ROCKVILLE LIBRARY PARKING AGREEMENT

This Rockville Library Parking Agreement (this "Agreement") is made and entered into as of this _____ day of _____ 2007 (the "Effective Date"), by and between the Mayor and City Council of Rockville, a political subdivision of the State of Maryland (the "City"), and Montgomery County, Maryland, a political subdivision of the State of Maryland (the "County").

Recitals

WHEREAS, the City and County entered into a Memorandum of Understanding, dated October 23, 2003, relating to the public and private redevelopment of the Rockville Town Center (the "Town Center Agreement");

WHEREAS, the City has constructed three (3) public parking garages (the "Garages"), as part of the Town Center Agreement, has agreed to provide parking for the employees and patrons of the Rockville Library in the Rockville Town Square ("Rockville Library") in those Garages on a first come, first serve basis as herein provided;;

WHEREAS, the City has elected to operate a networked Pay By Space revenue collection system for the Garages. This system functions through automated pay stations that accept payments for hourly paid parking and hourly or monthly parking charged through individual account numbers;

WHEREAS, the County Council has indicated their preference that parking be free of charge for patrons of all Rockville Libraries and will pay for the parking charges during times when the City is charging for parking;

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the County and the City, the County and City agree as follows:

1) Library Pay Station. The City agrees to install and maintain an automated pay station in the Rockville Library. The pay station shall register parking for patrons of the Rockville Library without requiring direct payment from the patrons. Instead the pay station shall record all patron parking against a single account number, or through a similar method, so that the County may be invoiced as hereinafter provided. The City shall also provide for at least one hundred twenty (120) additional separate accounts, or so many additional separate accounts as be necessitated by the number of Rockville Library employees from time-to-time, to which parking charges incurred by County employees may be individually charged.

2) Employee Parking Charges. The County agrees to pay and the City agrees to accept for those charges incurred by County employees who work in the Rockville Library building ("County Employees") an hourly parking charge at the rate of forty-five cents ($0.45)

per hour charged to the individual employee account numbers. This hourly charge is derived from the City's intention to charge $85 per month for monthly parking in the Garages, translated into an hourly charge (based on 21 work days per month and 9 hours per day of parking).

The County estimates that the total number of hours that will be used on a monthly basis by employees who work in the Rockville Library building will be approximately twelve thousand five hundred (12,500) hours per month for a total estimated monthly cost of $5625, or a total estimated annual cost of sixty-seven thousand, five hundred dollars ($67,500) per year. The County shall pay the City this estimated amount by the 7th day of the month, for parking during that month (for the month of April, for example, the County shall pay the City the estimated monthly cost by April 7.) The City shall provide to the County, on a monthly basis, an invoice reflecting the actual hours charged to each of the individual employee accounts and a total for all employee charged hours for that month. If the total hours exceed the total estimated monthly cost ($5625), the County shall pay the additional cost pay the City for the excess monthly charges, above the monthly estimated number of hours (12,500), which charges will be included in the monthly invoice to the County and be payable by the County within 15 days of receipt of the monthly invoice from the City. Late payment shall be assessed a charge of 1% of the total amount of the invoice, and increase by 1% for each month of outstanding payment. If the total number of hours is less than the estimated number of monthly hours (12,500), the County shall reduce its estimated monthly payment for the following month by a total of the number of hours under the estimate times the $0.45. (For example, if the total hours used by employees in the Library building for the month of April are 11,000, the County shall deduct 1,500 hours x $0.45, or $675, from the payment that is to be made by June 7. Thus, the payment on June 7, for the month of June, would be $5625 – 675 = $4950).

Although it is estimated that the employee usage will average twelve thousand five hundred (12,500) hours per month, the County does not guarantee to the City any guaranteed minimum number of hours of usage by County employees and the County shall be charged by the City only for actual hours used by County employees in the preceding month at the rate of forty-five cents ($0.45) per hour. Any hourly usage in excess of twelve thousand five hundred (12,500) hours by County employees shall also be billed and paid at the same rate of forty-five cents ($0.45) per hour to a maximum of 17,500 hours, after which the charge shall be one dollar ($1.00) per hour. The City's policy is to provide employee parking account numbers only to employees in Rockville Town Square, which includes the Rockville Library building. The County will therefore exercise good-faith efforts to ensure that the employee account numbers for parking provided by the City to the County are used only by employees of the Rockville Library building, and only during their working hours.

3) Patron Parking Charges. The County further agrees to purchase, and the City agrees to sell to the County ten thousand (10,000) additional hours of parking usage at seventy cents ($0.70) per hour for monthly parking charges for Rockville Library patrons. This monthly usage by library patrons of ten thousand (10,000) hours at seventy cents ($0.70) per hour, or seven thousand dollars ($7,000) per month or eighty-four thousand dollars ($84,000) per year, unlike the estimate for employee hours, is a guaranteed minimum amount that the County shall pay to the City monthly, whether or not the patrons utilize the full ten thousand (10,000) hours. Provided further, however, that if the patrons of the Rockville Library utilize in excess of ten

thousand (10,000) hours, in any given month, then the County shall pay, in addition, for patron hourly usage, in excess of ten thousand (10,000) hours per month, at the rate of ninety cents ($0.90) per hour for each additional hour between ten thousand one (10,001) hours and twelve thousand (12,000) hours, and one dollar ($1.00) per hour for each hour in excess of twelve thousand (12,000) hours used by the Rockville Library patrons in the preceding month.

The County shall pay the City the guaranteed minimum amount ($7,000) by no later than the 7th day of each month, for that current month (for example, the County would pay the City the guaranteed minimum amount for the month of March by March 7). Late payments will be assessed a fee of 1% ($70) of the total, with an additional 1% of the outstanding total for each calendar month that payment is in arrears. In the initial month of the payment system being activated, the County shall pay the City the guaranteed minimum amount within 15 days of activation of the payment system. If more than three payments are late to the City, the City shall reserve the right to terminate this agreement.

At the end of each month, the City shall provide the County an invoice, showing the total number of hours charged for that preceding month against the account number for Rockville Library patrons. All charges owed by the County to the City beyond the guaranteed minimum amount shall be paid within 15 days of receipt of the monthly invoice.

4) Fifteen (15) Minutes "Free" Parking Includable in Determining Monthly Hours. In computing the number of hours used by County employees and patrons of the Rockville Library, the fifteen (15) minutes of "free" parking normally allowed between the time that an employee or patron parks and enters their space number by pressing a button that indicates they are going to the Rockville Library and the time they arrive at the Rockville Library shall nonetheless be included in computing the number of employee and patron parking hours incurred monthly and shall be paid at the hourly rates provided for respectively in Paragraphs 2 and 3 above of this Agreement for employee and patron parking.

5) Adjustments. In order to adjust the estimated monthly employee usage (however, without guaranteeing any minimum employee weekly, monthly or annual hourly usage), to estimate more accurately patron usage of parking, and to establish a more reliable guaranteed minimum monthly hourly usage and payment for patron parking, the County and the City agree that during the month of October 2008, the parties shall review the monthly usage of both employees and patrons over the preceding period to determine whether any adjustment in the estimated (but not guaranteed) monthly hourly usage of parking by employees and/or the guaranteed monthly minimum usage by patrons should be made. It is agreed by both parties that monthly usage by either employees or patrons that is higher or lower by more than 10% than the estimated (for employees) or guaranteed (for patrons) amounts will result in an adjustment of payment made by the County to the City by the 7th of each month, per payment formulae established in Paragraphs 2 and 3. Any such adjustment will be effective for fiscal year (FY) 2010, commencing 7/1/2009, should the parties elect the first option year of this agreement (see Paragraph 7, Term and Annual Adjustment, for option years).

The County and the City agree, further, that in the event that the parties have elected to continue the agreement in the first option year (FY 2010), that during the month of October

2009, the parties shall review the monthly usage of both employees and patrons over the preceding period to determine whether any adjustment in the estimated (but not guaranteed) monthly hourly usage of parking by employees and/or the guaranteed monthly minimum usage by patrons should be made. It is agreed by both parties that monthly usage by either employees or patrons that is higher or lower by more than 10% than the estimated (for employees) or guaranteed (for patrons) amounts will result in an adjustment of payment made by the County to the City by the 7th of each month, per payment formulae established in Paragraphs 2 and 3. Any such adjustment will be effective for fiscal year (FY) 2011, commencing 7/1/2010, should the parties elect the second option year of this agreement.

The hourly rates for employee and patron parking charges, of forty-five cents ($0.45) per hour for employees for the first seventeen thousand five hundred (17,500) hours and one dollar ($1.00) per hour for each employee-used hour in excess of seventeen thousand five hundred (17,500) hours, and seventy cents ($0.70) per hour for patrons for the first ten thousand (10,000) hours, ninety cents ($0.90) per hour for patron hours between ten thousand one (10,001) hours and twelve thousand (12,000) hours, and one dollar ($1.00) per hour for each patron-used hour in excess of twelve thousand (12,000) hours, shall only be changed if the City of Rockville adjusts the overall rates for parking in the garages, which are currently one dollar ($1) per hour, 7:00 am – 10:00 pm, Monday through Friday; and, for monthly parking, eighty-five ($85) per month. Any changes to the rates that the County pays the City per this agreement will be proportionate to the changes made to the overall rates by the City of Rockville.

6) Cost of the Library Pay Station Installation and Maintenance. The City agrees that installation charges and the costs of agreements with the vendor shall be at the City's sole cost. Routine maintenance associated with the pay station at the Rockville Library shall be at the City's sole cost. Routine maintenance includes changing receipt paper, fixing parts inside the machine and problems related to routine use. The County shall be responsible for the costs of repairing damage associated with vandalism and other non-routine maintenance, though the City shall be responsible for carrying out those repairs. Payment by the County to the City for such charges shall be itemized as part of the monthly invoice. The County further agrees to be responsible for any utility hookups and utility charges associated with the installation and usage of the pay station.

In the event that the Pay Station in the library is not functioning, such that Library patrons are unable to communicate their hours of Library parking to the system, the charge to the County for each day where there has been a malfunction will be the greater of a) the daily amount entered by patrons during the preceding days of the month when the Pay Station has been functioning, or b) the average daily charge related to patron parking for the month during which the occurrence took place, for all other days of that month (not including the 15 minutes "free" component of the charge). The City will work expeditiously to repair the Pay Station and find an alternative method for providing free parking during this malfunction, but does not guarantee an alternative approach. If no such alternative approach is found, patrons of the Rockville library will be required to pay for parking in the Garages during times when the City is charging for parking and no payments, shall be due by the County to pay for periods when patrons have been paying for parking. Both the County and the City, or their contractors, will

make their best efforts to communicate with Library patrons when such an occurrence takes place, with guidance to the Library patrons as to the actions that they should take.

7) Term and Annual Adjustment. The parties agree that this agreement shall remain in full force and effect through the end of fiscal year (FY) 2009 (until June 30, 2009), with two additional option years. Any adjustments that are made per Paragraph 5 will be made as part of the commencement of an option year.

8) County Right to Terminate Paid Patron Parking. If for any reason, in the County's sole discretion, the County shall determine to discontinue paying for patron parking at the Rockville Library, this Agreement shall nonetheless continue in full force and effect with respect to County employee parking as if there had been no provision in this Agreement for the payment of patron parking; and all provisions herein with respect to patron parking shall be deemed null and void and of no further force and effect; but those provisions with respect to employee parking shall nonetheless continue in full force and effect as herein set forth. The County agree that, before the County discontinues paying for parking for Rockville Library patrons, which would result in the need for such patrons to pay for parking during times when the City is charging for parking, the County will provide at least 14 days of public notice of the County's decision to discontinue paying for patron parking at the Rockville Library. Such notice would include, at a minimum, the date when such County payments will discontinue. The County agrees to continue providing public notice of this change for at least 30 days after such discontinuation.

9) Cooperation in Enforcement. The parties further agree to cooperate in eliminating or reducing to a minimum, any misuse of the parking by employees or patrons for purposes unrelated to their employment or patronage (as the case may be) at the Rockville Library. The County agrees to provide the City with any notice of the same, to the extent actually (but not impliedly) known to the County, and to work with the City in the elimination of the same. The City reserves the right to terminate individual employee accounts when abuse is clear, upon notice to the County.

10) **Review of Procedures.** The County and City recognize that innovative procedures are being established for employee and patron parking the Rockville Library. The County and City agree to review procedures after 90 days of operation and to discuss any adjustments that may need to be made. Subsequently, the County and City will, at a minimum, discuss and, as necessary, adjust the procedures every six months, providing that such adjustments do not affect prices charged to the City to the County. Agreements that amend stipulations from other portions of this agreement must be reflected in a written agreement signed by both parties.

11) **Recognition of Changing Technology** The County and City recognize that technology is in a state of rapid advancement with respect to revenue collections and registration for parking. As such, both parties agree to make good faith efforts to discuss and make appropriate changes, as technology and management methods evolve, to the mechanism for keeping track of parking and processes for invoicing. Agreements that amend stipulations from other portions of this agreement must be reflected in a written agreement signed by both parties.

12) Authority to Bind. The undersigned, by their signatures, individually represent and warrant that this Agreement and its execution has been duly authorized by all necessary actions on the part of each party to this Agreement, and that they are duly authorized and empowered to execute this Agreement and to bind the respective parties they represent.

13) Authorship and Interpretation. Each party acknowledges that this Agreement is entirely the product of the collective joint drafting efforts of the parties and their respective legal counsel, and should there be any claim of ambiguity, it shall not be construed more strictly against (or more favorably for) any party solely as a result of that party's particular contribution to this effort.

14) Successors and Assigns. The terms of this Agreement shall be binding upon and fully enforceable against the successors, successors-in-title, and assigns of all parties to this Agreement.

15) Enforceability and Intent. In the event that any portion or any portions of this Agreement are held to be unenforceable, then the remainder of this Agreement shall be enforced as through such portion(s) had not been included, unless to do so would cause this Agreement to fail of its essential purposes.

16) Entire Agreement. This Agreement sets forth the entirety of the undertakings and obligations of the parties hereto and supersedes all prior understandings and agreements of the parties with respect to subject matters addressed herein, and the parties acknowledge that they have not relied upon any representations by any other party apart from those set forth in this Agreement.

17) Modifications. Any modifications of this Agreement must be in writing signed by all of the parties to this Agreement.

18) Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Maryland, without giving effect to its conflict laws. The parties agree that any suit(s) or action(s) arising from, or related in any way to this Agreement, shall be brought only in the Circuit Court for Montgomery County, Maryland, which court the parties acknowledge and agree shall have exclusive jurisdiction and venue with respect to any such suit(s) or action(s).

19) Counterparts. This Agreement may be signed in counterparts, each constituting an original. Photocopies or facsimile transmissions of signatures shall be deemed original signatures and shall be fully binding upon the parties to the same extent as original signatures.

20) Effective Date. The "Effective Date" of this Agreement is the day and date above written.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first-above written.

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MAYOR AND COUNCIL OF ROCKVILLE

By:_____

Name:_____

Title:_____

MONTGOMERY COUNTY, MARYLAND

By: Diane R Schwartz Jones

Name: Diane R Schwartz Jones

Title: Assistant Chief Administrative Officer

Approved as to form and legality:

OFFICE OF THE COUNTY ATTORNEY

By:_____
John J. Fisher
Associate County Attorney

Recommended by:

_____
Arthur Holmes
Director, DPWT

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