

ITEM#: 26  
DATE: 04-28-20

### **COUNCIL ACTION FORM**

**SUBJECT: FIVE-YEAR RENEWAL OF SMARTCARD PARKING SYSTEM AGREEMENT WITH IOWA STATE UNIVERSITY**

#### **BACKGROUND:**

On April 22, 2014, City Council approved a unified Smartcard parking system agreement with Iowa State University (ISU). This agreement makes it possible for users of both ISU and City of Ames parking meter systems to use the same pre-paid card. It also provides a method for ISU and the City to manage the revenues acquired through Smartcard use. It should be noted that this system has been very successful for parking system users, ISU, and the City alike.

The current agreement expired on June 30, 2019. There have been some unforeseen delays in updating the agreement to reflect current conditions, revising the agreement document, and having the changes agreed to by both agencies. However, all issues have recently been resolved. Attached to this Council Action Form is the five-year renewal agreement that will continue the unified Smartcard arrangement.

#### **ALTERNATIVES:**

1. Approve the five-year renewal of the unified Smartcard agreement between ISU and the City of Ames retroactively starting on July 1, 2019 through June 30, 2024.
2. Reject the renewal agreement and direct staff to dissolve the unified Smartcard system.

#### **MANAGER'S RECOMMENDED ACTION:**

The unified Smartcard system has been a positive customer service improvement for ISU and the City of Ames parking users. The system allows for a seamless transition from ISU parking meters to those in both Campustown and Downtown. Since the beginning of the unified system, staff has experienced overwhelmingly favorable responses from our citizens.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, as noted above.

## **Pre-Pay Parking Smart Card Program Agreement**

This Pre-Pay Parking Smart Card Program Agreement ("Agreement") is entered into by the City of Ames, Iowa ("City") and Iowa State University of Science and Technology ("ISU").

### **Background**

ISU and City each have parking meters that allow permit users to pay for parking using a smart card. ISU and City desire to establish a program to allow ISU students, faculty, and staff and citizens of Ames to use the same smart card with their respective parking meters that accept payment through the use of a smart card. This Agreement sets forth the terms and conditions for that program.

### **Terms and Conditions**

1. **Term.** The term of this Agreement shall be from July 1, 2019 to June 30, 2024, unless earlier terminated. The parties may mutually agree in writing to extend the term of this Agreement.
2. **Supported Meters.** Each party currently owns parking meters that accept payment through the use of a card with an embedded chip that stores information on the amount of funds the card user has pre-paid for metered parking and the fees incurred by the user through the use of metered parking ("Smart Cards"). The parking meters that each party owns that utilize the Smart Card technology are referred to as "Supported Meters" in this Agreement. Each party may increase or decrease the number of its Supported Meters or relocate its Supported Meters. Each party is responsible for maintaining and repairing its own Supported Meters, including Smart Card readers and related software, and ensuring that its Supported Meters and related technology are compatible with the Smart Cards.
3. **Smart Cards.** ISU shall be responsible for maintaining a sufficient Smart Card stock for sale by both parties and ordering additional Smart Cards as needed. The City shall be responsible for timely notifying ISU when City needs additional Smart Cards. When purchasing the new Smart Cards, ISU shall require the vendor to use a design on the Smart Card that is mutually agreeable to ISU and City within any parameters set by the vendor. The new Smart Card shall indicate that users may use the Smart Card at both ISU and City Supported Meters. ISU shall invoice City for the cost of Smart Cards provided by ISU to City, as well as half of the design or similar fees charged by the vendor in connection with the production of the new Smart Cards. The City shall pay such invoice(s) within thirty days of receipt.
4. **Sale of Smart Cards to Users.** Each party may sell Smart Cards to users.
  - a. **User Forms and Master List.** At the time a user purchases a Smart Card from a party, the party shall require the user to complete and sign a form. ISU shall create a form for such purpose, and the form shall require: the number of the Smart Card issued; information on the user's name, address, telephone number, email address, and university identification number (if applicable); and the value added to the Smart Card. The form shall also set forth the terms and conditions for using the Smart Card. The initial terms and conditions for using the Smart Card are set forth in Exhibit A. The parties may mutually agree to modify the user terms and conditions, and ISU shall modify the form accordingly. After the user completes the form, the party receiving the form shall make a copy of the form

and give it to the user. ISU and the City shall create a master list of users and update it regularly. The parties shall use the master list solely to provide services contemplated by this Agreement.

- b. Administrative Fee. Each party shall charge users an administrative fee for each Smart Card purchased. The amount of the administrative fee shall be agreed upon by the parties. Initially, the administrative fee shall be \$5.00. The party who sells the Smart Card may retain the administrative fee.
  - c. Addition of Value to Card. Each party may add value to a Smart Card and shall charge the user an amount equal to the value added. Each party may establish limits on the amount of value that may be added to a Smart Card in any one transaction. In no event shall a party allow the maximum value on a Smart Card to exceed \$300.00 on any day. Each party shall deposit an amount equal to the value added to a Smart Card into a designated account maintained by ISU ("ISU Account"). The schedule for City to make such deposits shall be mutually agreed upon by the parties, but in no event shall deposits be more frequently than monthly. Neither party may reduce the amount of the deposit into the ISU Account due to issues with the user's payment, such as canceled checks, insufficient funds, and the like. Such issues shall be addressed by the party with the user.
  - d. Refunds and Replacements. Neither party shall issue refunds or provide replacement Smart Cards to users whose cards are lost, stolen, or damaged. A party may replace a malfunctioning Smart Card provided that the party has reliable information regarding the value balance that should be added to the new Smart Card.
5. Monthly Revenue Distributions.
- a. Report. During the term of this Agreement, each party shall generate a monthly report that accurately identifies parking fees paid at that party's Supported Meters through the use of the Smart Card ("Meter Revenue"). The report shall be generated using the party's vendor-provided meter software. By the 5th of each month during the term of this Agreement, each party shall submit a copy of the report for the prior month's Meter Revenue ("Monthly Meter Revenue Report").
  - b. Revenue Distribution. Within thirty days of receiving an appropriate Monthly Meter Revenue Report from a party, ISU shall distribute to such party from the ISU Account an amount equal to the Meter Revenue set forth in the Monthly Meter Revenue Report ("Monthly Meter Revenue Payment") provided that there are sufficient funds in the ISU Account. If there are insufficient funds, then the parties shall mutually agree upon how to handle the Monthly Meter Revenue Payment.
  - c. Supported Meter Malfunction. If a Supported Meter malfunction such that information about Meter Revenue generated at that Supported Meter is unreliable, then for the month during which the Supported Meter malfunctions, the parties will substitute the average monthly Meter Revenue generated at the Supported Meter during the prior twelve-month period rather than the actual Meter Revenue reported for the month in calculating the Monthly Meter Revenue Payment. The party that owns the Supported Meter shall take reasonable measures to promptly repair the Supported Meter. If the Supported Meter is not repaired such that the

average monthly Meter Revenue has to be used for two consecutive months in the calculation the Monthly Meter Revenue Payment, then in subsequent months no Monthly Meter Revenue Payment will be issued for such Supported Meter until the Supported Meter is repaired and properly functioning.

6. Annual Revenue Distributions. On or about August 15th each year during the term of this Agreement, ISU shall make the following distributions of Meter Revenue from the ISU Account:
  - i. Retain in the ISU Account \$500.00 or such other amount mutually agreed upon by the parties;
  - ii. Distribute to ISU Parking Division ten percent of the ISU Account balance less the retainage in (i); and
  - iii. Distribute the remaining ISU Account balance based on an average percentage of previously distributed Meter Revenue between ISU and City.

The above payments are conditioned upon there being sufficient funds in the ISU Account. If there are insufficient funds, then the parties shall mutually agree upon how to handle the Annual Revenue Distributions.

7. Audit. Each party is responsible for conducting an audit on a weekly basis of the Smart Cards and values placed on them and of Meter Revenue from that party's Supported Meters. Each party shall maintain books, documents, and other records sufficient to reflect properly its activities pursuant to this Agreement. Each party shall preserve and make such records available to the other party, the Auditor of the State of Iowa or other auditor designated by a party for a period of five years after termination of this Agreement.
8. Termination.
  - a. Expiration. This Agreement shall terminate upon expiration of the term. If the term is extended, then this Agreement shall terminate upon expiration of the extended term.
  - b. For Convenience. Either party may terminate this Agreement by giving the other party written notice 120 days prior to the intended date of termination.
  - c. For Cause. In the event of a material breach of any term or condition of this Agreement by a party, the non-breaching party may issue a written notice of the breach to the breaching party and demand the breach to be cured in thirty days. If the breach is not cured within thirty days of receiving the notice, the non-breaching party may send to the breaching party a written notice terminating this Agreement and the termination will be effective upon the breaching party's receipt of the notice.
  - d. Termination Procedures.
    - i. Notice to Users. Ninety days prior to the termination of this Agreement pursuant to (a) or (b) above or promptly after the termination of this

Agreement pursuant to (c) above, ISU shall issue a notice to users that the Smart Card program has been terminated and that users shall have sixty days to use the remaining value balance on the Smart Card.

- ii. Final Meter Revenue Report and Payment. Within thirty days of the expiration the sixty day period, the parties shall each prepare a final Meter Revenue Report for Meter Revenue generated from the period covered by the prior Monthly Meter Revenue Report until the date on which the sixty day period expired. Within thirty days of receiving an appropriate final Meter Revenue Report from a party, ISU shall distribute to such party from the ISU Account an amount equal to the Meter Revenue set forth in the final Meter Revenue Report ("Final Meter Revenue Payment").
  - iii. Final Revenue Distribution. Within ten business days of distributing the Final Meter Revenue Payments, ISU shall (a) distribute to ISU Parking Division ten percent of the ISU Account Balance and (b) distribute the remaining ISU Account balance based on an average percentage of previously distributed Meter Revenue between ISU and City.
  - iv. Insufficient Funds in ISU Account. If there are insufficient funds to pay the final Meter Revenue Payment and/or Final Revenue Distribution, any funds that are available shall be distributed between the parties on an average percentage of previously distributed Meter Revenue between ISU and City.
  - v. Supported Meters. Within thirty days of the expiration of the sixty day period for users to use the remaining value balance on the Smart Card, City shall modify City's Supported Meters or its software system to that it now longer accepts the Smart Card previously sold by the parties pursuant to this Agreement.
9. Compliance with Law. The parties shall comply with all applicable laws, rules, and ordinances, including but not limited to the Disposition of Unclaimed Property law and regulations relating to prepaid access if applicable.
  10. Relationship of Parties. ISU and City are independent contractors, and nothing in this Agreement creates any partnership or joint venture.
  11. Notices. Notices relating to this Agreement shall be in writing and shall be delivered by email to the other party at the address set forth below or such other address as may be given in writing in accordance with this Section. Notice shall be deemed effective upon receipt.

Notices to ISU

For technical matters:

Mark Miller memiller@iastate.edu

For contract matters:

Pam E. Cain  
pellioth@iastate.edu

Notices to City

For technical matters:

Damion Pregitzer damion.pregitzer@cityofames.org

For contract matters:

Diane Voss

diane.voss@cityofames.org

12. Miscellaneous. This Agreement (including Exhibit A) constitutes the entire Agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, whether written, oral, or implied. This Agreement shall not be modified without the written mutual consent of the parties. The failure of either party to require performance of any term or condition of this Agreement by the other party shall not constitute a waiver to subsequently enforce such term or condition. The invalidity or illegality of one or more provisions of this Agreement shall not affect the enforceability of the remaining provisions. The parties' rights and obligations in this Agreement that, by their nature, would continue beyond the termination of this Agreement shall survive such termination. This Agreement may not be assigned or transferred by either party without the prior written consent of the other party, which shall not be unreasonably withheld. This Agreement shall be construed in accordance with the laws of the State of Iowa, without giving effect to its conflicts of law provisions, and any litigation or actions commenced in connection with this Agreement shall be instituted in a court of competent jurisdiction in the State of Iowa.
13. Counterparts; Authorization. This Agreement may be executed in any number of counterparts and delivered by facsimile or by electronic transmission in PDF format, each of which will be deemed to be an original and all of which shall constitute one agreement that is binding upon each of the parties. Each party represents and warrants that the person executing this Agreement on its behalf is authorized to do so.

CITY OF AMES, IOWA

By:

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John A. Haila  
Mayor

By:

\_\_\_\_\_  
Diane R. Voss  
City Clerk

IOWA STATE UNIVERSITY OF  
SCIENCE AND TECHNOLOGY

By:

\_\_\_\_\_  
Pam E. Cain  
Interim Senior Vice President for  
Operations and Finance

**Exhibit A**  
**User Terms and Conditions**

By using the Pre-Pay Parking Smart Card, the holder agrees to the following terms and conditions. Holder is responsible for using the value placed on the card. Meter revenue funds become the property of Iowa State University/City of Ames at the time value is added to the card. No refunds shall be granted. Holder agrees that Iowa State University/City of Ames shall not be responsible for reimbursements of the card's value in cases of loss, theft, mutilation of the card, or use by a third person.

- Card is valid in supported machines owned by either Iowa State University or the City of Ames, which will be clearly marked.
- Inserting the card into any other card reader will disable the card, making it not usable.
- Card is NOT valid at the ISU Memorial Union Ramp.
- Card is NOT valid at the Ames Intermodal Facility.
- Card or amount on card is not replaceable if card is lost, stolen, or the chip on card is damaged.
- Card does not guarantee availability of parking space.
- Cost to purchase card is currently \$5.00.
- Maximum limit of \$300 value may be added to cards. The maximum limit that may be added in one transaction through ISU is \$300 and through City is \$50.
- Neither the cost of the card nor the value added to the card is refundable.
- ISU and/or City may, at any time, suspend or cancel the Smart Card program for any reason. The cardholder will be given a 60-day advance notice in case of termination to use the balance on the card. Cardholder shall ensure that either ISU or City has cardholder's current contact information for this purpose.