



Department of
Community Investment

Memorandum

Tuesday, January 26, 2016

TO: Redevelopment Commission
FROM: Aaron Kobb *AK*
SUBJECT: SBCSC Amended Parking Agreement

The agreement before you today serves as an amendment to the original Parking Agreement dated December 16, 2005 between the South Bend Redevelopment Commission and the South Bend Community School Corporation. The original agreement called for the SBCSC to have 150 "reserved" parking spaces as an incentive to redevelop the Citizens Building in downtown. The agreement set a per space rate for parking spaces on the top two levels of the parking garage. The amended agreement allocates 125 "non-reserved" parking spaces throughout the entire structure at an ordinance set rate of \$45/space for 2016 and future rates to be adjusted per ordinance by the South Bend Common Council. The term of agreement remains unchanged.

Staff is requesting the approval and execution of the enclosed Amended and Restated Parking Agreement.



AMENDED AND RESTATED PARKING AGREEMENT

This Amended and Restated Parking Agreement (this "Agreement") is made and entered into on _____, 2016, (the "Effective Date") by and between the City of South Bend, Indiana, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission (the "Commission"), and the South Bend Community School Corporation (the "SBCSC") (each a "Party" and together the "Parties").

Background

A. In accordance with the Agreement Between the South Bend Community School Corporation and the South Bend Redevelopment Commission Related to the School Administration Relocation Project dated September 9, 2004 (the "Relocation Agreement"), the City of South Bend, Indiana acting through its Board of Public Works (the "City"), the Commission, and SBCSC have heretofore conveyed to the SBCSC the Century Building located at 215 South St. Joseph Street, South Bend, Indiana, for use as the SBCSC administration building (the "Administration Building").

B. In accordance with Section II(d) of the Relocation Agreement, the Commission and the SBCSC entered into that certain Parking Agreement dated December 16, 2005 (the "Original Contract"), under which SBCSC is entitled to use for vehicular parking certain areas within the parking garage located at 121 E. Wayne Street, South Bend, Indiana (the "Parking Garage").

C. The Parties have agreed to modify certain terms of the Original Contract.

D. Accordingly, the Commission and the SBCSC desire to amend and restate the Original Contract, effective as of the Effective Date of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

Use and Maintenance of Parking Garage

1.1 For an initial term of twenty-five (25) years concluding on December 31, 2030 (the "Term"), the Commission grants to the SBCSC an exclusive license to use for vehicular parking a total of up to one hundred twenty-five (125) parking spaces in the Parking Garage, which spaces will not be reserved, specifically designated, or confined to any particular area within the Parking Garage (the "Parking Garage Spaces").

1.2 (a) The SBCSC will pay to the Commission (or its designee) monthly fees (which, collectively, are referred to as "Monthly Rent") for the SBCSC's use of the Parking Garage Spaces in accordance with the following table:

<u>Period</u>	<u>Monthly fee</u>
January 1, 2016 – December 31, 2016	\$45.00 multiplied by the number of Parking Garage Spaces requested by the SBCSC in accordance with Section 1.3.
January 1, 2017 – December 31, 2030	During this period, the applicable fee(s) will be the per-parking-space fee(s) set by ordinance of the South Bend Common Council multiplied by the corresponding number of Parking Garage Spaces requested by the SBCSC at such fee in accordance with Section 1.3. In the event the South Bend Common Council modifies said per-parking-space fee(s) during this period, the modified per-parking-space fee(s) will take effect under this Agreement upon the commencement of the fiscal year of the SBCSC following such modification. Not less than thirty (30) days in advance of such effective date, the Commission (or its authorized representative) will provide written notice to the SBCSC of such modification of the per-parking-space fee(s).

(b) In addition to the monthly fees stated in Section 1.2(a), the SBCSC will pay to the Commission the sum of Eleven Thousand Nine Hundred Sixty Dollars (\$11,960.00) (the “Arrearage Payment”) by December 31, 2017, to satisfy overdue payments owed by the SBCSC to the Commission for the SBCSC’s use of the Parking Garage. The amounts of any Monthly Rent paid by the SBCSC under Section 1.2(a) for the SBCSC’s use of Parking Garage Spaces during calendar year 2017 will be deducted from the amount of the Arrearage Payment. In the event said Monthly Rent for the SBCSC’s use of the Parking Garage Spaces during calendar year 2017 do not exceed the amount of the Arrearage Payment, the SBCSC will pay the balance of the Arrearage Payment to the Commission on or before December 31, 2017. The SBCSC’s failure to make the Arrearage Payment in accordance with this Section 1.2(b) will constitute a default of this Agreement for which the Commission may pursue all remedies under Article V or otherwise available at law or in equity without the need to provide notice of or an opportunity to cure such failure.

1.3 Within thirty (30) days before the beginning of each calendar year during the Term, the SBCSC will give to the Commission (or its authorized representative) written notice of the number of Parking Garage Spaces that it will use (of its maximum allotment stated in Section 1.1) during the ensuing calendar year of the Term (a “Space Request”). In the event the SBCSC fails to submit a Space Request within the time provided in the foregoing sentence, the then-current number of Parking Garage Spaces and the corresponding Monthly Rent will be continued into the ensuing calendar year. If, during the course of a calendar year, the SBCSC wishes to

reduce said number of Parking Garage Spaces used by the SBCSC for the remainder of the calendar year, the SBCSC will give to the Commission (or its authorized representative) written notice (a "Reduction Notice") at least ninety (90) days in advance of the date on which the reduction will be effective. The SBCSC's Reduction Notice will specify the number of Parking Garage Spaces that the SBCSC will use at each per-parking-space fee that applies under the terms of Section 1.2(a).

1.4 RESERVED.

1.5 The Commission is responsible for providing management, operational, maintenance, repair, cleaning, security, utilities and other operating services for the Parking Garage consistent with that of other City-owned parking facilities, provided however, with prior written notice to SBCSC, the Commission reserves the right to suspend or reduce the services of heating, elevators, plumbing, electrical, air conditioning or other mechanical systems in the Parking Garage when necessary by reason of governmental regulations, civil commotion, or riot accident or emergency, or for repairs, alterations or improvements which are in the reasonable judgment of the Commission desirable or necessary, or for any other reason beyond the power or control of the Commission (including without limitation, the unavailability of fuel or energy or compliance by the Commission with any applicable laws, rules or regulations relating thereto), without liability in damages therefor. The exercise of such right by the Commission shall not constitute an actual or constructive eviction in whole or in part or relieve SBCSC from any SBCSC's obligations under this Agreement or impose any liability upon the Commission or its agents by reason of inconvenience or annoyance to SBCSC or injury to or interruption of SBCSC's business or otherwise. The Commission shall not in any way be liable or responsible to SBCSC for any loss, damage or expense which SBCSC may sustain or incur if, during the term of this Agreement and for reasons beyond the control of the Commission, either the quality or character of electric current is changed or is no longer available or suitable for SBCSC's requirements.

1.6 SBCSC will cause each of its users of the Parking Garage Spaces to complete a form provided by the Commission (or the Commission's designee responsible for parking facility management), which form will call for information concerning the user's contact and vehicle information and will include an acknowledgment by the user that he or she releases the Commission (and the Commission's designee responsible for parking facility management) from any and all liability for injury or property damage associated with the user's use of the parking facilities.

ARTICLE II

Additional Uses

The Commission and SBCSC acknowledge and agree that they will each cooperate in connection with proposed special uses of the Parking Garage, including specifically, certain Aids Ministries Rooftop Rendezvous fundraisers and the City Garage Sale event. The Commission shall provide written notice to the SBCSC at least thirty (30) days in advance of any proposed special use and the SBCSC shall use reasonable good faith efforts in accommodating such

proposals for special use, however, the SBCSC has no obligation to agree to any special use which will unreasonably interfere with use of the Parking Garage by SBCSC employees and visitors during regular business hours.

The Commission and SBCSC further acknowledge and agree that they will each cooperate in connection with the use, operation and maintenance of the pedestrian skyway that connects the Parking Garage and the building owned by SBCSC at 215 S. St. Joseph Street Second (2nd) Floor level of the Administration Building and traverses across, over and above the public right-of-way and further agree to enter into a separate agreement setting forth the terms of same.

ARTICLE III

Damage and Destruction

3.1 In the event of damage to, or destruction of, the Parking Garage, by fire or other insured cause to an extent Commission has determined in its reasonable discretion can be repaired within one hundred twenty (120) days after the date of the cause of said damage, Commission will promptly cause the damage to be repaired and will diligently pursue the completion of such repair. In such event, this Agreement will continue in full force and effect except that Monthly Rent will be abated on a pro rata basis from the date of the cause of the damage until the date of the completion of such repairs (the "Repair Period") based on the proportion of the Parking Garage Spaces that SBCSC is unable to use during the Repair Period.

3.2 If the Parking Garage is damaged by fire or other insured cause to an extent the Commission has determined in its reasonable discretion cannot be repaired within one hundred twenty (120) days after the date of the cause, then (1) the Commission may cancel this Agreement as of the date of the cause of the damage by providing written notice SBCSC or (2) SBCSC may cancel this Agreement as of the date of the cause of the damage by giving written notice to the Commission within 10 days after the Commission's delivery of a written notice that the repairs cannot be made within one hundred twenty (120) days. If neither the Commission nor SBCSC so elects to cancel this Agreement, the Commission will diligently proceed to repair the Parking Garage Monthly Rent will be abated on a pro rata basis during the Repair Period based on the proportion of the Parking Garage Spaces that SBCSC is unable to use during the Repair Period.

If the Commission elects to cancel this Agreement, as provided in this Section 3.2, then the Commission, with direction from the City's Board of Public Works which oversees parking facilities within the City, shall identify alternate parking for SBCSC's use throughout the remainder of the Term, as defined in Section 1.1. The alternate parking shall be conveniently located within the proximity of the Administration Building located at 215 South St. Joseph Street. SBCSC shall pay a rental rate for the alternate parking that is the lesser of: (1) the Monthly Rent described at Section 1.2; or (2) the actual rent being charged for the alternate parking site.

3.3 If the Parking Garage is damaged by uninsured cause, or if the proceeds of insurance are insufficient to pay for the repair of any damage to the Parking Garage, the Commission will have the option either to elect to repair the damage or to cancel this Agreement as of the date of the cause by written notice to SBCSC not less than ten (10) days after the date of the cause. If the Commission elects to cancel this Agreement, as provided in this Section 3.3, then the Commission, with direction from the City's Board of Public Works which oversees parking facilities within the City, shall identify alternate parking for SBCSC's use throughout the remainder of the Term, as defined in Section 1.1. The alternate parking shall be conveniently located within the proximity of the Administration Building located at 215 South St. Joseph Street. SBCSC shall pay a rental rate for the alternate parking that is the lesser of: (1) the Monthly Rent described at Section 1.2; or (2) the actual rent being charged for the alternate parking site.

3.4 If any damage by fire or other cause is the result of the willful conduct or negligence or failure to act of SBCSC, its agents, contractors, employees, or the willful conduct of SBCSC's invitees, Monthly Rent will not be abated. SBCSC will have no right to terminate this Agreement on account of any damage to the Parking Garage, except as set forth in this Agreement, and the Commission reserves the right to cancel this Agreement.

3.5 For purposes of computing any period of a number of days hereunder for notices or performance (but not for accrual of interest), Saturdays, Sundays and holidays shall be excluded.

3.6 If, at or prior to the expiration of the Term, as defined in Section 1.1, the Commission determines that the Parking Garage has exceeded its useful life such that the structural integrity of the Parking Garage is compromised and repair or rehabilitation is not economically feasible, the Commission, with direction from the City's Board of Public Works which oversees parking facilities within the City, shall identify alternate parking for SBCSC's use throughout the remainder of the Term, as defined in Section 1.1. The alternate parking shall be conveniently located within the proximity of SBCSC's property at 215 South St. Joseph Street. SBCSC shall pay a rental rate for the alternate parking that is the lesser of: (1) the Monthly Rent described at Section 1.2; or (2) the actual rent being charged for the alternate parking site.

Should SBCSC relocate its administrative operations from 215 South St. Joseph Street, then the Commission shall be relieved of its obligation to provide parking to the SBCSC and this agreement shall terminate.

ARTICLE IV

Representations and Covenants

The Commission and SBCSC represent, warrant and covenant to each other that: (a) each has all requisite power and authority to enter into this Agreement and to comply with and fulfill the terms and conditions of this Agreement; (b) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby has been duly authorized by all

necessary action; and (c) this Agreement constitutes a legal, valid and binding obligation, enforceable in accordance with its terms and conditions.

ARTICLE V

Defaults and Remedies

5.1 Selection of Remedies. If any party fails to perform or observe any term or condition of this Agreement on its part to be performed or observed, and such failure continues: (a) with respect to the payment of money, for a period of fifteen (15) days after receipt by the failing party of a written notice indicating that such amount is past due, or (b) with respect to non-monetary defaults, for a period of sixty (60) days after receipt by the failing party of a written notice specifying the nature of the failure (a "Default"); then the non-failing party(ies) hereto shall be entitled to: (i) terminate this Agreement; (ii) obtain the remedy of specific performance or injunction to enforce such term or condition; (iii) bring an action against the party failing to perform or observe the term or condition of this Agreement on its part to be performed or observed to recover its actual damages; and (iv) perform the failed term or condition (entering upon any part of the Parking Garage for such purpose as applicable and necessary), without such performance being construed as a waiver of any term or condition of this Agreement.

5.2 Suspension of Remedies. Notwithstanding Section 5.1, above, if the failure of a party as described above is of such a nature that it cannot be corrected within the applicable cure period despite diligent effort, then the other parties hereto shall not be entitled to exercise their respective remedies under this Article so long as the breaching party commences to cure the breach within the applicable cure period and diligently pursues such cure to completion.

ARTICLE VI

Assignment and Conveyance

The Commission shall have the right to convey, transfer and assign any or all of their respective rights, title and/or interest in and to the Parking Garage; provided, that such conveyance, transfer or assignment shall be subject to the terms and conditions of this Agreement, the transferee shall assume the Commission's obligations hereunder and any document conveying, transferring or assigning such interest shall expressly specify the same.

ARTICLE VII

Notice

Any notice required or permitted to be given by either party to this Agreement shall be in writing, and shall be deemed to have been given: (a) when delivered in person to the other party; (b) when sent by facsimile, with electronic confirmation of receipt; or (c) one day after being sent by national overnight delivery service, with confirmation of receipt, addressed as follows:

Commission: South Bend Redevelopment Commission
1400 S. County-City Building
227 West Jefferson Blvd.
South Bend, IN 46601
Attention: Executive Director of the Department
of Community Investment

With a copy to: South Bend Department of Law
1200 S. County-City Building
227 West Jefferson Blvd.
South Bend, IN 46601
Attention: Corporation Counsel

SBCSC: South Bend Community School Corporation
215 South St. Joseph St.
South Bend, IN 46601
Attention: Executive Director, Human Resources
and Legal Services

Any party may change its address for purposes of this Article by giving the other party written notice of the new address in the manner set forth above.

ARTICLE VIII

Other Provisions

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

8.2 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

8.3 Modification. This Agreement may not be changed or modified, except by an agreement in writing signed by the party sought to be charged with such modification.

8.4 Third Parties. Nothing herein expressed or implied: (a) is intended to give to; or (b) shall be construed to confer upon; any person other than the parties hereto, and their permitted successors or assigns, any rights or remedies under or by reason of this Agreement.

8.5 Entire Agreement. This agreement, together with the other agreements referenced herein, constitutes the entire agreement among the parties hereto, and supersedes all prior discussions, letters of intent, outlines of terms, agreements, writings and representations among the parties hereto with respect to the transaction contemplated herein.

8.6. Further Assurances. The Parties agree that they will each take any action and execute and deliver any document reasonably required to carry out the intents and purposes of this Agreement. Without limitation, this shall include the furnishing or any exhibit called for to be attached hereto or included herewith, and the failure to attach any such exhibit to this Agreement at the date of execution shall not void this Agreement.

8.7 Approval by Public Agencies. The Parties understand and acknowledge that certain actions contemplated by this Agreement may be undertaken by the Commission, the South Board of Public Works, and/or the South Bend Common Council and/or various other persons, agencies or entities that are not party to this Agreement. Such actions are required to be undertaken in accordance with applicable state, federal and local laws. Accordingly, the Parties hereby acknowledge that any such action referenced in this Agreement under the authority of such third parties shall require independent approval by the respective person(s), entity(ies) or governing body(ies) thereof.

8.8 Corporate Authority. The undersigned persons executing and delivering this Agreement on behalf of the SBCSC represent and certify that they are the duly authorized officers of SBCSC and have been fully empower to executed and deliver this Agreement and that all necessary corporate action has been taken and done.

[Signatures on the Following Pages]

IN WITNESS WHEREOF, the Commission and the SBCSC have executed this Agreement as of the Effective Date.

CITY OF SOUTH BEND, INDIANA,
DEPARTMENT OF REDEVELOPMENT,
BY AND THROUGH THE SOUTH BEND
REDEVELOPMENT COMMISSION

SOUTH BEND COMMUNITY SCHOOL
CORPORATION

Marcia I. Jones, President

President, Board of School Trustees

ATTEST:

Secretary, Board of School Trustees

Donald E. Inks, Secretary

Carole Schmidt, Superintendent

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