

**AGREEMENT FOR
PARKING GARAGE MANAGEMENT SERVICES
AND
ON-STREET PARKING ENFORCEMENT**

THIS AGREEMENT FOR PARKING GARAGE MANAGEMENT SERVICES AND ON-STREET PARKING ENFORCEMENT (the or this Agreement) is entered into effective the 1st day of February, 2015, by and between **THE CITY OF SOUTH BEND DEPARTMENT OF REDEVELOPMENT, acting by and through the South Bend Redevelopment Commission**, organized under and operating pursuant to the laws of the State of Indiana (the Commission), and Downtown South Bend, Inc., an Indiana non-profit corporation, (the Operator).

1) **Location:** This Agreement pertains to:

a) Each of the parking garages (collectively, the Garages) leased and/or operated by the Commission, all in the City of South Bend, Indiana, and located at:

117-131 South Michigan Street (the Leighton Garage)

126 North Main Street (the Main Street Garage)

121 East Wayne Street (the Wayne Street Garage)

b) On-Street Parking: There are approximately 870 on-street parking spaces within the downtown enforcement zone (see Appendix A). Parking spaces are marked with a 2 hour, 1 hour, ½ hour and 15 minute limit. Enforcement for the on-street parking is to be accomplished via Duncan AutoCITE-X3 handheld units. Parking ticket payments are processed through the City of South Bend in accordance with City Ordinances.

2) **Term:** The term of this Agreement shall be two (2) years, commencing on February 1, 2015, and ending on January 31, 2017. In order to permit the Commission to comply with Section 103 and 141 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated pursuant thereto, the parties agree that the Commission shall have an absolute right to terminate this Agreement for any reason and without cause or penalty. However, this Agreement may also be terminated by either party, with or without cause, upon thirty (30) days written notice of cancellation. The Operator covenants that it will not take any action or fail to take any action that would result in the loss of the exclusion from gross income for federal tax purposes of interest on bonds issued and outstanding for any of the parking garages described herein. The Operator further covenants and otherwise agrees to enter into any amendment of this Agreement or otherwise terminate this Agreement in order to prevent the loss of the exclusion from gross income for federal tax purposes of interest on the aforementioned bonds.

- 3) **Use:** The Garages shall be used exclusively for the parking of licensed motor vehicles and related purposes. The Operator shall:
 - a) Manage and operate the parking services at the Garages;
 - b) Furnish the personnel for the operation of the Garages, including evening attendants;
 - c) Collect parking receipts and make deposits as hereinafter provided;
 - d) Account for parking receipts and operating expenditures as hereinafter provided; and
 - e) Consult with the Commission on parking matters.

- 4) **Budget:** Within fifteen (15) days of the execution of this Agreement, and by June 1st of each contract year, Operator shall prepare and submit to the Commission a proposed Budget for the operation and maintenance of the Garages for the next year. The Commission shall advise the Operator of its approval or disapproval of the proposed Budget as soon as reasonably possible. Thereafter, the Operator shall manage the Garages pursuant to the agreed Budget.

- 5) **Deposit of Revenues:** The Operator shall deposit on a daily basis all revenues collected from the operation of the Garages into a bank account designated by the Commission, and shall provide, on a weekly basis, to the Commission an account, acceptable to the Commission, of the daily revenues so deposited.

- 6) **Monthly Accounting/Reimbursement of Operation Expenses:**
 - a) The Operator shall keep a complete account of all revenues and expenses arising from the operation of the Garages including parking revenues, receipts, operating expenses, copies of daily sales reports, deposit slips and disbursements, and shall furnish the Commission, on or before the 15th day of each month, with a statement of such revenues and expenses for the preceding month, including receipts for expenses incurred.

 - b) Within fourteen (14) days of the receipt of such monthly statement, the Commission shall reimburse Operator the full amount of all expenses incurred by the Operator in the preceding month for the operation of the Garages, including but not limited to expenses incurred for wages, payroll taxes, fringe benefits, workers' compensation, fidelity bonding, elevator maintenance, snow removal, garage utilities, one telephone business line, data processing, supplies, uniforms, tickets, incidental equipment and improvements, and parking equipment maintenance.

 - c) The Commission reserves the right to deduct from such monthly reimbursement any expenses disputed by the Commission in good faith until any such dispute is resolved between the Operator and the Commission.

- 7) **Management and Enforcement Fee:**

a) For services rendered by the Operator pursuant to this Agreement, the Commission agrees to pay a monthly management fee (the "Monthly Management Fee") in accordance with the following schedule:

Leighton Garage ó \$1,035.21 per month.

Main Street Garage ó \$585.57 per month.

Wayne Street Garage ó \$507.90 per month.

b) The Monthly Management Fee shall be paid to the Operator in arrears for services rendered the previous month, concurrently with the monthly payment by the Commission for reimbursement of operating expenses.

c) The Operator shall be paid for on-street parking enforcement the sum of \$412.80 per month in arrears for services rendered the previous month.

d) The Operator shall provide, as part of its management fee, off-site supervision, overhead allocation, and travel expenses. The Operator shall not be reimbursed by the Commission for these services.

8) **Audit:** The Operator agrees to keep all records relating to its management and operation of the Garages for not less than three (3) years following the termination of this Agreement. The Commission and or the State Board of Accounts may review or audit such records at any reasonable time and place.

9) **Parking Operation:** Parking rates, hours and methods of operation, free parking, and any discounts or allowances shall be determined and directed in writing by the Commission, or its designee, to the Operator. The Operator will make the Garages available to the Commission for Special Event use. The Operator shall furnish qualified personnel for the operation of the Garages and enforcement of on-street parking. This includes personnel during special events that occur in the evenings and weekends. The Operator shall be responsible for maintenance of the Garages. This includes (but is not limited to):

- a) Lighting fixtures
- b) Cleaning pedestrian entrances, exits and stairwells
- c) Elevators
- d) Graffiti removal (as necessary)
- e) Touch-up paint
- f) Minimal landscape maintenance
- g) Snow removal

10) **Retail Area:** The Garages contain an area designated for retail use, which areas include room for several business establishments. The Operator will have no

rights or responsibilities under this Agreement relative to the retail areas. It is the intent of this Agreement that the Commission will contract separately concerning the retail areas.

- 11) **Aesthetic Control:** The Commission reserves the right to maintain aesthetic control over the interior and exterior of the Garages. Any signage, changes or improvements affecting such areas must be approved in advance by the Commission or its designee.
- 12) **Utilities:** The Commission shall provide the Garages with all applicable utility services, and shall reimburse the Operator for any such services, paid directly by the Operator, pursuant to Section 6, above.
- 13) **Taxes and Assessments:** The Operator shall not be responsible for the payment of any taxes and assessments levied upon or assessed with respect to the real and personal property contained in or upon the Garages.
- 14) **Liability Insurance and Indemnification:**
 - a) During the term of this Agreement, the Operator shall insure, indemnify and hold the Commission, the City of South Bend, Indiana, and their agents and employees, harmless against any and all liability and loss whatsoever arising from any damage, injury, claim or demand caused by the acts, misconduct, errors, omissions or negligence of the Operator and its agents or employees during the scope and course of their employment pertaining to the Garages. Accordingly, the Operator shall provide and pay for comprehensive general liability insurance, property damage insurance and garage keeper's legal liability insurance to a combined single limit of Five Million Dollars (\$5,000,000.00) and statutory coverage for the worker's compensation insurance. Commission and the City of South Bend shall each be named as an additional insured under the insurance policy or policies provided above.
 - b) The Commission shall indemnify and hold the Operator harmless against any and all liability and loss whatsoever arising from any damage, injury, claim or demand caused by the design or structural condition of the Garages, or the use or tenancy of the location.
- 15) **Independent Contractor:** The Commission and the Operator agree that they are not to be deemed as partners or joint venturers, and that the services to be rendered by the Operator are as an independent contractor. All personnel for the operation of the Garages shall be employees of the Operator and not of the Commission or the City of South Bend.
- 16) **Notice:** Notices, communications and changes of address pursuant to or related to this Agreement shall be deemed given if deposited with the United States Mail, registered or certified, with postage paid, addressed as follows:

To the Commission: Department of Redevelopment
1400 S. County-City Building
South Bend, Indiana 46601
Attn: Brock Zeeb

and

City Controller
City of South Bend, Indiana
1200 N. County-City Building
South Bend, Indiana 46601

With a copy to: South Bend Legal Department
1200 S. County-City Building
South Bend, Indiana 46601

To the Operator: Aaron J. Perri
Executive Director
Downtown South Bend, Inc.
217 S. Michigan Street
South Bend, Indiana 46601

- 17) **Intermediaries:** The Commission and the Operator each represent and warrant that they have not obligated the other to compensate any agent, attorney or broker to be their intermediary in connection with the negotiation, preparation or execution of this Agreement.
- 18) **Descriptive Headings:** The paragraph headings used herein are descriptive only and for the convenience of identifying the provisions hereof and are not determinative of the meaning of any of the provisions of this Agreement.
- 19) **Non-discrimination:** The Operator agrees not to discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to his or her hire, tenure, term, conditions or privileges of employment or any other matter directly or indirectly related to employment, because of his or her race, color, religion, sex, handicap, national origin or ancestry.
- 20) **Entire Agreement:** This Agreement contains the entire Agreement and understanding between the Commission and the Operator and may be amended and changed only by a written amendment executed after the date of this Agreement, by the Commission and the Operator, specifically referencing this Agreement.

- 21) **Governing Law:** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Indiana.
- 22) **Survivability:** To the extent permitted by law, all terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the Commission and the Operator and each of their respective successors in interest.
- 23) **Not a Lease:** The Commission and the Operator acknowledge that this Agreement does not constitute a lease of the Garages. Operator has no responsibility for property taxes or capital equipment and improvements for the Garages and no possessory interest in the Garages.
- 24) **Uniform Conflict of Interest Disclosure Statement:** Operator has executed a Uniform Conflict of Interest Disclosure Statement, the form of which is attached hereto and incorporated herein as Appendix B.
- 25) **Additional Requirements:** The Operator hereby represents and certifies that it may enter into this agreement under Indiana Code § 3564461 and, to the extent applicable, has executed and filed with the City a “**NON-COLLUSION, NON-DEBARMENT AFFIDAVIT, EMPLOYMENT ELIGIBILITY VERIFICATION AND NON-DISCRIMINATION COMMITMENT**”, the form of which is attached hereto and incorporated herein as Appendix C prior to the Commission’s approval of this Agreement.
- 26) **E-Verify:**
- a) The Operator will not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the Operator subsequently learns is an unauthorized alien. The Operator agrees that it shall enroll in and verify the work eligibility status of all the Operator’s newly hired employees through the E-Verify Program as defined by I.C. 22-5-1.7-3.
- b) The Operator shall require its subcontractors performing work under this contract to certify that the subcontractors do not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the subcontractor subsequently learns is an unauthorized alien, and that the subcontractor has enrolled in and is participating in the E-Verify Program.

(Signature Page(s) Follow)

IN WITNESS WHEREOF, the duly authorized representatives of the Commission and the Operator have executed this Agreement effective as of the date first written above.

**CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT**

Signature

Printed Name and Title

South Bend Redevelopment Commission

ATTEST:

Signature

Printed Name and Title

OPERATOR:

By: _____

Title: _____

*(Signature Page to Agreement for Parking Garage Management Services
and On-Street Parking Enforcement)*

Appendix A

MAP OF DOWNTOWN PARKING ENFORCEMENT ZONE



APPROXIMATE NUMBER OF ON-STREET PARKING SPACES IN ENFORCEMENT ZONE: 870
TYPE OF PARKING: 2 HOUR, 1 HOUR, ½ HOUR & 15 MINUTES

Appendix B

(2/93) Form 236

**Uniform Conflict of Interest Disclosure Statement
Indiana Code 35-44-1-3**

A public servant who knowingly or intentionally has a pecuniary interest in or derives a profit from a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D Felony. A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of the public servant or a dependent of the public servant who is under the direct or indirect administrative control of the public servant; or receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant. "Dependent" means any of the following: the spouse of a public servant; a child, stepchild, or adoptee (as defined in I.C. 31-3-4-1) of a public servant who is unemancipated and less than eighteen (18) years of age; and any individual more than one-half (1/2) of whose support is provided during a year by the public servant.

The foregoing consists only of excerpts from I.C. 35-44-1-3. Care should be taken to review I.C. 35-44-1-3 in its entirety.

1. Name and Address of Public Servant Submitting Statement:

2. Title or Position With Governmental Entity: _____

3. a. **Governmental Entity:** _____
b. **County:** _____

4. This statement is submitted (check one):

- a. _____ as a "single transaction" disclosure statement, as to my financial interest in a specific contract or purchase connected with the governmental entity which I serve, proposed to be made by the governmental entity with or from a particular contractor or vendor; or
- b. _____ as an "annual" disclosure statement, as to my financial interest connected with any contracts or purchases of the governmental entity which I serve, which are made on an ongoing basis with or from particular contractors or vendors.

5. Name(s) of Contractor(s) or Vendor(s): _____

6. Description(s) of Agreement(s) or Purchase(s) (Describe the kind of contract involved, and the effective date and term of the contract or purchase if reasonably determinable. Dates required if 4(a) is selected above. If "dependent" is involved, provide dependent's name and relationship):

Appendix C

When the prospective Contractor is unable to certify to any of the statements below, it shall attach an explanation to this Affidavit.

**NON-COLLUSION, NON-DEBARMENT AFFIDAVIT, EMPLOYMENT ELIGIBILITY
VERIFICATION AND NON-DISCRIMINATION COMMITMENT**

STATE OF INDIANA)
) SS:
_____ COUNTY)

The undersigned Contractor, being duly sworn upon his/her/its oath, affirms under the penalties of perjury that:

1. Contractor has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding. Contractor further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee, gift, commission or thing of value on account of such sale; and

2. Neither Contractor nor any of its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; and

3. Contractor does not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the Contractor subsequently learns is an unauthorized alien. Contractor agrees that he/she/it shall enroll in and verify the work eligibility status of all of Contractor's newly hired employees through the E-Verify Program as defined by I.C. 22-5-1.7-3. Contractor's documentation of enrollment and participation in the E-Verify Program is included and attached as part of this bid/quote; and

4. Contractor shall require his/her/its subcontractors performing work under this public contract to certify that the subcontractors do not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the subcontractor subsequently learns is an unauthorized alien, and that the subcontractor has enrolled in and is participating in the E-Verify Program. The Contractor agrees to maintain this certification throughout the term of the contract with the City of South Bend, and understands that the City may terminate the contract for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the City; and

5. Contractor shall not discriminate against any employee or applicant for employment in the performance of this contract with privileges of employment, or any matter directly or indirectly related to employment, because of race, religion, color, sex, handicap, national origin or ancestry. Breach of this provision may be regarded as a material breach of the contract.

Dated this _____ day of _____, 20__

Contractor/Bidder (Firm)

Signature of Contractor/Bidder or Its Agent

Printed Name and Title

Subscribed and sworn to before me this _____ day of _____, 20____

My Commission Expires _____

Notary Public

County of Residence _____