Day and continuing through Labor Day, the parking lot will be available for City use 24 hours each day.
2. Beginning the day after Labor Day and continuing for two weeks the 4 northern most rows of the parking lot will be available for City use 24 hours each day.
3. Beginning two weeks after Labor Day through the Friday before Memorial Day, between 5:00 pm and 5:00 am, Monday through Friday, the parking lot will be available for City use.
4. Beginning two weeks after Labor Day and continuing through the Friday before Memorial Day, between 5:00 am and 5:00 pm Monday through Friday, University will not park in the northernmost row of parking spaces marked by signage as Park Use Only. Those spaces are available for City use.

- B. Lot C (Unpaved Lot)** – the City shall have the right to use such lot at all times not identified in Section A(III) of this Exhibit.

EXHIBIT B

ANNUAL LEASE PAYMENT AMOUNTS

| DURATION | LOT A – SOUTH | LOT B – NORTH, PAVED | LOT C – NORTH, DIRT | TOTAL DUE |
|-------------------------------|------------------|-------------------------|------------------------|-----------|
| Sept 1, 2020– Aug 31, 2020 | \$72,643 | \$45,624 | \$8,740 | \$127,007 |

The lease payment amounts identified above are based on the University's permit plan for such lots (e.g., yellow, blue, etc.) for the 2020-2021 lease term. If the University changes any Lot permit plan for a renewal term of this Lease, the lease payment amount for such Lot shall be adjusted proportionate to permit plan change, but subject to the 3% annual increase.