

# **City of Scottsbluff, Nebraska**

**Monday, December 17, 2018**

**Regular Meeting**

## **Item Reports2**

**Council to consider approval of a Right of Way and License Agreement with Auto Spa, LLC for the placement and maintenance of a sewer service line, clean outs and water service line and authorize the Mayor to execute the Agreement.**

### **Minutes:**

**The right-of-way under Avenue I, the alley between 27th and 26th Street on the east side of Avenue I, right-of-way to 27th Street and unplatted lands adjacent to the Burlington Northern Subdivision.**

**Staff Contact: Nathan Johnson, City Manager**

## **USE OF RIGHT OF WAY AND LICENSE AGREEMENT**

This Use of Right of Way and License Agreement ("Agreement") is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Scottsbluff, Nebraska, a Municipal Corporation, ("Licensor") and Auto Spa, LLC, a Nebraska limited liability company ("Licensee").

In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

### **1. Grant of License:**

Licensor owns and now grants a non-exclusive license and right to use the Licensed Property described below as well as the Avenue I and alley right-of-way and the 27<sup>th</sup> Street right of way to Licensee for the purpose of laying, constructing, installing, maintaining repairing and inspecting an underground sewer service line, clean outs and water service line, subject to all of the terms and conditions of this Agreement, in and under the following described real estate:

The right-of-way under Avenue I, the alley between 27<sup>th</sup> and 26<sup>th</sup> Street on the east side of Avenue I, right-of-way to 27<sup>th</sup> Street and unplatted lands adjacent to the Burlington Northern Subdivision, located on the southwest corner of the intersection of 27<sup>th</sup> Street and Avenue I in the NE1/4 of Section 22, Township 22 North, Range 55 West of the 6<sup>th</sup> P.M., Scottsbluff, Scotts Bluff County, Nebraska. ("Licensed Property")

### **2. Permitted Purpose:**

a. The Licensed Property constitutes a parcel of land and right-of-way owned by the Licensor. The Licensor agrees to allow the Licensee the following: (i) use a ten (10) foot wide portion of the Licensed Property for installation and connection of a four (4) inch sewer service line to the right-of-way for Avenue I, along with the permission to bore under Avenue I toward the southeast to the alley right-of-way and the sewer main located in the alley between 27<sup>th</sup> and 26<sup>th</sup> Street as set forth in the map, marked as Exhibit "A" and incorporated by this reference; and (ii) a water tap and service line located on the northwest area of the Licensed Property to the 27<sup>th</sup> Street right-of-way. The sewer service line and water service line will run under the right-of-way and Licensed Property to real estate owned by Licensee

b. As a condition to the permitted use the Licensee must construct two (2) new four (4) foot square clean outs with manhole covers on the east and west side of Avenue I as set forth on Avenue I and must bury its service lines under the Licensed Property a depth as determined and approved by the Licenser. The Licensee will apply for and obtain the permission of the Licenser's Director of Public Works prior to the installation, construction, maintenance or repair of either the sewer service line, clean outs or water service line.

c. Licensee agrees to use the Licensed Property solely for placement and maintenance of a sewer service line, clean outs and water service line ("permitted use"). Licenser permits the Licensee the right to use the Licensed Property, for such permitted use so long as Licensee does not obstruct or impede Licenser's use of the Licensed Property.

### 3. Termination:

a. Licenser may terminate this Agreement at any time by giving written notice to the Licensee, specifying the date of termination. Such notice shall be given not less than ninety (90) days prior to the date specified in such notice for the date of termination. Upon termination of this Agreement, Licensee agrees to cease the permitted use, and if requested by Licenser, to remove any and all of its improvements at its own expense and to repair and replace the Licensed Property to its condition as it exists on the date of this Agreement.

b. Should the Licensee and/or permitted use obstruct or impede Licenser's use of the Licensed Property or its right-of-way in any way this Agreement shall immediately terminate.

c. Licensee shall not have the right to rebuild or build any other improvement on the Licensed Property or put the Licensed Property to any other uses than the permitted use, without receiving the express written consent of the Licenser.

### 4. Use at Licensee's Risk:

a. The Licensee understands and agrees the sewer service line, clean outs and water service line remain its property and the Licensee shall be responsible for all maintenance and repairs required on them. In the event maintenance or repairs are required the Licensee will apply for and obtain the permission of the Licenser's Director of Public Works prior to commencing any maintenance or repairs on the service lines and clean outs on or under the Licensed Property or right-of-way.

b. The Licensee understands and agrees that the use of the Licensed Property for the permitted use is at its own risk and it will insure against all loss or damage. In the event Licenser is required to remove all improvements or structures on the Licensed Property, it has an unlimited right to do so and, if any of Licensee's Property or improvements are damaged in any way, Licensee will assume the full risk of replacing or repairing the property or improvements.

5. Agreement to Indemnify:

Licensee shall indemnify and hold Licensors harmless from and against any and all loss or damage that shall be caused by the permitted use or by any wrongful or negligent act or omission of Licensee, its agents, customers or employees. Licensee agrees to maintain the area around the permitted use as well as any and all improvements placed thereon and to repair any damage to the Licensed Property. The Licensee's agrees to use the License Property in a reasonable manner and in such a way that it will not interfere with Licensors's use of the License Property or become a nuisance or safety hazard.

6. Notices:

Any notice provided for or concerning this Agreement shall be in writing and shall be sufficiently given when sent by United States First Class Postal Service Delivery to the addresses of the parties as listed below:

Licensors:  
City of Scottsbluff  
2525 Circle Drive  
Scottsbluff, NE 69361  
ATTN: City Clerk

Licensee:  
Auto Spa, LLC  
C/O Casey York  
902 Mockingbird Drive  
Scottsbluff, NE 69361

7. Assignment of Rights:

The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity. Any of Licensee's heirs or assigns shall not have the right to rely on this Agreement.

[SIGNATURE PAGE WILL FOLLOW]

CITY OF SCOTTSBLUFF,

ATTEST:

By \_\_\_\_\_  
Raymond Gonzales, Mayor

\_\_\_\_\_  
City Clerk

Auto Spa, LLC, a Nebraska limited liability  
company

BY \_\_\_\_\_  
Casey York

STATE OF NEBRASKA, SCOTTS BLUFF COUNTY:

The above and foregoing License Agreement was acknowledged before me on  
December \_\_\_, 2018, by Raymond Gonzales, Mayor of The City of Scottsbluff, a  
Nebraska Municipal Corporation, on behalf of the Corporation, Licensor.

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

STATE OF NEBRASKA, SCOTTS BLUFF COUNTY:

The above and foregoing License Agreement was acknowledged before me on  
December \_\_\_, 2018, by Casey York, as authorized member of Auto Spa, LLC, a Nebraska  
limited liability company, Licensee.

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

