

**MEMORANDUM**

**TO:** MAYOR AND CITY COMMISSION

**FROM:** CITY ATTORNEY'S OFFICE

**DATE:** May 2, 2016

**RE:** **Parking License Agreement with Trinity Presbyterian Church of Lakeland, Inc.**

Attached hereto for your consideration is a proposed parking license agreement with Trinity Presbyterian Church of Lakeland, Inc., (Trinity Presbyterian Church) for the City's use of Trinity Presbyterian Church's lot located at the Northwest corner of Bay Street and North Tennessee Avenue. Specifically, Trinity Presbyterian Church is seeking to sublease approximately sixty (60) of its parking spaces to the City as part of a public private partnership. The parking spaces will be metered by the City's third party vendor, Parkmobile.

On August 20, 2014 the City's Parking Services staff presented a proposed alternative to the City Commission during its FY 2015 Budget Workshop for paying for metered parking in Downtown Lakeland. This alternative, approved by the City Commission in November 2014, was first applicable to metered lots only and eventually was utilized for on-street spaces in May of 2015.

Pursuant to the Agreement, Trinity Presbyterian Church will receive 50% of the monthly Parkmobile revenue generated, excluding tax, as payment from the City to utilize the lot for public parking. In addition, the Agreement includes a provision enabling Trinity Presbyterian Church's employees (approximately 10 to 15) to park in the lot at no cost. All parking enforcement fines will remain with the City's Parking Services. The term of this Agreement shall be for an initial period of five (5) years, effective May 9, 2016, subject to approval by the City Commission, with one (1) additional five (5) year term upon mutual written agreement of the parties. Either party may terminate the agreement upon ninety (90) days prior written notice.

It is recommended that the appropriate City officials be authorized to execute this Parking License Agreement with Trinity Presbyterian Church for parking spaces in the Trinity Presbyterian Church lot.

RS

attachment

## PARKING LICENSE AGREEMENT

**THIS PARKING LICENSE AGREEMENT** (the "Agreement") is made and entered into this 2nd day of May 2016 by and between the CITY OF LAKELAND, a Florida municipal corporation, whose current mailing address is 228 S. Massachusetts Avenue, Lakeland, Florida 33801 (hereinafter referred as to the "LICENSEE") and TRINITY PRESBYTERIAN CHURCH OF LAKELAND, INC., a Florida not-for-profit corporation whose current mailing address is 301 N. Florida Avenue Lakeland, Florida 33801 (hereinafter referred to as the "OWNER").

In consideration of the covenants, terms, conditions and agreements set forth below, OWNER and LICENSEE agree as follows.

1. **Parking Spaces** – OWNER is the owner of real property used as a parking area located at 301 N. Florida Avenue, Lakeland, Florida, more particularly described as Munns Survey, Deed Book G, PG 392, Block 4, Lots A, B, C, D, & Alley (hereinafter referred to as the "Property") and as indicated on attached Figures 1 and 2 hereto. OWNER hereby grants to LICENSEE, a license to use +/- sixty (60) automobile parking spaces located on the Property (hereinafter referred to as the "Parking Spaces"). Parking Spaces shall be undesignated.

The License Fee paid by the LICENSEE to the OWNER shall be fifty percent (50%) of the total revenue collected by LICENSEE'S third party vendor, Parkmobile, for the Parking Spaces, less applicable taxes (hereinafter referred to as "License Fee"). Said License Fee shall not increase or decrease because of a change in the number of available spaces.

a. **Use of Parking Spaces.** The LICENSEE, its employees, invitees or other persons authorized by LICENSEE, shall be authorized to use the Parking Spaces only for the parking of automobiles or light trucks on a twenty-four (24) hour per day seven (7) day a week basis. The OWNER and the LICENSEE shall mutually agree on a system to identify those vehicles authorized by the OWNER, including its staff and church permittees, which shall have unlimited free use of the Parking Spaces pursuant to this Agreement. The automobiles or light trucks authorized by OWNER to use Parking Spaces on the Property shall be referred to herein as "OWNER'S Vehicles".

2. **Term of Agreement.** This Agreement shall be for a single term of five (5) years, commencing on May 9, 2016 ("Effective Date") and continuing through April 31, 2021, subject to termination only as provided in this paragraph. Either party may terminate this Agreement upon ninety (90) days' notice to the other party by advising the non-terminating party, in writing, of its termination. Upon termination, neither party shall have further obligation to the other, except for payment of the License Fee for use of the Parking Spaces prior to termination. Upon mutual written agreement of the parties, this Agreement may be renewed for one (1) additional five (5) year term based on the same terms and conditions set forth herein.

3. **License Fee** – LICENSEE shall pay the OWNER a License Fee in an amount equal to fifty percent (50%) of the proceeds collected for use of the +/- sixty (60) Parking Spaces per month, less applicable sales tax thereon for the first five (5) year term. Licensee shall pay any applicable sales tax to the Florida Department of Revenue. Proceeds collected for use of the Parking Space will be based on an established hourly rate set by LICENSEE, as approved by the OWNER, and collected through the use of

parking meters or equivalent meter equipment devices placed on OWNER'S property and serviced by LICENSEE'S third party vendor, Parkmobile. The parties agree that LICENSEE reserves the right to not charge for public use of the above-specified Parking Spaces Monday through Friday between the hours of 5 p.m. and 8 a.m. and anytime on Saturdays and Sundays.

The License Fee, which does not include sales tax, shall be paid by LICENSEE to OWNER on the first day of each month one month following the month during which the proceeds from the Parking Spaces are received by Parkmobile during the term of this Agreement.

4. **Ad Valorem Taxes** - The OWNER shall pay all applicable taxes on the real property pursuant to this Agreement.

5. **Use of Property** – Unless OWNER shall otherwise consent in advance in writing; the Property subject to this Agreement shall be used only for the purpose of parking automobiles of LICENSEE, its assigns or subtenants, or its employees, tenants, agents and customers. The Parking Spaces and any rights pursuant to this Agreement may be assigned or sublet by the LICENSEE with the prior written consent of the OWNER.

6. **Compliance with Laws and Regulations** – LICENSEE shall at all time during the Agreement Term and any extensions thereof, at LICENSEE'S sole expense, comply with all laws regarding the use of the Parking Spaces.

7. **Maintenance** – All maintenance, including landscaping, striping, paving and lighting shall be the responsibility of the OWNER. The parties acknowledge the present condition of the Property and the LICENSEE agrees to accept possession in its present condition. Upon the expiration of this Agreement for any reason, the LICENSEE shall

return the property in the same condition as when accepted by removal of LICENSEE'S signage, parking meters or equivalent parking meter equipment/devices. In addition, OWNER grants permission to LICENSEE and its third party vendor, Parkmobile, to access the Property for purpose of maintaining, repairing, removing or installing any parking meter equipment/devices.

8. **Default of LICENSEE** - The occurrence of a breach of any of the material covenants of this Agreement shall constitute an event of a default.

9. **Remedies in Event of Default** – Upon the occurrence of an event of default and as often as any such event occurs, OWNER may, at OWNER'S option, terminate this Agreement and resume possession of the Parking Spaces, provided, however, that the LICENSEE shall have ten (10) days following written notice from the OWNER to cure any event of default. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees from the non-prevailing party.

10. **Performance of Obligations** – If LICENSEE defaults in the performance of or compliance with any covenant, condition or agreement in this Agreement required to be performed or complied with by LICENSEE, OWNER may, after sixty (60) days' written notice to LICENSEE (or without notice if, in OWNER'S opinion, an emergency exists) perform such covenant, condition or agreement for LICENSEE'S account and at LICENSEE'S sole expense.

In such event, LICENSEE shall, with sixty (60) days after demand, reimburse OWNER for all reasonable costs incurred in order to affect such cure.

11. **Exclusive Possession** - This Agreement shall give to the LICENSEE, its successors or assigns, an exclusive right of possession to the Parking Spaces.

12. **Effect of Waiver** – The failure of OWNER to insist, in one or more instances, upon the strict performance of or compliance with any of the terms, covenants, conditions or agreements of this Agreement, or to exercise any option herein conferred, shall not be considered as waiving or relinquishing for the future any such terms, covenants, conditions, agreements or options, but the same shall continue and shall remain in full force and effect.

13. **Assignment and Binding Effect** – This Agreement and the rights, and obligations provided herein shall be assignable by LICENSEE with the consent of the OWNER, which shall not be unreasonably withheld. Except as otherwise provided herein, the terms covenants, conditions and agreements of this License Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, personal representatives, successors and permitted assigns.

14. **Signs** – The LICENSEE may place signage in accordance with the City of Lakeland's Sign Ordinance.

15. **Environmental Contamination** – In the event that an incident occurs which may result in the spill or release of toxic or hazardous material, as soon as is practical following the event , LICENSEE shall provide written notice to the OWNER.

16. **Indemnification** – To the extent provided by law, and subject to the monetary limitations set forth in Florida Statue 768.28, the LICENSEE shall indemnify and hold harmless the OWNER, officers, employees or agents from all claims, suits and actions of any kind brought against it for or on account of any injuries or damages received

or sustained by any person or property by, from or on account of any acts or omissions or negligence or willful misconduct of the LICENSEE, its officers, employees, agents, servant, invitees, sub-tenants or assigns arising out of its occupancy or presence in Parking Spaces pursuant to this Agreement.

To the extent provided by law, the LICENSEE shall indemnify, save harmless and defend the OWNER, its officers, employees or agents against any claim or liability arising from, or based upon, the violation of any federal, state, county or city law, ordinance or regulation by LICENSEE, its officers, employees, agents, servants, sub-tenants or assigns.

**IN WITNESS WHEREOF**, the Parties hereto have hereunder executed this Parking License Agreement as of the date first set forth above.

**Trinity Presbyterian Church**

ATTEST:

By: \_\_\_\_\_  
Frank McCaulley  
Director of Operations

By: \_\_\_\_\_  
Tim Strawbridge, Director

**City of Lakeland**

Signed in the presence of:

By: \_\_\_\_\_  
Kelly S. Koos  
City Clerk

By: \_\_\_\_\_  
R. Howard Wiggs  
City Mayor

Approved as to form and correctness:

By: \_\_\_\_\_  
Timothy J. McCausland, City Attorney

Figure No. 1  
Trinity Presbyterian Church/City of Lakeland  
Public Private Partnership (P3)  
Location Map

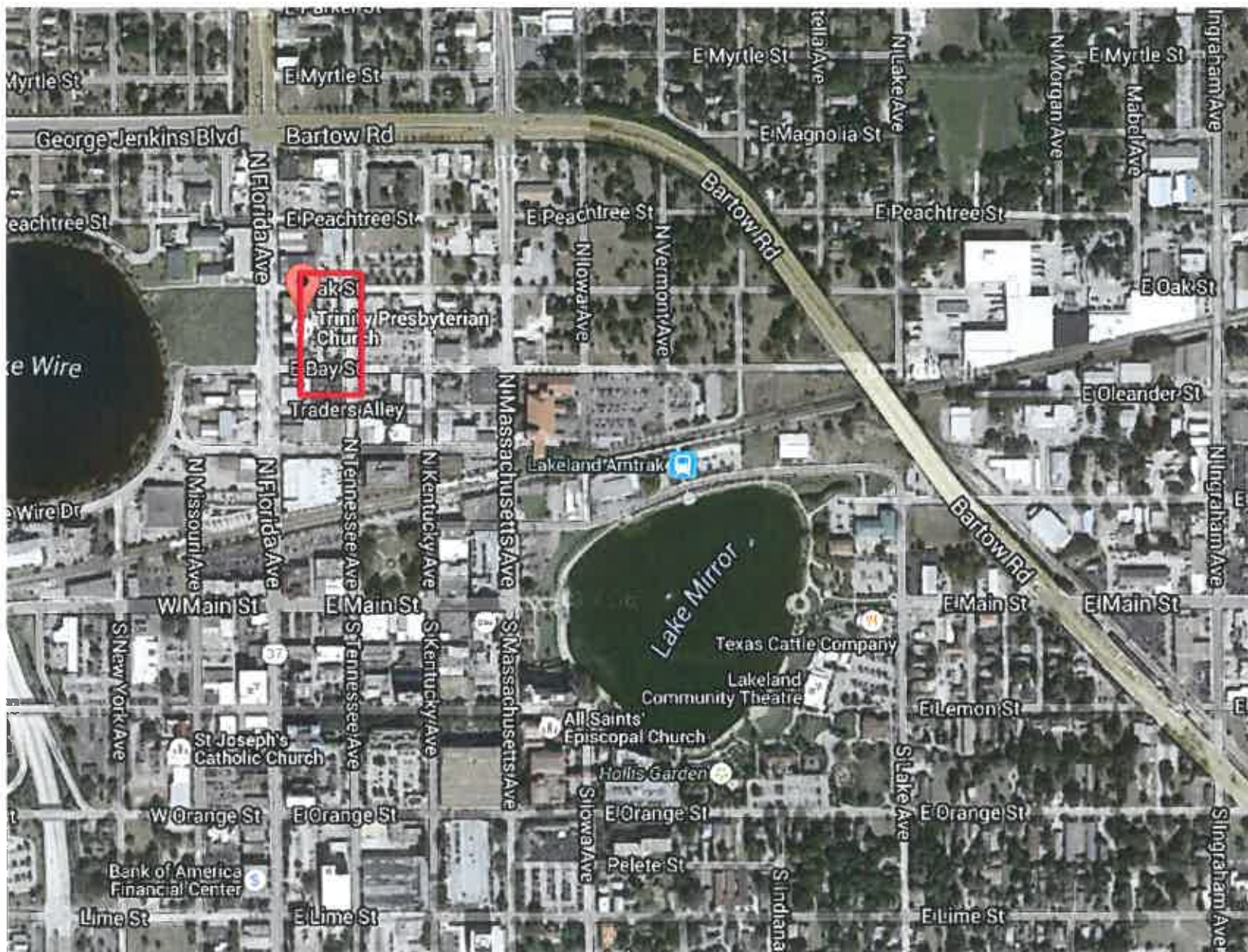




Figure No. 2  
Trinity Presbyterian Church/City of Lakeland  
Public Private Partnership (P3)  
Parking Plan

