

**AGREEMENT FOR MUNICIPAL PARKING  
ADMINISTRATIVE MANAGEMENT SERVICES**

**THIS AGREEMENT** entered into this 17<sup>th</sup> day of July, 2006 by and between the **City of Bemidji**, a municipal corporation duly organized under the laws of the State of Minnesota, hereinafter referred to as the "**City**", and the **Bemidji Downtown Development Authority, Inc.**, a non-profit corporation organized under the laws of the State of Minnesota, hereinafter referred to as the "**DDA**".

**WITNESSETH**

**WHEREAS**, the City owns and maintains eight (8) Municipal Parking Lots, Nos. 2-9, located throughout the Downtown Business District, as listed and shown on **Exhibit A** attached to this Agreement, which lots are available both for short-term, time-limited public parking and for public parking on a contract permit basis; and

**WHEREAS**, on behalf of the City, the DDA has managed administration of permit parking for the above-described municipal parking lots, including preparation and issuance of individual parking permits, allocation of permit quotas for each lot, and the collection of parking permit fees; and

**WHEREAS**, the City desires that continued administrative management of permit parking for these parking lots and any future parking facilities, be by written agreement with the DDA; and

**WHEREAS**, both parties hereto desire to memorialize in writing that management relationship.

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, the City and DDA agree as follows:

**ARTICLE I**  
**Administrative Management Services**

DDA agrees to provide all resources, labor and otherwise, necessary to provide the services required to administratively manage parking permits for the eight (8) municipal parking lots located within the City of Bemidji, including management of all future municipal permit or permitted parking facility(s) constructed within the City, which services are further defined by the terms and conditions of this Agreement. The administrative management services identified in this Agreement will be undertaken at the direction of City Staff, including the City Manager and staff of the City's Public Works Department.

The administrative management services provided by DDA will include:

- a. Preparation of parking permit forms and stickers, including permit applications and agreements or contracts for parking permits;
- b. Issuance of annual parking permits;
- c. With assistance from the City, formulation of permit quotas allocated to each municipal parking lot;
- d. Collection of parking permit fees and permit parking contract charges at the time of issuance;
- e. Preparation of monthly financial statements and such documentation, including permit sale records, as the City may require, and adding historical comparison as management operations proceed. Such monthly statement and supporting documentation to be delivered to the City Finance Officer.

- f. Daily or as needed deposit of cash receipts from the sale of parking permits in an account in the DDA's name at a financial institution to be identified to the City.
- g. Monthly deposit by DDA of accumulated permit parking revenues with the City Treasurer/Finance Department.

In administering permit parking, DDA shall not permit any product or service other than the parking of vehicles to be dispensed or furnished at or in connection with any municipal parking facility.

## **ARTICLE II Management Fees**

**A. Amount of Fee.** City agrees to compensate DDA annually for administrative management services a sum equal to **10%** of permit parking revenue collected from all municipal lots subject of this Agreement.

**B. Billing and Payment.** DDA shall submit a monthly invoice to the City Finance Department, detailing the amount of parking permit revenues received in the month preceding the invoice, as well as the calculated sum equal to 10% of the revenues subject of the invoice. The City shall pay DDA the fee billed under the invoice within 30 days after receipt of the same. Compensation will be paid out of parking permit revenues received from the DDA and deposited in the City's account as described in Paragraph I(g) above.

**ARTICLE III**  
**Use of Permit Parking Revenues**

**A. Parking Lot Revenues**

Parking permit revenues generated, collected and deposited with the City pursuant to this Agreement shall be designated by the City in a special "Parking Fund" in the City's financial records. The primary policy goal sought by creation of a special Parking Fund is to generate a permanent self-perpetuating fund for capital expenditures for current and future municipal parking facility(s), but including parking related expenditures as well when authorized. Permissible expenditures from the Parking Fund are as outlined hereinafter and as authorized by the Council after recommendation of the "Parking Sub-committee" hereinafter created and described in Article IV below.

Parking permit revenues may be expended as follows:

- i. To pay DDA's management fee;
- ii. Twenty percent (**20%**) of total parking permit revenues shall be dedicated for general operation and maintenance of municipal parking lots and transferred into the City's General Fund.
- iii. For property acquisition, demolition, excavation and paving of and in relation to approved municipal parking facility expansion and construction purposes;
- iv. For the cost of design, architectural, engineering and related professional services, as well as the cost of construction of and in relation to approved municipal parking facilities;
- v. For parking related improvements generally (other than operation and maintenance).

**B. Transfer of Revenues in DDA Account**

Permit parking revenues currently being held by the DDA prior to execution of this Agreement, shall be remitted to the City in the time and manner, and with consideration for services previously rendered by DDA, as agreed to and directed by the City Council.

**ARTICLE IV  
Parking Sub-Committee**

With execution of this Agreement, the City Council further agrees to create and appoint a sub-committee to the standing City Public Works Committee with the specific delegated purpose of planning, reviewing and recommending proposed uses of designated parking permit revenues. The sub-committee shall be made up of six members, three of which shall be appointed by the DDA, including the then serving DDA president, with the remaining three members being the Council appointed representatives on the Public Works Committee.

**ARTICLE V  
Permit Parking Fees and Charges**

Fees and charges for parking permits in City Municipal Lots 2-9 shall continue at the rates shown in **Exhibit B** attached hereto and incorporated herewith and which Exhibit is approved by the Council with the execution of this Agreement. Thereafter, proposals to increase or otherwise modify levels of parking permit fees or charges must be first reviewed and approved by the Parking Sub-committee and, finally, by the City Council before the revised fees or charges may be imposed or take effect. Approval of

fees or charges shall not be unduly withheld by the City Council unless the proposed fees or charges are unreasonable.

Proposed parking permit or contract parking fee(s) for any parking facility constructed subsequent to execution of this Agreement, shall first be submitted to the Parking Sub-committee prior to being presented to the City Council for review and approval. Approval of the proposed fees shall not be unduly withheld by the Council unless the proposed fees are unreasonable.

#### **ARTICLE VI Assignment**

Except as provided herein, DDA shall not, in any way, subcontract with or assign or transfer its rights or interest under this Agreement to any other party, without prior written permission of the City.

#### **ARTICLE VII Term and Renewal**

This Agreement shall commence as of the day first above written, and extend for a period of **ten (10) years**, unless terminated earlier as provided herein or unless extended or renewed upon the terms hereinafter stated.

This Agreement may be extended or renewed automatically, except as otherwise provided herein, under the same terms and conditions herein contained for **two (2) additional terms of ten (10) years** each ("Extended Terms"), each Extended Term to begin at the expiration of the preceding term, unless at least **ninety (90) days** prior to the expiration of the then current term, either the City or DDA shall notify the other that it intends not to renew the Agreement.

## **ARTICLE VIII Termination of Services**

Except as otherwise provided herein, this Agreement may be terminated by mutual agreement of the parties or by either party upon **ninety (90) days** written notice to the other.

In the event of default by either party under the terms of this Agreement, the City or DDA may terminate this Agreement with cause by giving written Notice specifying the nature of the default and the effective date of the termination, which date shall be at least **ninety (90) days** after the receipt of the written notice by the other party. If within **thirty (30) days** of the notice the defaulting party commences efforts to cure the default, and proceeds with diligence to cure or correct the default, even if said correction or cure extends beyond **ninety (90) days** of the notice, then the terminating party shall not proceed to termination until such time as the defaulting party has abandoned or further failed to diligently prosecute said cure to completion.

In the event of termination, DDA shall be provided payment for all services satisfactorily provided under this Agreement to the date of termination. Furthermore, upon termination, DDA shall immediately remit to the City all permit parking revenues being then held in the DDA's account as described in Paragraph I(f) above. Upon termination, the City shall also be entitled to any records or items provided by the City, which were given to DDA for use in providing the services under this Agreement, which records or items shall be given to the City on the date of termination.

**ARTICLE IX  
Records and Audit**

Records, including bank account records, shall be maintained by DDA with respect to the Administrative Management Services provided under this Agreement. Such records shall be maintained and available for inspection by City representatives for **seven (7) years** following completion of DDA's services under this Agreement. Such records shall include a record of costs supported by payrolls, time records, invoices, contracts, vouchers, bank account statements and/or other documentation evidencing charges incurred by DDA in the provision of services under this Agreement. DDA shall also provide on request by City during normal business hours, such statements, summaries and information as may assist the City in determining performance under this Agreement.

The DDA shall prepare and submit an Annual Financial Report to the City Council, subject to an audit at the Council's discretion. If an audit is requested, the expense of such audit shall be paid from permit parking revenue dedicated for general operation and maintenance in **Article III.A.ii**. DDA shall permit the City's auditors to audit, examine and make excerpts or transcripts from records, including bank records, in DDA's possession with respect to services provided under this Agreement.

**ARTICLE X  
Insurance and Indemnification**

The DDA currently maintains a General Liability Insurance Policy insuring, among other things, the activities subject of this Agreement. DDA shall continue to maintain Occurrence-Based Commercial General Liability insurance providing coverage on an "occurrence," rather than on a "claims made" basis, which shall also include a

Broad Form General Liability Endorsement GL 0404 (Insurance Services Office form designation), or an equivalent form (or forms). Prior to execution of this Agreement, DDA shall furnish to the City evidence of insurance in the form of a standard Certificate of Insurance. Thereafter, either upon renewal or annually, DDA shall furnish City with an updated certificate evidencing coverage.

DDA also agrees to defend, indemnify and hold harmless, the City and its officers, agents and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons including agents of the City or of the DDA, by reason of the loss or damage to property arising out of the provision of services or performance of DDA's actions and obligations under this Agreement. In turn, the City shall defend, indemnify and hold harmless, the DDA and its officers, agents and employees from and against any and all claims, demands, suits, judgments, costs and expenses by reason of the loss or damage to property caused by the negligence of the City or its employees related to the activities subject of this Agreement.

City shall promptly give notice to the DDA of any notice of any filing of claims or lawsuits against the City arising out of such damages or loss.

#### **ARTICLE XI Independent Contractor**

Nothing in this Agreement is intended or shall be construed as creating or establishing a relationship of co-partners between the parties to the Agreement, or any other parties, representatives or employees of any other party providing services under this Agreement. No party shall be considered an employee of any other party to this

Agreement, and any claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of any party or any officer, or agent of any party arising out of employment or claimed employment, including claims of discrimination, shall be the responsibility of that party. No party, employee or agent of any party shall be entitled to compensation, rights or benefits to hospital care, sick leave, vacation pay, worker's compensation, unemployment insurance, disability pay or severance of any other party.

**ARTICLE XII  
Discrimination**

During the term of and in the provision of services under this Agreement, DDA shall not unlawfully discriminate and shall comply with all applicable federal or state laws regarding non-discrimination

**ARTICLE XIII  
Laws, Rules and Regulations**

DDA agrees to observe and comply with all rules, regulations and ordinances of the City, the State of Minnesota and the United States of America, which are now or hereafter promulgated, and which are applicable to the services provided under this Agreement. Furthermore, this Agreement, together with all of its terms and provisions, is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

For purposes of this Agreement, the City represents that it will faithfully and consistently enforce parking restrictions and prosecute parking violations with respect to all City parking facilities and amenities, whether on or off street in nature.

**ARTICLE XIV**  
**Notices**

Notices required under this Agreement to be sent to the City shall be sufficient if sent by regular United States Mail, postage pre-paid, addressed to the City, Attention: City Manager, City Hall, 317 4<sup>th</sup> Street NW, Bemidji, MN 56601; and notices to DDA, if sent by regular United States Mail, postage pre-paid addressed to P.O. Box 235, Bemidji, MN 56619-0235; by direct provision to Parking Sub-committee members; or to such other persons or addresses as the parties may designate to each other in writing from time to time.

**ARTICLE XV**  
**Waiver**

Any waiver by either party of any provision of this Agreement, or of any right and/or remedy arising under the terms of this Agreement, shall not imply any subsequent waiver of that or any other provision or of any rights and/or remedies in respect to any subsequent breach or default under the terms of this Agreement.

**ARTICLE XVI**  
**Amendments**

Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed the original Agreement or their successors in office.

**ARTICLE XVII**  
**Entire Agreement**

This Agreement, including all exhibits and all documents incorporated by reference, constitutes the entire Agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof.

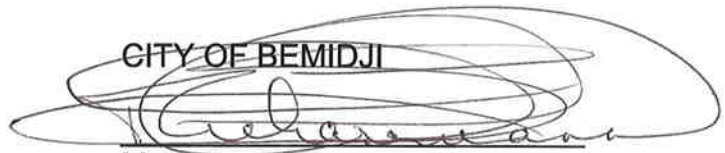


**ARTICLE XVIII  
Severability**

To the maximum extent possible, each provision of this Agreement shall be interpreted in such manners to be effective and valid under applicable law. If any provision of this Agreement shall be prohibited by or held to be invalid under applicable law, such provisions shall be ineffective solely to the extent of such prohibition or invalidity and it shall not invalidate the remainder of such provision or any other provision of this Agreement.

**ARTICLE XIX  
Counterparts**

This Agreement is executed in any number of counterparts, each of which will constitute one and the same instrument.

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

CITY OF BEMIDJI  
  
\_\_\_\_\_  
Mayor  
  
\_\_\_\_\_  
City Manager  
  
BEMIDJI DOWNTOWN  
DEVELOPMENT AUTHORITY, INC.  
  
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