



Department of  
**Community Investment**

## Memorandum

April 13, 2015

TO: South Bend Redevelopment Commission  
FROM: Brock Zeeb, Director of Economic Resources  
SUBJECT: Renewal of Surface Lot Parking Management Agreement & Services

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Attached is an agreement between the City of South Bend and DTSB for Surface Parking Management Services. The agreement is a renewal of the same terms previously approved by the Commission.

The agreement will last 2 years

DTSB collects revenues and maintains all aspects of the parking lots.

### DTSB DUTIES

- A. Manage and operate the surface parking facilities located at the Premises, which are to be used for parking by visitors and other invitees in the downtown South Bend area;
- B. Furnish personnel for the operation of the Premises;
- C. Collect parking receipts and make disbursements as hereinafter provided;
- D. Account for parking receipts and disbursements as hereinafter provided;
- E. Pay all Operating Expenses identified in Section 6 of this Agreement;
- F. Consult with Owner on parking matters related to the Premises; and
- G. Monitor the use and condition of the Premises on a regular basis; and
- H. Maintain the Premises in a clean condition and in good order and repair at all times during the term of this Agreement.



**TEMPORARY USE AND  
MANAGEMENT AGREEMENT**

This Temporary Use and Management Agreement (the "Agreement") is entered into on April 16, 2015 (the "Effective Date") by and between the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission (the "Owner") and Downtown South Bend, Inc., an Indiana non-profit corporation ("DTSB") (each, a "Party," and collectively the "Parties").

**Recitals**

WHEREAS, Owner exists and operates under the provisions of Indiana Code § 36-7-14, commonly known as the Redevelopment of Cities and Towns Act of 1953 (as amended, the "Act"); and

WHEREAS, Owner owns certain real property located in the City of South Bend, Indiana, presently improved for surface parking uses; and

WHEREAS, Owner desires to obtain and DTSB desires to provide certain management services in connection with Owner's surface parking facilities; and

NOW, THEREFORE, in consideration of the mutual promises stated in this Agreement, the Parties agree as follows:

1. **Premises.** This Agreement pertains to the use and management of certain surface parking facilities located in South Bend, Indiana, as more particularly described in **Exhibit A** attached hereto (collectively, the "Premises"). Owner may determine, in its sole discretion, whether and when to take out of service any of the surface parking facilities identified in Exhibit A.

2. **Term and Termination.** (a) The initial term of this Agreement will commence on the Effective Date of this Agreement and conclude on April 15, 2017. This Agreement will automatically renew for an additional term of one (1) year beginning on April 16, 2017 (the "Initial Renewal Date") and will automatically renew likewise on each succeeding anniversary of the Initial Renewal Date, unless either Party hereto shall provide the other with written notice of its intent not to renew this Agreement a minimum of ninety (90) days prior to any such anniversary of the Initial Renewal Date.

(b) Upon the occurrence of a default, as defined in Section 8 of this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or, upon ten (10) days' notice to the defaulting Party, terminate this Agreement.

(c) Notwithstanding anything in this Agreement to the contrary, the Parties agree that Owner shall have an absolute right to terminate this Agreement, with respect to all or a part of the Premises, for any reason and without cause or penalty upon thirty (30) days' written notice of termination to DTSB.

(d) Upon expiration or termination of this Agreement, DTSB will immediately (a) deliver to Owner all data, documents, files, and work papers of any kind or description possessed by DTSB

in connection with its use and management of the Premises, and (b) deliver possession of the Premises to Owner, including all fixtures and equipment installed on the Premises (at any time by any Party or third party) and all personal property stored on or used in connection with the Premises, in the same condition as that which existed on the Effective Date, ordinary wear and tear excepted.

3. Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties concerning the use and management of the Premises and supersedes all other agreements or understandings between the Parties concerning the use and management of the Premises or any part of the Premises, including, without limitation, the Temporary Use and Management Agreement dated March 14, 2013, as amended by the First Amendment to Temporary Use and Management Agreement dated March 26, 2015. This Agreement may be amended only by a written instrument signed by both Parties.

4. Use. The Premises shall be used for the parking of licensed motor vehicles and related purposes.

5. Management; Rates; Authority. (a) DTSB shall perform the following services for Owner in compliance with all laws and ordinances applicable thereto:

- A. Manage and operate the surface parking facilities located at the Premises, which are to be used for parking by visitors and other invitees in the downtown South Bend area;
- B. Furnish personnel for the operation of the Premises;
- C. Collect parking receipts and make disbursements as hereinafter provided;
- D. Account for parking receipts and disbursements as hereinafter provided;
- E. Pay all Operating Expenses identified in Section 6 of this Agreement;
- F. Consult with Owner on parking matters related to the Premises;
- G. Monitor the use and condition of the Premises on a regular basis; and
- H. Maintain the Premises in a clean condition and in good order and repair at all times during the term of this Agreement.

If, at any time during the term of this Agreement, Owner determines that revisions to the scope of services are necessary or the methods employed by DTSB are inappropriate, Owner may require such revisions to the scope or methods by notifying DTSB in writing.

(b) Parking rates, hours and methods of operation, discounts, and allowances shall generally be determined by DTSB. Notwithstanding the foregoing sentence, any increase or decrease in any rate, discount, or allowance that exceeds ten percent (10%) of the current rates, discounts, or allowances, must be approved by Owner before DTSB may implement the change.

(c) DTSB will have no authority to bind the Owner with respect to any contract for goods or services relating to the Premises unless such authority is expressly and specifically stated in this Agreement.

6. Operating Expenses. DTSB will pay all Operating Expenses incurred in relation to DTSB's use and management of the Premises. As used in this Agreement, the term "Operating Expenses" includes the following expenses:

- A. Wages of cashiers, attendants, clerical staff, audit staff, and supervisory employees;

- B. Payroll-related expenses such as payroll taxes, accrued vacation, fringe benefits, social security taxes, recruitment and employment costs, medical insurance(s), and pension costs;
- C. Workers' compensation insurance at a rate developed and modified by DTSB as required by risk and reserve assessments of DTSB;
- D. Commercial general liability insurance and garage keeper's liability insurance to the extent required of DTSB in this Agreement which shall be at the rates developed and modified by DTSB as required by risk and reserve assessments of DTSB; deductible amounts paid in settlement of liability claims in an amount not greater than one thousand dollars (\$1,000) per occurrence, payment of claims in excess of policy limits, and any voluntary settlement of patron claims for vehicle damage or loss of contents if directed by Owner;
- E. Supplies;
- F. Janitorial, sweeping, and snow plow services, if applicable;
- G. Uniform and laundry charges;
- H. Telephone and Internet expenses;
- I. City and police permits, local business license(s), business or parking taxes, and other taxes related to the revenues or expenses at the Premises;
- J. Supervisory and accounting fees directly attributable to the Premises;
- K. Payroll processing, data processing, and accounts receivable processing expenses;
- L. Normal maintenance and repair of the parking facilities (including paving, striping, painting), equipment, signs, revenue and access control equipment, and any other repairs required by Owner; and
- M. Cost of audits specific to the Premises performed on behalf of DTSB.

7. Compensation. (a) DTSB shall be entitled to a management fee (the "Management Fee") as compensation for rendering services to the Owner in accordance with the terms of this Agreement. The Owner is entitled to withhold any portion of the Management Fee in the event of any failure or default of DTSB under the terms of this Agreement until such failure or default is cured. The Management Fee will be payable to DTSB on a quarterly basis (for the quarters ending on March 31, June 30, September 30, and December 31, respectively) and will be equal to the amount of Gross Income generated by DTSB's use and management of the Premises during such quarter, except that at no time will the Management Fee include any Gross Income or other amount collected with respect to Lot #6 (as identified in Exhibit A). Owner will not pay, and DTSB will not be entitled to collect, a Management Fee or any other compensation whatsoever with respect to any surface parking facility taken out of service or with respect to which Owner has terminated this Agreement. For purposes of this Section 7, "Gross Income" means the sum of all payments, from whatever source, to DTSB in connection with its use and management of the Premises under this Agreement.

(b) Unless otherwise instructed by Owner in writing, DTSB will receive the monthly Management Fee by retaining the Gross Income collected by DTSB during the corresponding period of time. On or before the 20th day after the end of each quarter, DTSB will submit to Owner a statement of the Management Fee retained by DTSB for the previous quarter, along with the information required under Section 9(b) of this Agreement.

8. Default. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of twenty (20) days following written notice of such failure from the other Party (a "Default Notice"), unless such period is extended by written consent, shall constitute a default under this Agreement. Any Default Notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 20-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 20-day period. If the default is cured, then no default shall exist and the noticing Party shall take no further action.

9. Accounting; Records; Right to Audit. (a) DTSB agrees to keep, maintain, and make available, a complete set of books and records of all revenues received by DTSB in connection with the operation of the Premises, including without limitation all receipts, expenses, copies of daily sales reports, deposit slips and reimbursements. Owner acknowledges that DTSB is required to store and maintain parking tickets used at the Premises for a period of three (3) calendar months.

(b) On a weekly basis, DTSB shall furnish Owner copies of all deposit slips. On or before the 20th day of each month, DTSB shall furnish Owner a statement of all revenues and expenses for the preceding month and documentation proving the same.

(c) During the term of this Agreement and for a period of sixty (60) days after the expiration or termination of this Agreement, Owner shall have the right to inspect, copy, and audit, during normal business hours, all records and supporting documentation kept by DTSB in connection with the operation of the Premises.

(d) DTSB will promptly file its annual Form 990, and any related documents, required under the United States Internal Revenue Code and its accompanying regulations and submit a copy of the same (and all amendments thereto) to Owner within five (5) days of filing. If DTSB is required to submit an E-1 form to the Indiana State Board of Accounts, DTSB will submit a copy of the same to Owner within five (5) days of filing.

10. Utilities. Owner shall provide the Premises with all applicable utility services. Owner shall pay directly to the utility for all such services unless otherwise specified in Section 6 of this Agreement.

11. Taxes and Assessments. Owner will pay directly to the taxing authorities all taxes and assessments, if any, levied upon or assessed with respect to the real and personal property of the Premises, other than the taxes described in Section 6.I. of this Agreement.

12. Insurance. (a) During the term of this Agreement, DTSB shall obtain and pay for commercial general liability insurance and garage keeper's legal liability insurance, naming Owner as an additional insured, in a combined single limit of five million dollars (\$5,000,000.00) per occurrence and statutory coverage for workers' compensation insurance. DTSB shall provide to Owner a Certificate of Insurance proving the foregoing coverage and identifying Owner as an additional insured.

(b) DTSB agrees to exercise reasonable efforts to provide for the general security of persons and automobiles in the Premises and shall exercise reasonable efforts to notify Owner of

any dangerous situations in the Premises, provided, however, that DTSB shall not have any duty to provide a third-party guard service or other third-party security service in connection with the operation of the Premises. Owner represents that it maintains liability self-insurance in accordance with applicable law.

13. Indemnification. DTSB agrees to defend, indemnify, and hold harmless Owner, its officials, directors, employees, and agents from any and all claims of any nature which arise in connection with DTSB's use and management of the Premises under this Agreement, except for claims arising out of the negligence of Owner. The obligations of DTSB under this Section 13 will survive the termination or expiration of this Agreement.

14. Independent Contractor. DTSB shall at all times and for all purposes under this Agreement be an independent contractor, rather than an employee, of Owner. No act or omission to act by DTSB shall in any way bind or obligate Owner, unless such authority is specifically provided under the terms of this Agreement. All personnel involved in the operation of the Premises shall be employees of DTSB and not of Owner. Owner and DTSB agree that they are not to be deemed partners or joint venturers.

15. No Lease. Owner and DTSB acknowledge that this Agreement does not constitute a lease of the Premises. This Agreement grants DTSB no property interest in the Premises or any fixtures attached thereto at any time, and DTSB has no responsibility for property taxes or capital improvements at the Premises.

16. Notices. Notices, communications, and changes of address pursuant to or related to this Agreement shall be deemed given when deposited with the United States Mail, registered or certified, with postage paid, or when received if hand-delivered, addressed as follows:

To Owner: City of South Bend  
1400 S. County-City Building  
227 W. Jefferson Blvd.  
South Bend, IN 46601  
Attn: Brock Zeeb

To DTSB: Downtown South Bend, Inc.  
217 S. Michigan St.  
South Bend, IN 46601  
Attn: Aaron Perri

17. Conflict of Interest. DTSB hereby certifies and agrees that no member, officer, or employee of Owner, or its designees or agents, and no one with whom they have family or business ties, who exercises any functions or responsibilities with respect to the Premises during his or her tenure or for one year thereafter, shall have any financial benefit, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Premises. DTSB acknowledges that its directors, officers, employees and agents, may potentially be deemed to be "public servants" as defined by Indiana Code § 35-31.5-2-261. DTSB hereby represents and certifies that it may enter into this Agreement under Indiana Code § 35-44.1-1 and, to the extent

applicable, will execute and file with Owner and any other appropriate bodies a Uniform Conflict of Interest Disclosure Statement, the form of which is attached hereto and incorporated herein as **Exhibit B**.

18. **Non-Solicitation**. Owner agrees that during the term of this Agreement, and within one (1) year after the expiration or termination of this Agreement, that it will not hire or solicit for hire, either directly or indirectly, any person employed by DTSB at the Premises.

19. **Assignment**. DTSB's obligations under this Agreement may not be assigned or transferred to any other person or entity without prior written consent of Owner.

20. **Intermediaries**. Owner and DTSB each represent and warrant that they have not obligated the other to compensate any agent, attorney, broker or finder or their intermediary in connection with the negotiation, preparation or execution of this Agreement.

21. **Descriptive Headings**. The section headings used herein are descriptive only and for the convenience of identifying the provisions hereof and are not determinative of the meaning or effect of any of the provisions of this Agreement.

22. **Dispute Resolution; Attorneys' Fees**. Any legal proceeding concerning a dispute arising out of this Agreement will be commenced in a court of competent jurisdiction located in St. Joseph County, Indiana. In the event of any such dispute, each Party shall bear its own costs, including attorneys' fees.

23. **Governing Law**. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Indiana.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, duly authorized representatives of Owner and DTSB have executed this Agreement to be effective as of the Effective Date.

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

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name and Title*

**South Bend Redevelopment Commission**

**ATTEST:**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name and Title*

**South Bend Redevelopment Commission**

**DOWNTOWN SOUTH BEND, INC.**

  
\_\_\_\_\_  
*Signature*

Aaron Perri, Executive Director  
\_\_\_\_\_  
*Printed Name and Title*



## **EXHIBIT A**

### **Premises**

**Lot #   Location**

- 1      Parking lot located at 225 Main Street
- 2      Parking lot located at 121 St. Joseph Street
- 3      Parking lot located at the intersection of Main Street and Western Avenue
- 4      Parking lot located adjacent to the LaSalle Hotel, namely Lots #2 and #3 in the recorded plan of the Original Plat of the Town (now City) of South Bend Portage Township, City of South Bend, St. Joseph County, Indiana (Parcel Key Nos. 018-1002-0041 and 018-1002-0042)
- 5      Parking lot located at the St. Joseph County Public Library (Parcel Key Nos. 18-3008-0279, 18-3008-0280, 18-3008-0281, 18-3008-0282, and 18-3008-028301)
- 6      Parking lot located at 302-317 Lafayette Boulevard (Parcel Key Nos. 018-3009-0305, 018-3009-0306, 018-3009-0307)

**EXHIBIT B**

**Uniform Conflict of Interest Disclosure Statement**



**UNIFORM CONFLICT OF INTEREST DISCLOSURE STATEMENT**

State Form 54266 (R / 6-12) / Form 236  
STATE BOARD OF ACCOUNTS

**Indiana Code 35-44.1-1-4**

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. "Dependent" means any of the following: the spouse of a public servant; a child, stepchild, or adoptee (as defined in IC 31-9-2-2) 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 IC 35-44.1-1-4. Care should be taken to review IC 35-44.1-1-4 in its entirety.

1. **Name and Address of Public Servant Submitting Statement:** Aaron Perry, Downtown  
South Bend, Inc / 217 S. Michigan St. / South Bend, IN 46601

2. **Title or Position With Governmental Entity:** Executive Director

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):** Downtown South Bend, Inc

6. **Description(s) of Contract(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.):

Parking Management

7. **Description of My Financial Interest** (Describe in what manner the public servant or "dependent" expects to derive a profit or financial benefit from, or otherwise has a pecuniary interest in, the above contract(s) or purchase(s); if reasonably determinable, state the approximate dollar value of such profit or benefit.):

None

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Attach extra pages if additional space is needed.)

8. **Approval of Appointing Officer or Body** (To be completed if the public servant was appointed by an elected public servant or the board of trustees of a state-supported college or university.):

I (We) being the \_\_\_\_\_ of  
(Title of Officer or Name of Governing Body)

\_\_\_\_\_ and having the power to appoint  
(Name of Governmental Entity)

the above named public servant to the public position to which he or she holds, hereby approve the participation to the appointed disclosing public servant in the above described contract(s) or purchase(s) in which said public servant has a conflict of interest as defined in Indiana Code 35-44.1-1-4; however, this approval does not waive any objection to any conflict prohibited by statute, rule, or regulation and is not to be construed as a consent to any illegal act.

_____	_____
_____	_____
_____	_____
Elected Official	Office

9. **Effective Dates** (Conflict of interest statements must be submitted to the governmental entity prior to final action on the contract or purchase.):

_____	_____
Date Submitted (month, day, year)	Date of Action on Contract or Purchase (month, day, year)

10. **Affirmation of Public Servant:** This disclosure was submitted to the governmental entity and accepted by the governmental entity in a public meeting of the governmental entity prior to final action on the contract or purchase. I affirm, under penalty of perjury, the truth and completeness of the statements made above, and that I am the above named public servant.

Signed: [Signature]  
(Signature of Public Servant)

Date: 4-13-15  
(month, day, year)

Within fifteen (15) days after final action on the contract or purchase, copies of this statement must be filed with the State Board of Accounts, Indiana Government Center South, 302 West Washington Street, Room E418, Indianapolis, Indiana, 46204-2765 and the Clerk of the Circuit Court of the county where the governmental entity took final action on the contract or purchase.