City of Scottsbluff, Nebraska

Monday, July 1, 2019

Regular Meeting

Item Reports1

Council to discuss and instruct staff on a License Agreement for property located on the southwest corner of the intersection of 27th Street and Avenue I.

Staff Contact: Nathan Johnson, City Manager

LICENSE AGREEMENT

This License Agreement ("Agreement") is entered into on this 3rd day of December 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:

Licensee is the owner of the following real estate:

> Lot 1, Block 1, Plat of Burlington Northern Subdivision of Blocks One, Two, Three, Four, Five and Six, A Subdivision of the City of Scottsbluff, situated in part of the NE1/4 of Section 22, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska.
> ("Licensee Property")

Licensor owns and now grants a license to Licensee to use as an access drive and occupy, subject to all of the terms and conditions of this Agreement, the following described real estate:

> Unplatted lands adjacent to the Burlington Northern Subdivision, located on the southwest corner of the intersection of 27th Street and Avenue I in the NE1/4 of Section 22, Township 22 North, Range 55 West of the 6th P.M., Scottsbluff, Scotts Bluff County, Nebraska.
> ("Licensed Property")

2. Limitation to Described Purpose:

The Licensed Property constitutes a lot and right-of-way owned by the Licensor. The Licensor agrees to allow the Licensee to use a portion of the Licensed Property for access from 27th street to the Licensee Property and a turn around area on the Licensed Property. The dimensions of the access and turn around area are as set forth on the map which is attached to this Agreement, marked as Exhibit "A", and incorporated by this reference. Licensee agrees to use the Licensed Property solely for placement and maintenance of an access drive and asphalt turn around area to the Licensee Property ("licensee use"). Licensor grants the Licensee the right to use the Licensed

Property, as set forth on Exhibit "A", for such licensee use so long as Licensee does not obstruct or impede Licensor's use of the Licensed Property.

3. Termination:

a. Licensor 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 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 licensee use obstruct or impede Licensor'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 licensee use.

4. Use at Licensee's Risk:

The Licensee understands and agrees that the use of the Licensed Property for the purpose set forth in this Agreement is at its own risk and it will insure against all loss or damage. In the event Licensor 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 Licensor harmless from and against any and all loss or damage that shall be caused by the licensee 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 licensee 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 Licensor'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:

Licensor:
City of Scottsbluff
2525Circle 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.

CITY OF SCOTTSBLUFF,

By _____
Mayor

ATTEST:

_____
City Clerk

City of Scottsbluff, Nebraska CORPORATE SEAL Incorporated June 10, 1916

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 5, 2018, by Raymond Gonzales, Mayor of The City of Scottsbluff, a Nebraska Municipal Corporation, on behalf of the Corporation, Licensor.

GENERAL NOTARY - State of Nebraska
CHRISTINE BURBACH
My Comm. Exp. February 1, 2020

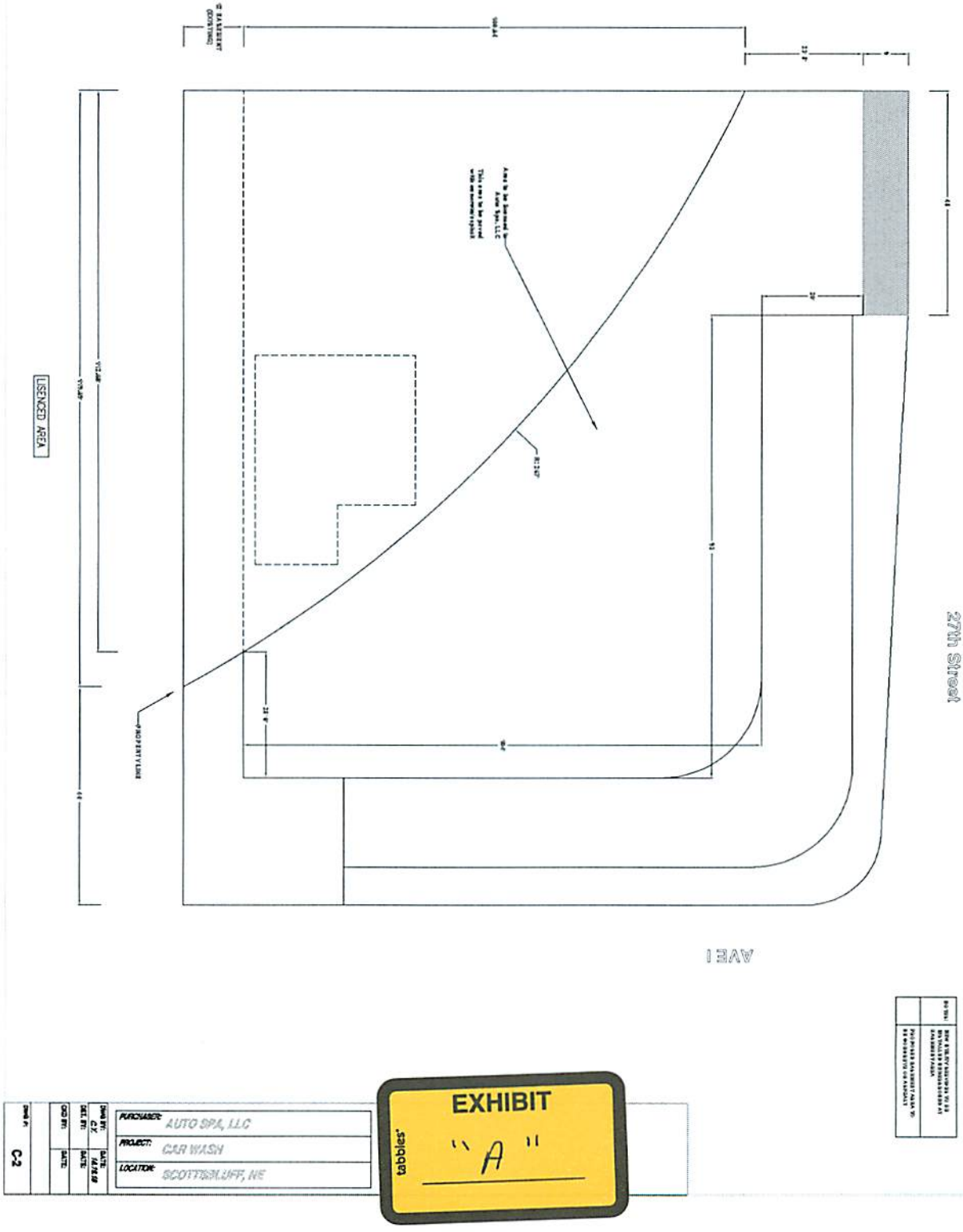
_____
Notary Public

STATE OF NEBRASKA, SCOTTS BLUFF COUNTY:

The above and foregoing License Agreement was acknowledged before me on November 26, 2018, by Casey York, as authorized member of Auto Spa, LLC, a Nebraska limited liability company, Licensee.

General Notary - State of Nebraska
KIMBERLEY E. WRIGHT
My Comm. Exp. Jan. 24, 2021.

_____
Notary Public


27th Street
AVE I
LEGENDED AREA
PURCHASER: AUTO SPA, LLC
PROJECT: CAR WASH
LOCATION: SCOTTSBLUFF, NE
C-2
EXHIBIT
"A"
tabbies

USE OF RIGHT OF WAY AND LICENSEAGREEMENT

This Use of Right of Way and License Agreement ("Agreement") is entered into on this 17th day of December, 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 27th 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 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, located on the southwest corner of the intersection of 27th Street and Avenue I in the NE1/4 of Section 22, Township 22 North, Range 55 West of the 6th 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 27th and 26th 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 27th 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 Licensor. The Licensee will apply for and obtain the permission of the Licensor'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"). Licensor permits the Licensee the right to use the Licensed Property, for such permitted use so long as Licensee does not obstruct or impede Licensor's use of the Licensed Property.

3. Termination:

a. Licensor 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 Licensor, 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 Licensor'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 Licensor.

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 Licensor'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 Licensor 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 Licensor 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 Licensor'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:

Licensor:	Licensee:
City of Scottsbluff	Auto Spa, LLC
2525Circle Drive	C/O Casey York
Scottsbluff, NE 69361	902 Mockingbird Drive
ATTN: City Clerk	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,

By Raymond Gonzales
Raymond Gonzales, Mayor

ATTEST:

Kimberley Wright
City Clerk

City of Scottsbluff, Nebraska
CORPORATE SEAL
Incorporated June 10, 1916

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 17, 2018, by Raymond Gonzales, Mayor of The City of Scottsbluff, a Nebraska Municipal Corporation, on behalf of the Corporation, Licensor.

GENERAL NOTARY - State of Nebraska
CHRISTINE BURBACH
My Comm. Exp. February 1, 2020

Christine Burbach
Notary Public

STATE OF NEBRASKA, SCOTTS BLUFF COUNTY:

The above and foregoing License Agreement was acknowledged before me on December 26, 2018, by Casey York, as authorized member of Auto Spa, LLC, a Nebraska limited liability company, Licensee.

Kimberley E. Wright
Notary Public

General Notary - State of Nebraska
KIMBERLEY E. WRIGHT
My Comm. Exp. Jan. 24, 2021.