

ADDENDUM TO AUTOMOBILE PARKING SERVICES OPERATION AND MANAGEMENT CONTRACT

This ADDENDUM is made this 29 day of September, by and between the CITY OF PONTIAC, a Michigan municipal corporation, the address of which is 47450 Woodward Ave., Pontiac, MI, 48342 (the "City") and PONTIAC DOWNTOWN BUSINESS ASSOCIATION, INC., a Michigan nonprofit corporation, the address of which is 106 N Saginaw Street, Pontiac, Michigan 48342 (the "PDBA").

WHEREAS: On March 27, 2013, the City of Pontiac and the PDBA entered into a contract whereby the PDBA was given full control and authority to operate and manage the City's Parking System.

WHEREAS: It has become necessary for the City to enact additional ordinances and implement a Parking Violations Bureau at City Hall in order to aid the PDBA in their enforcement and operation of the Parking System.

WHEREAS: Due to the additional requirements placed upon the City and by mutual agreement of the parties, the parties wish to add such an addendum to the original contract, as follows:

1. **Cost to Operate Parking Violations Bureau.** In consideration for the City creating, organizing, and staffing the Parking Violations Bureau, the PDBA will provide the City with yearly payments of \$8,000.00 (eight thousand dollars), payable in monthly installments of \$666.67 (six hundred and sixty-six dollars and sixty-seven cents) no later than 14 days after the PDBA receives payment of monies owed to it from the City's Parking Fund, as required in the original contract. If the City's cost to operate the Parking Violation Bureau should exceed the total payment structure of \$8,000.00 plus the 1% administration fee in any given year, then the City shall submit a bill to the PDBA evidencing such costs, based on a reasonable accounting of the actual costs for the processing, collections, and administration of the Parking Bureau, exceeding the total of the \$8,000 plus 1% administration fee, which shall be paid by the PDBA within 30 days of PDBA review of the supplied documentation from the City. Failure to pay such a bill within 60 days constitutes a material breach of the contract between the parties. The City will send the appropriate detailed documentation and payment to the PDBA from the Parking Violations Bureau no later than the 15th Day of each month.

2. **Review Procedures.** The PDBA will provide a review process for any individual wishing to contest the issuance of any PDBA issued ticket, citation, or notice of violation. Such a review procedure must be approved by the City's Finance Director and City Attorney, in writing, prior to its implementation.



3. **Right to Review Third Party Contracts.** The City shall have the right to review any contracts between the PDDBA and any of its contractors or with any additional subcontractors or third-parties relating to the enforcement and operation of the Parking System.

4. **Indemnification.** The PDDBA covenants and agrees that it will not permit the use of the Parking System in any manner that would result in a violation of any local, state, or federal laws, ordinances, rules, or regulations now or hereafter in force and applicable thereto. The PDDBA shall also at all times defend, hold harmless, and indemnify the City, their agents, employees, and officials from all losses, damages, claims, expenses, judgments, and liability to persons or property occasioned, wholly or in part, by the negligence, acts, or omissions of the PDDBA or its agents, representatives, or contractors. The PDDBA further agrees that it will promptly, at its own expense, make and pay for any and all changes and alteration in or about the Parking System which during the term of this Contract are requires to be made at any time by reasons of any local, state, or federal law, ordinance, or regulations and to defend, indemnify and hold the City, their agents, employees, and officials harmless and free from all costs or damage in respect thereto. Notwithstanding the above, the PDDBA shall not indemnify the City from any losses, damages, claims, expenses, or judgments caused by the negligent actions of the City, its agents, employees or officials.

5. **Notices of Violation.** The PDDBA agrees to only issue tickets or citations in circumstances where expressly authorized by state law. Alternatively, the PDDBA may, at its discretion, issue Notices of Violations, in the type and manner prescribed by City Ordinance, for all other parking violations. Such Notices of Violation will be handled exclusively through the City's Parking Violation Bureau. All other tickets, citations, or civil infractions will be handled through the 50th District Court. The PDDBA further agrees to work directly with the City and the 50th District Court to create and implement a system whereby tickets, citations, notices of violations, and civil infractions can be electronically managed and submitted to the City and the Court. Finally, the PDDBA agrees to operate and manage the Parking System in accordance with federal, state, and local laws at all times and will amend its practices and procedures as necessary to accommodate any changes in the law, ordinance, or any other applicable rules or regulations.

The remainder of this page left intentionally blank. Signature Page to Follow

A handwritten signature or set of initials, possibly 'JA', located in the bottom right corner of the page.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

CITY OF PONTIAC, a Michigan
Municipal Corporation

By: Joseph M. Sobota, M.P.A.
Mr. Joseph M. Sobota, M.P.A.
Its: City Administrator

**PONTIAC DOWNTOWN BUSINESS
ASSOCIATION, INC.**, a Michigan
nonprofit corporation

By: De Monique
President

Its: _____

By: _____

Its: _____

**AUTOMOBILE PARKING SERVICES
OPERATION AND MANAGEMENT CONTRACT**

THIS AUTOMOBILE PARKING SERVICES OPERATION AND MANAGEMENT CONTRACT (this "Agreement") is made this 27th day of March, 2013, by and between the CITY OF PONTIAC, a Michigan municipal corporation, the address of which is 47450 Woodward Ave., Pontiac, MI, 48342 (the "City") and PONTIAC DOWNTOWN BUSINESS ASSOCIATION, INC., a Michigan nonprofit corporation, the address of which is 106 N Saginaw Street, Pontiac, Michigan 48342 (the "PDBA").

RECITALS:

- A. The City provides street-side (on-street) parking throughout Downtown Pontiac ("Parking System") for the benefit of the public (see Exhibit "A" attached hereto).
- B. PDBA is a Michigan non-profit tax-exempt entity pursuant to IRS Regulation 501(c) (6);
- C. PDBA has full authority and desires to operate and manage the Parking System for the City;
- D. The City desires to delegate to PDBA full control and authority to operate and manage the Parking System; and
- E. The public and future downtown development is best served by transferring operational control and management of the Parking System to PDBA.

NOW, THEREFORE, it is agreed:

1. Operation and Management. The City hereby assigns, delegates, and transfers to PDBA all rights and authority necessary to operate, manage, and staff the Parking System, to occupy and utilize all real property housing the Parking System and to plan, incorporate, and implement all necessary capital improvements, excluding city, county and state owned roads, streets, highways (roads, gutter and curb), to the Parking System as determined by PDBA in its reasonable business judgment. PDBA shall operate, manage and staff the Parking System in accordance with the terms hereof. PDBA shall reconfigure existing office space to accommodate parking pass sales and collection services. In performing the services contemplated herein, PDBA may, in its sole discretion, utilize the services of subcontractors.

2. Term. This Agreement shall commence March 27, 2013 and continue for a period of ten (10) years unless otherwise terminated as provided herein. Subject to the minimum term discussed below, this Agreement may be terminated by either party without cause after a public hearing, upon three hundred and sixty-five (365) days' written notice to the other party. PDBA shall have the option to extend the term of this Agreement for five (5) additional terms of

five (5) years each by providing notice to the City not later than one hundred twenty (120) days prior to the expiration of the then existing term. Notwithstanding the preceding to the contrary, unless in the event of a default, the term of this Agreement shall be for a minimum of ten (10) years. Upon the expiration of the initial ten (10) years, the City and PDDBA will meet and discuss this Agreement and the performance of the parties as contemplated hereunder and mutually determine if any amendment to the terms hereof is necessary.

NOTE: Our understanding is tickets will go through the court into the general fund and then paid back to PDDBA, and the City does not have a parking entity any longer.

3. **Parking System Funds.** The City shall grant to PDDBA authority over all of the Parking System's assets, including ticketing equipment, and a seed fund of Fifty Thousand Dollars (\$50,000.00), both existing as of the date hereof and as accumulated after the date hereof ("Operating Funds"), and shall use such assets and Operating Funds to satisfy its obligation to operate and manage the Parking System. PDDBA is authorized to expend those Operating Funds necessary for the operation and management of the Parking System. All revenue from the parking meters servicing the Parking System and all revenue from related tickets and citations shall remain the property of PDDBA and shall be managed and administered by PDDBA as further provided in Paragraph 8, below. The City will separately account for all parking tickets issued by the PDDBA, and for purposes of this Agreement, will refer to such account as the "Auto Parking Fund".

4. **Financial Support Services; Waste System.** The parties hereto shall each provide those services identified on attached Exhibit "B." PDDBA shall be responsible for all deposits, processing of vendor and other accounts payable payments, accounts receivable collections, the maintenance of an internal accounting system, and all other necessary financial activities in order to complete its obligations required hereunder. Additionally, the City shall continue to provide waste management services to the Parking System as requested annually by PDDBA. PDDBA may also utilize the City's property located at those sites identified on attached Exhibit "C" for storage of personal property used by PDDBA to manage and operate the Parking System.

5. **Personnel.** PDDBA shall have authority to sub-contract or employ, directly or indirectly, all personnel necessary to operate and manage the Parking System, including, without limitation, a Parking Manager, meter collectors, enforcement officers and maintenance staff.

6. **No Transfer; As Is.** No transfer of employees, ownership of personal and real property, leases, or contracts involving the Parking System shall occur or is intended by this Agreement. PDDBA accepts the Parking System, including all real and personal property used in connection with the Parking System in "AS IS" condition. After the date hereof, PDDBA acknowledges that the City has no obligation to make any repairs or alterations to the Parking System. Notwithstanding the preceding, however, any future repairs or alterations made by PDDBA shall be paid for out of the Operating Funds and accounts existing as of the date hereof and accumulated hereafter, excluding capital improvements for city, county and state owned roads, streets, highways (roads, gutter and curb). Property of the Parking System shall remain the property of the City at the end of this agreement.

7. **Maintenance and Repair.** PDDBA shall repair and maintain the Parking System in a clean, sanitary and safe condition in conformity and compliance with all existing and future statutes, laws, orders, ordinances, rulings and regulations of any lawful authority having jurisdiction over the Parking System. PDDBA shall have the exclusive authority for all expenditures and to enter into contracts in its sole and absolute discretion for all maintenance and repairs. PDDBA guarantees that an amount equal to up to ten percent (10%), or such greater amount as agreed to at the annual budget review meeting, of all revenue generated from the Parking System to be used for maintenance and repair of the Parking System. The PDDBA shall be responsible for all capital, maintenance, and operating costs (striping, signage, ticket printing, receipt paper of the Parking System, and the City shall not contribute any funds for these purposes other than the fifty-thousand dollars identified in Paragraph 3, except the City shall be responsible for plowing the streets.

8. **Parking Ticket System.** PDDBA shall continue to utilize the existing Parking Ticket Issuance and Adjudication System as contracted through the 50th District Court ("Court"). The PDDBA shall pay the contractual fees for the Ticket Issuance System involving the lease of the handheld enforcement equipment, if any. The *Auto Parking Fund* will in turn pay the remaining revenues, less City Administration costs of one percent (1%) of net ticket funds after court costs, to the PDDBA as hereafter provided.

- A. After the PDDBA begins issuing tickets, the City shall deposit all parking ticket fines collected into the *Auto Parking Fund* on a monthly basis and shall provide to PDDBA a monthly accounting of all such fines collected and deposited for the immediately preceding month. The Parking System funds shall be paid as provided above and all City costs of direct services to the Parking System, including but not limited to the Parking Violations Bureau, data processing, deposit collections, and such other uses necessary for the effective management and operation of the *Auto Parking Fund*.
- B. After consultation with the City and the 50th District Court, the PDDBA shall determine the pricing for parking, including pricing for all meters, tickets, citations and parking passes. Such pricing shall be competitive with that charged by communities in the same geographic territory.
- C. PDDBA shall have sole authority over the rental of parking spaces for construction, events and temporary use and the fees charged for same.
- D. Before authorizing and utilizing persons other than police officers to issue citations, the law enforcement agency or local unit of government shall implement a program to train the persons to properly issue citations as provided in this section, of which not less than 8 hours shall be in parking enforcement, conducted by that law enforcement agency or the law enforcement agency for that local unit of government or, if the local unit of government does not have a law enforcement agency, by the county sheriff. A person who successfully completes a program of training implemented under this section may issue citations as provided in this

section as authorized by law enforcement agency or local unit of government.

9. **Utilities.** The City will pay all parking lot and structure related utility costs for all locations unless PDDBA is otherwise charging parking fees in any particular location. If the PDDBA is charging for parking in any location, then the utilities for those locations will be paid for by PDDBA and PDDBA shall pay when due out of the *Auto Parking Fund* invoices for all utilities services provided to the Parking System.

10. **Insurance.** The PDDBA, and any and all of their subcontractors, shall not commence work under this contract until they have obtained the insurance required under this paragraph. All coverage shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with insurance carriers acceptable to City of Pontiac. The limits required below do not limit the liability of the PDDBA. All deductibles and SIRs are the responsibility of the PDDBA.

A. Workers' Compensation Insurance: The PDDBA shall procure and maintain during the life of this contract, Workers' Compensation Insurance, including Employers' Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

B. Commercial General Liability Insurance: The PDDBA shall procure and maintain during the life of this contract, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$ 2,000,000 per occurrence and aggregate. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent, if not already included.

C. Motor Vehicle Liability: The PDDBA shall procure and maintain during the life of this contract Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, with limits of liability not less than \$2,000,000 per occurrence combined single limit for Bodily Injury, and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

D. Additional Insured: Commercial General Liability and Motor Vehicle Liability, as described above, shall include an endorsement stating the following shall be Additional Insureds: "The City of Pontiac, all elected and appointed officials, all employees and volunteers, all boards, commissions, and/or authorities and board members, including employees and volunteers thereof. It is understood and agreed by naming the City of Pontiac as additional insured, coverage afforded is considered to be primary and any other insurance the City of Pontiac may have in effect shall be considered secondary and/or excess."

E. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance, and Motor Vehicle Liability Insurance, as described above, shall be endorsed to state the following: "It is understood and agreed Thirty (30) days, Ten (10) days for non-payment of premium, Advance Written Notice of Cancellation, Non-Renewal, Reduction, and/or Material change shall be sent to: Garland Doyle, City of Pontiac, 47450 Woodward Avenue, Pontiac MI 48342.

F. Proof of Insurance Coverage: The Contractor shall provide the City of Pontiac at the time the contracts are returned by him/her for execution, certificates and policies as listed below:

- a. Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;
- b. Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
- c. Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
- d. If so requested, Certified Copies of all policies mentioned above will be furnished.

G. If any of the above coverages expire during the term of this contract, the Contractor shall deliver renewal certificates and/or policies to City of Pontiac at least ten (10) days prior to the expiration date.

11. Reduction in Parking. Except in the event of temporary reduction in connection with special events and private or public construction, at no time shall PDBA reduce the parking spaces available to the public.

12. Non-Discrimination. The parties agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, handicapped status, or marital status. Breach of this covenant may be regarded as a material breach of this Agreement.

13. Entire Agreement. This Agreement, together with all the items incorporated herein by reference, constitutes the entire agreement of the parties and there are no valid promises, conditions or understandings which are not contained herein. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each Party that expressly states the sections of this Agreement to be modified; no other act, usage, or custom will be deemed to amend or modify this Agreement.

14. Authority to Execute. The parties agree that the signatories appearing below have the authority and are duly authorized to execute this Agreement on behalf each party to this Agreement.

15. Reimbursement. In the event this Agreement is terminated by either party for any reason before twenty-four (24) months after the effective date hereof, the City shall reimburse PDBA for its cost of all improvements made to Parking System and metering equipment that exceed the fifty-thousand dollars identified in Paragraph 3 in order to accommodate its obligations contemplated hereunder.

16. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining portions or provisions will remain in full force and effect.

17. **Governing Law.** This Agreement, and all matters arising under or related hereto, will be governed according to the laws of the State of Michigan, without respect to its conflict of law principles. The parties submit to the exclusive jurisdiction and venue of the state or federal courts having jurisdiction over Pontiac, Michigan of any claims or actions arising, directly or indirectly, out of or related to this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

CITY OF PONTIAC, a Michigan
Municipal Corporation

By: Louis H. Schimmel

Louis H. Schimmel
Its Emergency Financial Manager

PONTIAC DOWNTOWN BUSINESS
ASSOCIATION, INC., a Michigan
nonprofit corporation

By: Glen M. Konopaskie

Its: President, Pontiac Downtown
Business Association

By: _____

Its: _____

EXHIBIT "A"

PARKING SYSTEM

Saginaw north of Plaza, 121 spaces
Saginaw south of Plaza, 8 spaces
Lawrence, 39 spaces
Oakland Ave, 15 spaces
Mill, 12 spaces
Wayne, 8 spaces
Perry, 5 spaces
Warren, 2 spaces

All spaces shall be located within the area defined in Exhibit A.

Additional spaces or additional streets may be added upon joint agreement between the City and the PDDBA.

MAP FOLLOWS



EXHIBIT "B"

SERVICES

Trash removal from City lots under PDBA management.

EXHIBIT "C"

PROPERTY SITES

Saginaw north of Plaza, 121 spaces
Saginaw south of Plaza, 8 spaces
Lawrence, 39 spaces
Oakland Ave, 15 spaces
Mill, 12 spaces
Wayne, 8 spaces
Perry, 5 spaces
Warren, 2 spaces

All spaces shall be located within the area defined in Exhibit A.

Additional spaces or additional streets may be added upon joint agreement between the City and the PDBA.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	Berkfield & Co Ltd 2625 Pontiac Lake Road Waterford MI 48328	CONTACT NAME: Matt Lubaway
		PHONE (A/C, No, Ext): 248-682-0044 FAX (A/C, No): 248-682-2430 E-MAIL ADDRESS: mlubaway@berkfield.com
INSURED	Pontiac Downtown Business Association 106 N Saginaw Street Pontiac MI 48342	INSURER(S) AFFORDING COVERAGE
		INSURER A : Frankenmuth Mutual Insurance NAIC # 13986
		INSURER B :
		INSURER C :
		INSURER D :
		INSURER E :

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL SUBR INSR WVR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS					
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y	CPP6218740	03/26/2013	03/26/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$					
	GENL AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/>										
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS					X	SCHEDULED AUTOS NON-OWNED AUTOS	CPP6218740	03/26/2013	03/26/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB DED <input checked="" type="checkbox"/> RETENTION \$ 10,000										X
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC 6218740	03/26/2013	03/26/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 The City of Pontiac is an Additional Insured for operations of the Named Insured.
 30 days notice of cancellation, except 10 days for non-payment of premium.

CERTIFICATE HOLDER The City Of Pontiac 47450 Woodward Ave Pontiac MI 48342	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 