

126618

## PARKING AGREEMENT

THIS AGREEMENT is made as of the 12 day of February 2014, by and between the following parties:

**CITY OF ROCHESTER**, a municipal corporation with offices at City Hall, 30 Church Street, Rochester, New York 14614 (hereinafter "the City");

**YMCA of GREATER ROCHESTER**, a charitable association, with its principal place of business at 444 East Main Street, Rochester, New York 14604 (hereinafter "YMCA").

### RECITALS:

**WHEREAS**, YMCA is located at 444 East Main Street, Rochester, NY 14604 (the "Property"); and

**WHEREAS**, YMCA has members and staff who desire parking in the area near the Property; and

**WHEREAS**, the Cultural Center Commission is the owner of a parking garage located at 475 E. Main Street, Rochester, New York, known as the East End Parking Garage Site (the "EEPG"); and

**WHEREAS**, the Cultural Center Commission pursuant to Resolution No. 1 of 2013 agreed to a rate structure ("Rate Structure") for YMCA members and staff parking in the EEPG; and

**WHEREAS**, the Cultural Center Commission will be transferring the EEPG to the City provided the City agrees to the Rate Structure; and

**WHEREAS**, the City has agreed to the Rate Structure as a condition to accepting title to the EEPG; and

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants and conditions contained herein, the City and the YMCA agree as follows:

### SECTION 1. MONTHLY CHARGES:

#### A. YMCA Monthly

The YMCA shall pay the following monthly member fees for member parking:

April 1, 2013	\$2,404
April 1, 2015	\$2,476
April 1, 2017	\$2,550
April 1, 2019	\$2,627
April 1, 2021	\$2,705
April 1, 2023	\$2,787
April 1, 2025	\$2,871
April 1, 2027	\$2,957

## **B. YMCA STAFF PARKING RATES**

Up to seventy-five YMCA staff each month shall be permitted to purchase monthly parking passes at the following rates:

April 1, 2013	\$66.78
April 1, 2015	\$68.78
April 1, 2017	\$70.85
April 1, 2019	\$72.97
April 1, 2021	\$75.16
April 1, 2023	\$77.41
April 1, 2025	\$79.74
April 1, 2027	\$82.13

The rates shall remain constant through each two year term.

Once the City takes title to the EEPG, it will implement the same Rate Schedule as set forth above.

## **SECTION 2. PARKING PASS FEE**

Every YMCA staff parking in the EEPG must pay a fee of fifteen Dollars (\$15) for a parking pass. If a replacement parking pass is needed, the YMCA staff will be charged the replacement parking pass fee charged to the general public.

## **SECTION 3. PAYMENT**

YMCA monthly member parking fee shall be paid by mail or delivery to the City's Bureau of Parking at Bureau of Parking at 80 Commercial Street, Rochester, NY 14614.

YMCA shall pay their monthly member parking fees directly to the City's Bureau of Parking by mail to: Bureau of Parking at 80 Commercial Street, Rochester, NY 14614.

## **SECTION 4. VERIFICATION OF STAFF STATUS**

When registering with the City's Bureau of Parking to obtain a parking pass for the EEPG, each YMCA staff shall verify their status as a YMCA staff by supplying a copy of a YMCA verification of employment. On April 1<sup>st</sup> of each year, the YMCA staff will submit an updated YMCA verification of employment with their monthly payment.

## **SECTION 5. TERM**

The term of this Agreement shall commence as of April 1, 2013 and shall terminate at July 31, 2029, unless sooner terminated as provided below. Upon termination of this Agreement, YMCA members and staff shall pay the rate charged to the general public unless the parties enter into another Rate Schedule Agreement in the future.

## **SECTION 6. EARLY TERMINATION**

### **A. "UNUSABLE FOR PARKING"**

The City may permanently close all or a substantial portion of the EEPG prior to the termination of this Agreement for safety reasons, if determined, in its sole and absolute discretion that safety reasons exist or if the City of Rochester in its governmental capacity orders such closure. Such closure shall also be deemed a determination that the EEPG is "unusable for parking" as this phrase is used in this Agreement.

In the event that the EEPG becomes unusable for parking, this Agreement shall terminate within thirty (30) days written notice by the City to YMCA.

### **B. CONDEMNATION**

In the event that the EEPG, or any part of thereof shall be taken in condemnation proceeding or by exercise of any right of eminent domain, the City shall be entitled to the full amount of any condemnation award regarding its fee interest in the EEPG. YMCA shall not be entitled to any portion of any condemnation award for fee interest because of this Agreement. In no event shall this Agreement be termed, deemed or considered a leasehold interest.

In the event that the EEPG or any part of it is taken in condemnation, this Agreement shall terminate within thirty (30) days written notice by the City to YMCA.

### **C. DESTRUCTION**

subsequent to the execution of this Agreement shall be consistent with the terms of this Agreement.

## **SECTION 11. INDEMNIFICATION**

**A.** YMCA will defend, indemnify and hold the City harmless against any and all claims, suits, damages or causes of action for damages arising during the term of this Agreement, and against any orders or decrees or judgments which may be entered therein, brought for damages or alleged damages resulting from any injury to person and/or property or loss of life sustained in or about the EEPG by any person or persons whatever, to the extent such damages or alleged damages directly results from or directly arises out of the activities of YMCA, its agents, employees, contractors, invitees, successors and/or assigns, unless the foregoing results from fraud, misconduct, or an intentional or negligent act or omission of the City or its operator pursuant to Section 10 hereof. The foregoing indemnities shall apply irrespective of the application of any rule of comparative or apportioned liability. These indemnities shall survive the expiration of the term of this Agreement.

**B.** The City shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the EEPG, or to any property belonging to YMCA or any other person which may arise from any other cause whatsoever, unless the foregoing results from the fraud, misconduct, or an intentional or negligent act or omission of the City.

## **SECTION 12. NOTICES**

Any notice, demand or request required or agreed to be given under this Agreement by either party shall be sufficiently given or served if in writing and signed by the party giving it and either (a) personally delivered (including delivery by an overnight express delivery service if a receipt is obtained) or (b) mailed by certified mail, return receipt requested, addressed to the party to be notified as follows:

CITY:	Director of Finance City of Rochester City Hall, Room 108A 30 Church Street Rochester, New York 14614
WITH A COPY TO:	Corporation Counsel City of Rochester – Department of Law City Hall, Room 400A 30 Church Street Rochester, New York 14614

TO YMCA:                      YMCA of GREATER ROCHESTER  
                                    Attention: Controller  
                                    444 East Main Street  
                                    Rochester, New York 14604

or to such other address as the City and/or YMCA may from time to time designate by giving notice thereof in writing. Service shall be complete upon such mailing except in case of a notice to change an address in which case service shall be complete when the notice is received by the addressee.

### **SECTION 13. INDEPENDENT CONTRACTORS**

Nothing contained in this Agreement shall be construed to make the City and YMCA partners or joint ventures or to render either of said parties liable for the debts or obligations of the other, except as in this Agreement expressly provided.

### **SECTION 14. WAIVERS**

No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

### **SECTION 15. REMEDIES CUMULATIVE.**

All rights, privileges and remedies afforded the parties by this Agreement shall be deemed cumulative and the exercise of one of such remedies shall not be deemed to be a waiver of any other right, remedy or privilege provided for herein.

### **SECTION 16. MODIFICATIONS.**

Any alteration, change or modification hereof, in order to become effective, shall be made by written instrument or endorsed hereon and, in each such instance, executed on behalf of each party.

### **SECTION 17. PARTIAL INVALIDITY.**

If any provisions of this Agreement or the application thereof to any party or circumstances shall, to any extent, be invalid or unenforceable, the remainder

of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

#### **SECTION 18. FURTHER ACTS.**

Each party covenants and agrees that it will at any time and from time to time do, execute, acknowledge and deliver or will cause to be done, executed, acknowledged and delivered all such further acts, documents and instruments as may reasonably be required by the other party in order to carry out fully and effectuate the transactions herein contemplated.

#### **SECTION 19. SECTION HEADINGS**

The section headings in this Agreement are for convenience and for reference only and in no way define or limit the scope or contents of this Agreement or in any way affect its provisions. Unless otherwise set forth, references in this Agreement to sections and subsections shall mean the sections and subsections of this Agreement.

#### **SECTION 20. COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be deemed an original.

#### **SECTION 21. ENTIRE CONTRACT**

This Agreement embodies the entire agreement between the parties hereto and may be amended only by a document in writing signed by the parties hereto and properly acknowledged.

#### **SECTION 22. APPLICABLE LAW**

This Agreement shall be governed by the laws of the State of New York. Any action or proceeding regarding this Agreement shall be brought in the Supreme Court of New York State, in the Seventh Judicial District.

[Intentional End of Page – Signature Page Follows Immediately Hereafter]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**CITY OF ROCHESTER**

By: \_\_\_\_\_  
Name: Lovely A. Warren  
Title: Mayor

**YMCA of GREATER ROCHESTER**

By: Susan M. Reschke  
Name: Susan M. Reschke  
Title: SVP-Finance/CFO

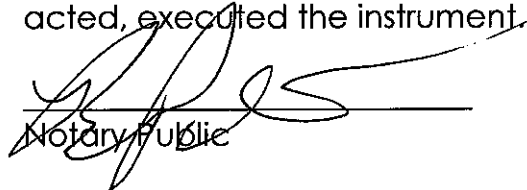
STATE OF NEW YORK )  
COUNTY OF MONROE ) ss:  
CITY OF ROCHESTER )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared Lovely A. Warren, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
COUNTY OF MONROE ) ss:

On the 14th day of February in the year 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared Susan Reschke, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public