

TEMPORARY PARKING AGREEMENT

MDPR PARKING RAMP

THIS AGREEMENT effective as of the “Effecting Date” as hereinafter defined, between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as “City” and FIRST PRESBYTERIAN CHURCH OF DULUTH, MINNESOTA, a non-profit corporation under the laws of the State of Minnesota, organized for charitable, educational and religious purposes, hereinafter referred to as “Church”.

WHEREAS, City, in conjunction with St. Mary’s Duluth Clinic (“SMDC”) is in the process of constructing a new parking ramp facility (the “New Ramp” as hereinafter defined) on property between First and Second Streets and 3rd and 4th Avenues East in Duluth as part of the Regional Exchange District Project to serve the parking needs of said District including those of the new St. Mary’s Hospital currently under construction; and

WHEREAS, City and SMDC are desirous of including certain Church-owned property located east of 3rd Avenue East between First Alley and First Street, currently used by the Church for church parking (the Property”), in the footprint of the New Ramp; and

WHEREAS, Church is willing to convey the Property to City and SMDC for inclusion in the New Ramp, subject to the provision in the City’s Medical District Parking Ramp as hereinafter defined (the “Ramp”) of sufficient replacement parking to meet the reasonable needs of the Church and the City entering into the hereinafter defined “Permanent Parking Agreement”; and

WHEREAS, City is willing to provide such parking to Church if Church will convey the Property to City and SMDC as provided for in the hereinafter-described Purchase Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

The following terms shall have the meanings hereinafter ascribed to them.

- A. Church Activities: shall mean the business of the Church congregation and activities occurring in the Church building or on Church grounds officially sanctioned by the Church during the times and dates when such officially sanctioned activities are actually occurring.
- B. Church Building: shall mean the property situated in St. Louis County Minnesota and legally described as Lots 50, 52 and 54 EAST SECOND STREET, DULUTH PROPER FIRST DIVISION.
- C. Church Proximity Device Users: shall mean the person or persons established by Church to the reasonable satisfaction of the of the Manager as providing services related to Church Activities in the Church Building on such a frequent or regular basis as to justify the issuance of Proximity Device to them.
- D. Church Representative: shall mean the President of the Church or such other person designated by said President to act on behalf of the Church for the purposes of this Agreement.
- E. Four Hour Validation Ticket or “4 Hour Ticket”: shall mean a card capable of providing a credit against the cost of parking in the Ramp equal to the cost of four hours of such parking.
- F. Manager: shall mean the City’s Manager of Parking Services or the Managers designee in writing or such other City employee or staff position as shall be designated, from time to time in writing by the City’s Chief Administrative Officer.
- G. New Ramp: shall mean that parking ramp having at least 800 spaces to be constructed between First and Second Streets and 3rd and 4th Avenues East in Duluth, Minnesota, including the Property, to be constructed by SMDC and to be conveyed to and to be owned and operated by City.
- H. Non-weekday Parking: shall mean parking as permitted under this Agreement during hours other than Weekday Parking Hours.
- I. Property: shall mean the property in St. Louis County, Minnesota legally described on Exhibit A attached hereto and made a part hereof.
- J. Proximity Device or “Prox Device Ticket”: shall mean a card or device issued by City to the Church to be issued to a Church Proximity Device User providing for parking in the Ramp for Church Activities at no cost to the bearer on

a 24 hour per day, 7 day per week basis which authorizes such parking by means of a proximity device reader to detect when users enter or exit the Ramp.

K. Ramp: shall mean the City-owned Medical District Parking Ramp located on the lower side of First Street between Third and Fourth Avenues West

L. Regular Users: shall mean persons formally recognized as members of Church by Church and persons invited by Church participate in Church Activities.

M. Two Hour Validation Ticket or "2 Hour Ticket": shall mean a card capable of providing a credit against the cost of parking in the Ramp equal to the cost of two hours of such parking.

N. Validation Ticket or "Ticket": shall mean a 2 Hour Ticket or a 4 Hour Ticket. Validation Tickets shall be a valid credit against the cost of parking in the Ramp only during the month for which they are issued.

O. Weekday Parking: shall mean parking in the Ramp as permitted under this Agreement between the hours of 6:00 A.M. and 5:00 P.M. on Monday through Friday.

ARTICLE II

PURPOSE

The purpose of this Agreement is to facilitate the sale of the Property to SMDC and the City to allow its inclusion in the Ramp and to meet the Church's legitimate need to provide parking to Church Proximity Device Users and Regular Users while involved in Church Activities in the Ramp during the period of time between the sale of the Property and the time when the New Ramp is ready for use by Church. The parties agree that their intent is not to allow use for purposes not related to Church Activities or to allow use by persons other than Church Proximity Device Users and Regular Users using the Ramp except in conjunction with Church Activities. The parties also agree that the uses provided for above can be reasonably expected to increase and to decrease with the passage of time and the changing needs of the Church. Therefore the parties hereby agree to work cooperatively over the life of this Agreement to adjust the number of Prox Devices and Validation Tickets issued to Church to accurately reflect the actual parking needs of the Church to accommodate Church Activities while minimizing the number of spaces that the City needs to reserve in the Ramp to meet those needs.

ARTICLE III

PROX DEVICES AND TICKETS

City agrees that it will issue to Church for issuance to Church Proximity Device Users and Regular Users a sufficient number of Prox Devices and Tickets to provide parking to such persons during the normal hours of Church Activities at no cost to such Church Proximity Device Users and Regular Users as is hereinafter provided for and under the terms and conditions of this Agreement. Church shall be solely responsible for the issuance of Prox Devices and Tickets, for insuring that they are issued to and used by only bona fide Church Proximity Device Users and Regular Users and that they are used only in conjunction with bona fide Church Activities. Church agrees that Church shall pay City at the prevailing rates in the Ramp for all parking by such Church Proximity Device Users and Regular Users in excess of that covered by Prox Devices and Tickets, either by such Church Proximity Device Users and Regular Users using such excess parking or by Church as hereinafter provided for.

A. PROX DEVICES

Initially and except as hereinafter provided for below, City agrees to issue one (1) Prox Device to Church for the purpose of Church providing them to Church Proximity Device Users. Church agrees that it will provide Prox Devices only to Church Proximity Device Users for their use in conjunction with Church business and Church Activities. Church shall be responsible to ensure that such Prox Devices are not used for parking in the Ramp for any purpose other than Church business or Church Activities. The initial issuance of Prox Devices to Church shall be at no cost to Church. Thereafter, Church agrees to reimburse city for the cost of issuing additional Prox Devices to Church, whether as new Devices or as replacements for lost or damaged Prox Devices.

B. 2 Hour Tickets

Initially and except as hereinafter provided for below, City agrees to issue up to Six Hundred (600) 2 Hour Tickets per calendar month to Church for Weekday Parking and up to Four Hundred (400) 2 Hour Tickets per calendar month to Church for Non-weekday Parking for the purpose of Church providing them to Regular Users. Church agrees that it will provide 2 Hour Tickets only to Regular Users for their use in conjunction with Church business and Church Activities. Church shall be responsible to ensure that such the 2 Hour Tickets are not used for parking in the Ramp for any purpose other than Church business or Church Activities.

C. 4 Hour Tickets

Initially and except as hereinafter provided for below, City agrees to issue up to Fifteen (15) 4 Hour Tickets per calendar month to Church for Weekday Parking for the purpose of Church providing them to Regular Users; provided, however, that during such times as Church is allowing the Lakeview Christian Academy basketball team to use the Church's gymnasium for team practices and only during those times when it is actively practicing, City agrees to issue up to Three Hundred Fifteen (315) 4 Hour Tickets per month to Church. Church agrees that it will provide 4 Hour Tickets only to Regular Users for their use in conjunction with Church business and Church Activities. Church shall be responsible to ensure that such the 4 Hour Tickets are not used for parking in the Ramp for any purpose other than Church business or Church Activities.

D. Ticket Issuance

Subject to Paragraph A of Article V below, the City will issue 2 Hour Tickets and 4 Hour Tickets to the Church on a monthly basis at least Ten (10) days prior to beginning of the month in which they are valid in quantities set forth in Paragraphs B and C above

E. Tickets-Limitations

Nothing to the contrary in this Agreement withstanding, City shall not be obligated to provide Tickets to Church providing parking in the Ramp which at any time would permit use of more than Forty (40) vehicle spaces at any one time for Weekday Parking or more than Eighty (80) vehicle spaces at any one time for Non-Weekday Parking. In the event that, on any day, the Ramp's revenue control equipment shall establish that Regular Users have occupied more than the above number of spaces in the Ramp at any one time, the Manager shall have the right to charge the Church for such excess use of each such space at the Ramp's established hour rate for use of each such space. The Manager shall invoice the Church for such use, along with supporting documentation, on a monthly basis and the Church shall promptly pay the City for such use.

F. Event Requests

In the event that the Church shall have scheduled a special Church Activity reasonably creating a one-time need for a number of Tickets in excess of provided for in Paragraphs B, C and D above, Church may submit a special request for additional Tickets to the Manager at least Ten (10) days prior to the end of the

month preceding the month in which such Church Activity is scheduled to occur if possible; If such notice is not possible Church shall give Manager as much advance notice as possible. Such request shall be supported by reasonable documentation of the need for the issuance of such additional Tickets and of the number of additional Tickets needed. If the Manager approves the request and documentation, the Manager will cause a reasonable number of additional Tickets to be issued to Church for the month in which the special Church Activity occurs, provided that the total number of Tickets issued for such Church Activity plus the Tickets issued pursuant to Paragraphs B C and D above shall not exceed the Limitations set forth in Paragraph E above. The Manager's approval shall not be unreasonably withheld.

ARTICLE IV

TERM

The Term of this Agreement shall be deemed to commence on the date when the Church conveys all right, title and possession of the Property to SMDC and shall continue until the Manager notifies the Church Representative in writing that the Ramp is available for use for vehicular parking by Church Proximity Device Users and Regular Users and shall thereafter terminate unless this Agreement is first terminate by the occurrence of one or more of the following:

- A. the Ramp is permanently closed for parking or is demolished by City or by successors in interest of City, if any;
- B. until Church or successor in interest to the Church Building ceases to use the Church Building for principally for the operation of a recognized religious organizational purposes;
- C. this Agreement is terminated as hereinafter set forth.

ARTICLE V

AGREEMENT MODIFICATIONS

A. Ticket Modifications

It is acknowledged and understood between the parties that the needs of the Church to have access in the Ramp to support Church Activities over time may fluctuate, increasing or decreasing as Church Activities and participation by Church Proximity Device Users and Regular Users change. The Church's need to

support Church Activities may generate increased need for parking over and above that provided for in Paragraph A, B or C of Article II above. Similarly, the City may determine that the demand for parking generated by Church Activities has declined to a level resulting in an excessive number of parking spaces in the Ramp reserved for Church parking be unused by Church. Church agrees that it will use its best efforts to make sure that it requests no more Tickets than are actually needed by Church for its operations during said month. The parties agree that either party may, from time to time, request a review of the number of Prox Devices and Tickets being provided by City to Church under this Agreement. In the event of such a request, the parties agree that the Manager and the Church's Representative shall meet and negotiate in good faith an adjustment in the number of Prox Devices and the number of Tickets per month that are needed to accurately reflect the actual parking needs of the Church to accommodate Church Activities while minimizing the number of spaces that the City needs to reserve in the Ramp to meet those needs. Upon the parties reaching agreement on any modification to the number of Prox Devices and Tickets set forth in this Agreement and the same may have been, from time to time, previously agreed to between the parties, the modification so agreed to shall be reduced to a memorandum signed by the Manager and the Church Representative and said memorandum shall be deemed to be an amendment to this Agreement.

B. Technology Modifications

It is understood between the parties that this Agreement is based on existing parking ramp technology that is anticipated to be installed in the Ramp upon its completion. It is also understood between the parties that such technology can reasonably be expected to change over time and that the Ramp equipment being installed at this time will at some point become physically or functionally obsolescent and will need to be replaced. The parties agree that the City shall have the right to replace the Ramp parking equipment from time to time as it sees fit and the parties agree that, in the event that Replacement of such equipment renders any of the terms or conditions of this Agreement to no longer practically applicable to Church's use of the Ramp, the Manager and the Church Representative will meet and negotiate in good faith modifications to this Agreement compatible with the

new equipment which will fulfill the goals of this Agreement for both parties as hereinbefore set forth.

ARTICLE VI

OPERATING COVENENTS

In its use of the Ramp, Church agrees for itself, its Church Proximity Device Users and its Regular users that it will:

A. Use of Prox Devices and Tickets

Will issue Prox Devices and Tickets only to Church Proximity Device Users and Regular Users for use in conjunction with Church Activities and that it will permit use the Prox Devices and Tickets only for Church Activities and only during times when Device holders and Ticket users are engaged in Church Activities.

B. Maintenance

Will require Church Proximity Device Users and Regular Users using the Ramp to park only within marked parking spaces and to removed any trash or debris brought into the Ramp by Church, its Church Proximity Device Users and its Regular Users from the Ramp or to deposit in trash receptacles maintained by City.

C. Obey All Laws

Will obey all laws, rules, regulations and ordinances of the government of the United States of America, the State of Minnesota and the City of Duluth applicable to the use of the Ramp and will require its Church Proximity Device Users and Regular Users to so comply with said laws, rules, regulations and ordinances.

D. Usage Reports

In order to investigate for suspected fraud, abuse or violation of this Agreement, upon the request of the Manager, the Church Representative shall provide to the Manager a report of all Church Activities that have occurred at the Church in any preceding month requested by the Manager along with the number of persons attending such Church Activity. Church shall have the burden of establishing to the reasonable satisfaction of the Manager that such numbers are as accurate as is practically possible based on the best available evidence.

ARTICLE VII

ASSIGNMENT OR TRANSFER

Church shall not assign, transfer, sell, convey, subgrant or in any other way grant or convey this Agreement or Church's rights thereunder without the prior written consent of the Manager, which shall not be unreasonably withheld. The consent of the Manger shall not be withheld if the transfer of the Church Building is to regularly recognized religious organization for the purpose of regular worship services and related activities.

ARTICLE VIII

DEFAULT

The following shall constitute events of default as to the defaulting party. The remedies available to the non-defaulting party shall be those hereinafter set forth.

A. Default by City

The following shall constitute defaults on the part of the City

1. Failure to provide the required number of Prox Devices or Tickets to Church within the time set forth above.
2. Failure to permit the Church and its Church Proximity Device Users and Regular Users to park in the Ramp as herein provided for.
3. Failure to perform any other obligation of City under this Agreement.

B. Default by Church

The following shall constitute defaults on the part of Church:

1. Issuing Prox Devices or Tickets to persons other than those authorized by Article II above.
2. Allowing Prox Devices or Tickets to be used in violation of this Agreement.
3. Failure to perform any other obligation of Church under this Agreement.

C. Remedies

In the event of any default under this Agreement, the non-defaulting party may send notice of default to the defaulting party as set forth in Article X giving the defaulting party notice of the default and demanding Cure thereof. Upon the giving of such notice the defaulting party shall have Thirty (30) days in which to cure said default. If the defaulting party fails to so cure said default, the non-defaulting party shall have the right to declaratory or injunctive relief and, in addition, to damages for damages actually incurred by it resulting from such default. And, in addition, in the event that Church shall have been in default of its obligation under subparagraph 12 or 2 of Paragraph B below on more than two (2) occasions within any one calendar year, City shall have the right to terminate this Agreement in which event, Church shall have no further rights hereunder.

ARTICLE IX

Runs with the Land

This Agreement shall be deemed to run with the Land and shall enure to the benefit of the parties hereto and to their successors and assigns.

ARTICLE X

Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of the City: City of Duluth
 Attn: Manager of Parking Services
 402 City Hall
 411 West First Street
 Duluth, MN 55802

In the case of Church First Presbyterian Church
 300 East 2nd Street
 Duluth, MN 55802:

ARTICLE XI

Disclaimer of Relationships

Church acknowledges that nothing contained in this Agreement nor any act by the City or Church shall be deemed or construed by Church or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between the City and Church.

ARTICLE XXI

Applicable Law

This Agreement together with all of its Articles, Paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in Duluth, Minnesota.

ARTICLE XII

Judicial Interpretation

Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who

itself or through its agent or attorney prepared the same, it being agreed that the agents and attorneys of both parties have participated in the preparation hereof.

ARTICLE XIII

Title of Articles

Any title, Articles and Paragraphs in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

ARTICLE XIV

Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

ARTICLE XV

Unavoidable Delays

Neither party shall be held responsible for, and neither party shall be in considered in default of this Agreement as a result of, delay or default caused by fire, riot, acts of God, war, government actions, judicial actions by third parties, strikes or embargoes, or adverse weather conditions, except for delays caused by government and judicial actions which could have been avoided by compliance with publicly available laws, rules and regulations of which either party had knowledge or should have reasonably had knowledge.

ARTICLE XVI

Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment 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.

ARTICLE XVII

Counterparts

This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

ARTICLE XVIII

Attorney's Fees

In the event that Church is in default of any of the terms and conditions of this Agreement and the City shall successfully take legal action to enforce said rights herein, in addition to the foregoing, the City shall be entitled to reimbursement for its reasonable attorneys' fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder. In the event City is in default of any of the terms and conditions of this Agreement, and Church shall successfully take legal action to enforce said rights herein, in addition to any other right or remedy, Church shall be entitled to reimbursement for its reasonable attorney's fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

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

CITY OF DULUTH, a Minnesota
Municipal Corporation

FIRST PRESBYTERIAN CHUCH,
a Minnesota Non-profit Corporation

By _____

Emily Larson

Its Mayor

By _____

Attest:

By _____

Its City Clerk

Date: _____

Countersigned:

Approved:

Its Auditor

City Attorney