

COUNCIL COPY

PUBLIC SAFETY COMMITTEE

12-0216R

RESOLUTION AUTHORIZING AN AGREEMENT WITH THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY (DEDA) TO CLARIFY EACH PARTY'S RIGHTS AND OBLIGATIONS UNDER THE PARKING MANAGEMENT AGREEMENT AMONG THE CITY, DEDA AND INTERSTATE PARKING COMPANY OF MINNESOTA, LLC (INTERSTATE).

CITY PROPOSAL:

RESOLVED, that the city and DEDA have entered into an agreement with Interstate for the management of city-owned and DEDA-owned and managed parking facilities (Interstate Agreement).

FURTHER RESOLVED, that the city and DEDA desire to enter into an agreement to clarify the respective rights and obligations of DEDA and city under the Interstate Agreement, the term of which will be coterminous with the term of the Interstate Agreement.

NOW THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, with DEDA; monies payable to or from DEDA payable into and out of the following accounts:

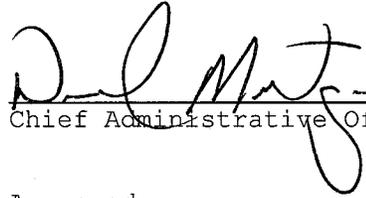
Parking Fund 505, Administrative Services Department 015, Parking Ramps Organization 1480, and Meters and Municipals Lots Organization 1481.

Approved:



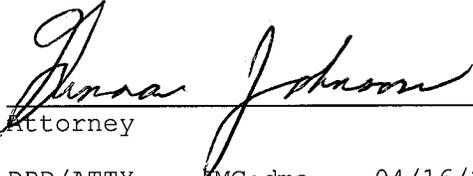
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

DPD/ATTY JMC:dma 04/16/2012

STATEMENT OF PURPOSE: The purpose of this Resolution is to approve an agreement with DEDA to clarify DEDA's and the City's rights and obligations under the agreement among the City, DEDA and Interstate Parking Management Company, LLC. for the management of City-owned and DEDA-owned and managed parking facilities. Under the terms of the Interstate Agreement, the City's parking manager will manage the Interstate Agreement on behalf of the City and DEDA. This agreement among other things will clarify the reporting and approval obligations of the parking manager to DEDA's Executive Director as well as the sharing of revenues and expenses.

AGREEMENT
BY AND BETWEEN
THE CITY OF DULUTH
AND
DULUTH ECONOMIC DEVELOPMENT AUTHORITY

This Agreement ("Agreement") effective as of April 26, 2012 ("Effective Date") is by and between the City of Duluth (the "City") and the Duluth Economic Development Authority ("DEDA").

1. RECITALS

WHEREAS, the City owns certain parking facilities set forth in Exhibit A and shown in Exhibit B (the "City Facilities");

WHEREAS, DEDA owns or is responsible for the management of certain parking facilities set forth in Exhibit C and shown on Exhibit D (each a "DEDA Facility" or collectively the "DEDA Facilities"). (The DEDA Facilities and the City Facilities are sometime collectively referred to as the "Facilities");

WHEREAS, the Lake City Lot, as set forth in Exhibit A and shown on B, is subject to a Ground Lease Agreement between DEDA and St. Croix, Inc. ("St. Croix") dated December 31, 1991 (the "St. Croix Agreement"). The St. Croix Agreement is perpetual subject to St. Croix's option to terminate as set forth in said agreement;

WHEREAS, the Northwest Iron Lot, as set forth in Exhibit C and shown on Exhibit D, is subject to an Agreement between DEDA and ETOR Properties Limited Liability Company ("ETOR") dated March 14, 2011 (the "ETOR Agreement"). The ETOR Agreement continues through December 31, 2013 unless terminated sooner as provided for therein;

WHEREAS, the City and DEDA have entered into an agreement commencing April 26, 2012 with Interstate Parking Company of Minnesota, LLC (City Contract No. 12-0409-12; DEDA Contract No. _____) (the "Interstate Agreement") to provide parking management services for the Facilities. A copy of the Interstate Agreement is incorporated by reference as if fully set forth within this Agreement; and

WHEREAS, the City and DEDA desire to enter into this Agreement to clarify each party's rights and responsibilities under the Interstate Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed between the parties hereto as follows:

2. DEFINITIONS: The following terms, as used in this Agreement, shall have the meanings ascribed to them hereunder:

- a. City Manager shall mean the City's Manager of Parking or his/her designee.
- b. Executive Director shall mean DEDA's Executive Director or his/her designee.

- c. Gross Revenue shall have the same meaning as defined in Section 15 of the Interstate Agreement.
- d. Interstate Agreement shall mean the agreement among the City of Duluth, Duluth Economic Development Authority and Interstate Parking Company of Minnesota, LLC commencing on April 26, 2012.
- e. Management Fee shall have the same meaning as defined in Section 14 of the Interstate Agreement.
- f. Operating Expenses shall have the same meaning as defined in Section 15 the Interstate Agreement.
- g. Operations Manual shall have the same meaning as defined in Section 1 of the Interstate Agreement.
- h. Operator shall mean Interstate Parking Company of Minnesota, LLC.
- i. Written Approval shall mean approval via e-mail or hard copy. If the Executive Director does not respond to a request for approval within three (3) business days, it shall be deemed approved.

3. OPERATION OF THE FACILITIES IN GENERAL:

- a. City shall ensure that Operator shall manage and operate the DEDA Facilities and the Improvements located thereon as public parking in accordance with the Operations Manual and the Interstate Agreement and in a professional, economical and businesslike manner satisfactory at all times to the Executive Director.
- b. City shall receive the revenues derived from the operation by Operator of each DEDA Facility and provide such revenue to DEDA as described in Section 12.
- c. City shall forward to the Executive Director the Operator's monthly operating statement of total expenses, revenues and a summary of public usage for each of the DEDA Facilities.
- d. City shall obtain the Executive Director's Written Approval as to the number of contract parkers allowed at each DEDA Facility.
- e. The City Manager and the Executive Director will meet to discuss and review operational issues and perform operational reviews quarterly or in such other increments determined to be necessary. Discussion shall include without limitation recommendations pertaining to hours of operation; rates; repair and maintenance by Operator; maintenance obligations of City and DEDA; and advertising/marketing of Facilities.
- f. City will provide the Executive Director with an opportunity to review and to provide input into the Operations Manual. The final Operations Manual and any subsequent amendments shall be approved by the Executive Director prior to implementation by Operator.

4. USE OF FACILITIES FOR SPECIAL EVENTS: DEDA and City acknowledge and agree that certain DEDA Facilities have been utilized as long standing venues for special events and activities and such special event use closes the DEDA Facilities to general parking. The Executive Director shall

provide the City Manager with at least forty-five (45) days' written notice of such use of the DEDA Facilities. In addition, DEDA agrees that any new or added special events use of the DEDA Facilities will not exceed one (1) week in duration per event. The Executive Director will provide the City Manager with sixty (60) days' written notice of any such new special event.

5. TERM AND TERMINATION:

a. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on April 26, 2012 and continue for a period of five (5) years through April 25, 2017, or for such shorter or longer period as shall be coterminous with the Interstate Agreement. Notwithstanding the above, the term of this Agreement with respect to the Northwest Iron Lot and Lake City Lot shall be coterminous with the term of the ETOR Agreement and the St. Croix Agreement respectively, but in no event shall the term be for a period longer than the term of this Agreement.

b. Notwithstanding the foregoing, beginning at the third (3rd) year of this Agreement, the Executive Director shall have the right to terminate DEDA's rights and obligations under the Interstate Agreement with or without cause upon one hundred and ninety (190) days' written notice to the City. The City will provide notice to Operator of DEDA's termination in accordance with the Interstate Agreement including providing Operator with a list of the DEDA Facilities to be removed from the Interstate Agreement. In the event of early termination, DEDA will pay to City, DEDA's applicable portion of the Management Fee prorated up to and including the date of termination, unless the Operator is in material breach or default under the Interstate Agreement. After notice of such termination and at the Executive Director's request, City shall use its best efforts to assist in the smooth transition of the operations of the DEDA Facilities to another service provider.

c. In the event that a succeeding agreement shall not be in place as of the termination date of the Interstate Agreement, the Executive Director may, at his/her option, continue with the Interstate Agreement on a month-to-month basis, with such continuation to be in accordance with the terms and conditions in effect immediately prior to the expiration of the term of the Interstate Agreement. During the month-to-month continuation, DEDA's participation in the Interstate Agreement may be terminated at any time upon giving the City not less than seventy (70) days' prior written notice of such termination.

6. STANDARD HOURS OF OPERATION: The City Manager shall provide the Executive Director with the opportunity to review and approve Operator's recommendations as to the standard days and hours of operation of the DEDA Facilities. The Executive Director may, upon mutual consent with the City Manager, change such operating days and hours.

7. RATES: The City Manager shall provide the Executive Director with an opportunity to review and approve Operator's recommendations regarding rates to be charged at the DEDA Facilities. The Executive Director may, upon mutual consent with the City Manager, change parking rates and may further have DEDA participate in free or reduced price parking for special or other events or programs. The City Manager shall ensure that Operator shall charge and collect the parking rates as approved by City and DEDA.

8. REPAIR AND MAINTENANCE:

a. The City Manager will provide the Executive Director with timely written notice of any maintenance needed at any DEDA Facility. All repair and maintenance of the DEDA Facilities

shall be subject to the Executive Director's Written Approval and shall be at DEDA's cost and expense.

b. City acknowledges and agrees that the subcontracting of any of the repair or maintenance items at the DEDA Facilities as outlined in Section 8 of the Interstate Agreement is subject to the Written Approval of the Executive Director if the item exceeds budget by both \$1,000 or more and by 10% or more.

c. On the first anniversary of the commencement of the Interstate Agreement, or any time thereafter, the Executive Director may, at his/her sole discretion, remove any of the repair and maintenance services to be provided by Operator as set forth in Section 8 subparagraphs A through Q of the Interstate Agreement with the respect to the DEDA Facilities.

9. MAINTENANCE OBLIGATIONS OF CITY WITH RESPECT TO DEDA FACILITIES: City agrees, at DEDA's expense, to maintain and pay for all maintenance and all repairs of any nature at the DEDA Facilities, including, but not limited to: electrical, plumbing, repairs to the walls and floors of the DEDA Facilities, sinkholes, maintenance of ventilation system and elevators, and any structural, mechanical, electrical or other installations or any alterations required by statutes or regulations pertaining to air quality, environmental protection, provisions for persons with disabilities or other similar governmental requirements. City shall, at DEDA's expense, be responsible for the payment for and repair of all utilities for the DEDA Facilities. City shall promptly forward to the Executive Director all reports and recommendations by Operator of any maintenance (major or otherwise) and/or unsafe conditions requiring repair at any DEDA Facility.

10. ADVERTISING/MARKETING OF FACILITIES: The City Manager shall promptly provide the Executive Director, for his/her Written Approval with respect to the DEDA Facilities, with a copy of Operator's 2012 marketing plan and budget. On or before January 1 of each subsequent year of this Agreement, the City Manager shall provide the Executive Director, for review and Written Approval, with Operator's annual marketing plan and budget.

11. MANAGEMENT FEE: As compensation for the professional management services rendered by Operator in connection with the DEDA Facilities, DEDA will be responsible for its portion of the monthly Management Fee, said portion being Two Hundred Ninety-seven and No/100ths Dollars (\$297.00). The Management Fee is part of the Operating Expenses.

12. ACCOUNTING PROCEDURES AND EXPENSE REIMBURSEMENT: On or before the 25th day of each month, the City Manager will forward to the Executive Director Operator's statement for the preceding calendar month setting out the Gross Revenue and Operating Expenses for such month for each DEDA Facility and each City Facility, together with payment to DEDA equaling Gross Revenue minus Operating Expenses for the DEDA Facilities payable from City Fund 505, Department 015, Organization 1480, Organization 1481 (Parking Fund, Administrative Services, Parking Ramps, Meters and Municipals Lots) into DEDA Fund 860. In the event that Operating Expenses exceed Gross Revenue for the DEDA Facilities, DEDA will pay said shortfall within twenty (20) days of receipt of an invoice for the same payable from the DEDA fund into the City fund set forth above.

If this Agreement commences on any date other than the first of the month, then the parties will adjust all revenues, expenses, deposits and accounts receivable as of midnight of the evening before the commencement date. In the event that the Executive Director is dissatisfied by the services rendered by Operator during the first twelve (12) months of the Interstate Agreement, City shall so inform Operator and shall obtain a refund of DEDA's portion of the first twelve (12) month cumulative Management Fee. The Executive Director shall have one (1) week from the one-year anniversary of the commencement of

the Interstate Agreement to notify the City Manager in writing of said dissatisfaction, and the City Manager shall notify the Operator within two (2) weeks following the one-year anniversary. The City shall provide such refund to DEDA within thirty-five (35) days of the Executive Director providing notice to the City Manager of such dissatisfaction.

13. REPORTS AND RECORDS: The City Manager shall forward to the Executive Director Operator's detailed monthly statement of Gross Revenues derived for the preceding month for operation and management of each DEDA and City Facility, said statement to be in a form acceptable to the Executive Director and minimally including reporting of revenue and expenses to budget with explanation of variances to budget of 10% or more. City shall ensure that Operator shall maintain, under and in accordance with generally accepted accounting principles, a complete and accurate set of books, records, and dates of its parking receipts including daily revenue and shift reports, bank deposit slips, tickets, accounts and cash register tapes showing all Gross Revenues collected by Operator under the Interstate Agreement and all taxes affecting said Gross Revenue. The City shall provide to DEDA monthly activity reports which shall include the number of parking tickets collected, the dollar value of all revenue collected, and the number of non paying exits for each DEDA Facility.

14. INCIDENT REPORTS: The City's Claims Investigator and Adjuster (the "Claims Investigator") shall notify the Executive Director in writing of any incident of injury or loss or damage to the property of DEDA or ETOR or any employees or patrons occurring within the DEDA Facilities. Written notice shall be provided within twenty-four (24) hours of the Claims Investigator's actual knowledge of any such incident on a form acceptable to the Executive Director.

15. LOSS OR DAMAGE TO THE FACILITIES: In the case of any substantial loss or damage to any of the DEDA Facilities as a result of taking under the power of eminent domain, or by fire, storm or other casualty, the Executive Director may (i) repair or restore the DEDA Facility at DEDA's expense, or (ii) abandon the operation and terminate this Agreement and the Interstate Agreement as it relates the damaged DEDA Facility by giving at least fifteen (15) days' prior written notice to City. If the Executive Director so terminates, DEDA shall not be liable to City for the portion of the Management Fee for the damaged DEDA Facility arising after the date of taking or casualty; provided however, if any portion of the DEDA Facility remains suitable for parking and Operator, with the Executive Director's prior written approval, continues its operation, DEDA shall be obligated for that portion of the Management Fee for the period during which such operations are continued. If the Executive Director repairs and restores the DEDA Facility, no Management Fee shall be due for the period the Facility is unsuitable for the ordinary conduct of parking business, and the City shall not require the Operator to provide services under the Interstate Agreement, but this Agreement and the Interstate Agreement shall continue in effect.

16. CUSTOMER RELATIONS: The City Manager shall provide the Executive Director with a copy of results of the annual customer satisfaction survey of the DEDA Facilities conducted by Operator and the results of Operator's mystery parking program at the DEDA Facilities.

17. PARKING TICKET VALIDATION: The Executive Director shall review and approve the method for and number of parking ticket validations for use by City, DEDA or Operator at the DEDA Facilities.

18. SIGNS: Prior to the erection or installation of any sign or advertising in any DEDA Facility, the City Manager shall provide the Executive Director with a sample of the proposed sign or advertising, proposed location, and proposed method of installation. The Executive Director shall promptly review and approve all such use or shall, within three (3) business days, provide the City Manager with objections to the sign or advertising with recommended changes. Failure to provide Written Approval of the items within such three (3) day period shall be deemed an approval of the sign or advertising. Any

material change in the approved items shall additionally require the Executive Director's Written Approval of the items. A sign or advertising approved by the Executive Director in connection with one DEDA Facility which has not been materially altered shall not require an additional Executive Director approval for use in connection with another DEDA Facility.

19. NOTICES: Any notices or communications required to be given to or by or served upon the respective parties hereto may be so given or served by mailing the same, properly addressed and stamped, to such party or parties by United States regular mail, registered mail, certified mail or by reputable overnight courier service, or alternatively, to the most current City e-mail address of the Parking Manager or the Executive Director. Until new addresses shall be given, the addresses of the respective parties for the purpose of such notices or communications or for any other purposes shall be:

As to City:
City of Duluth
Ground Floor City Hall
411 West First Street
Duluth, MN 55802
Attention: Parking Manager

As to DEDA:
Duluth Economic Development Authority
Room 402 City Hall
411 West First Street
Duluth, MN 55802
Attention: Executive Director

20. WAIVER: The waiver by the City or DEDA of any breach of any term, covenant, or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition herein contained.

21. 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.

22. AUTHORITY TO EXECUTE AGREEMENT: The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their governing bodies or boards, that the officers of the parties who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of said parties on their behalf will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

23. COUNTERPARTS AND DELIVERY: This Agreement may be executed in separate counterparts with the same effect as if all signatures were on the same Agreement. Delivery of an executed counterpart of this Agreement by electronic file or facsimile shall be as effective as delivery of an original executed counterpart hereof.

IN WITNESS WHEREOF, the parties have set their hands the day and date first shown above.

CITY OF DULUTH

**DULUTH ECONOMIC DEVELOPMENT
AUTHORITY**

By: _____
Its Mayor

By: _____
Its Executive Director

Attest: _____
Its City Clerk

By: _____
Its Secretary

Countersigned:

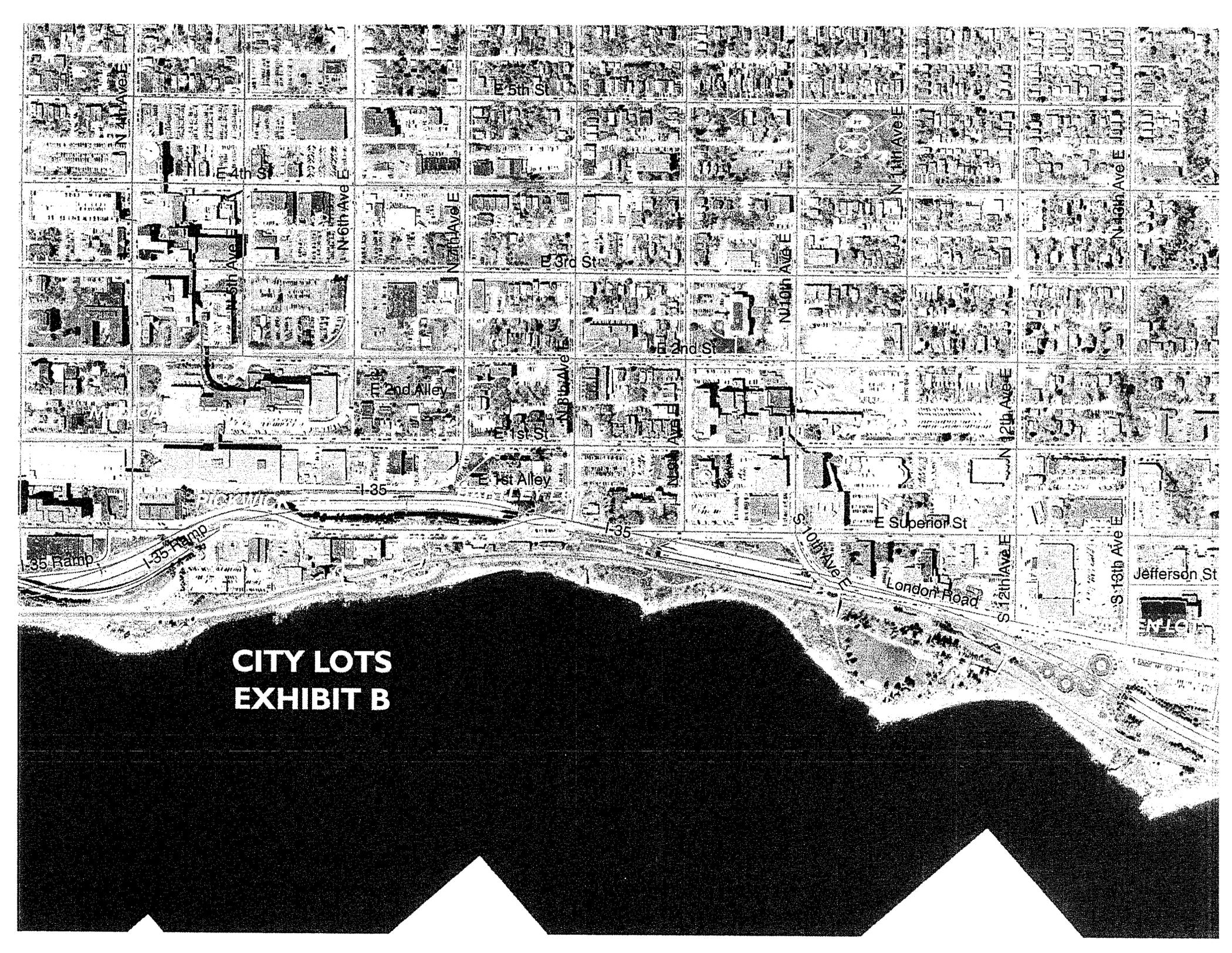
By: _____
Its City Auditor

Approved as to form:

By: _____
Its City Attorney

RAMP/LOT NAME	RAMP/LOT LOCATION	NUMBER OF SPACES	NUMBER OF METERS	NUMBER OF RAMP LEVELS	EQUIPMENT
City Lots					
Tech Village Parking Facility	14 East First Street	595		6	Amano McGann Pay-go kiosks
Medical District Parking Facility	302 East First Street	599		5 EAST/4 WEST	Amano McGann Pay-go kiosks
Sculptured Wall Lot	300 Block Canal Park	21	21		Meters
Lake Place Lot	Lower Railroad St/Lake Ave	60 +	60 +	(will have new layout)	Meters
Library Ramp (contract)	6th Ave W & Michigan Street	44			Garage Door
Library Ramp	West side of Depot	126	126		Meters
Coney Island Ramp	112 West First St.	50	26	2	Meters above/garage door underneath
Pickwick Lot	508 East Superior St.	30	30		Meters
Hartley Lot	9th Ave East/Superior ST	10	10		Meters
Rose Garden Lot	13th Ave East/London Road	44			no equipment
Library/Depot Open Lot	506 W. Michigan St	50			no equipment
Viaduct	5th Ave W	8			no equipment
Gov't Service Center	320 W. 1st Street	4			no equipment
Lake Avenue Alley	Lake Ave Alley W 2nd/3rd St	5			no equipment
Municipal Lot A	Under 4th Avenue Auto Park	104	104		
Municipal Lot B	Between 3rd & 4th Ave W below Michigan St.	30	30		
Municipal Lot C	Between 2nd & 3rd Ave W below Michigan St.	67	67		
Municipal Lot D	Between 4th & 5th Ave W below Michigan St.	47			no equipment
Old Town Ramp	115 E Superior St	317			staffed booth
Totals ----- >		2,151	414		

Exhibit A



**CITY LOTS
EXHIBIT B**



RAMP/LOT NAME	RAMP/LOT LOCATION	NUMBER OF SPACES	NUMBER OF METERS	NUMBER OF RAMP LEVELS	EQUIPMENT	COMMENTS
DEDA Lots						
Northwest Iron Lot	400 Block Canal Park	195			Entrance ticket splitter gate arm-Exit booth attendant and gate arm/Amano	Contract ETOR
Marine Museum Lot	500 Block Canal Park	87			Entrance is coin & bill operated with a gate arm-Exit is a gate arm/Amano	
Lake City Lot	300 Block Canal Park	85			Entrance is coin & bill operated with a gate arm-Exit is a gate arm/Amano	
Lincoln Lot	300 Block on Upper Second	45			no equipment	
Irvin Lot	In front of Irving (Harbor Dr.)	34	34		Meters	12 Hotel Parking spaces
Steam Plant Lot	Lower Railroad St/Steam Plant	50	50		Meters	
Phoenix Ramp	4th Ave West below First	39	39		Meters	
	Totals ----- >	535	123			

Exhibit C



**DEDA LOTS
EXHIBIT D**

NORTHWEST IRON LOT

MARINE MUSEUM LOT