

Ordinance authorizing the City Manager or his designee to execute a License for Street Right of Way Use with the B-Y, LTD ("Licensee") to construct a parking lot expansion project to better serve the needs of Ayers Plaza Shopping Center tenants in full compliance with the City of Corpus Christi and with the approval of the Texas Department of Transportation, subject to the Licensee' compliance with specified conditions.

WHEREAS, B-Y 4918 Ayers, LTD. ("Licensee"), desires to install, operate, and maintain, the parking lot expansion adjacent to the Ayers Plaza Shopping Center.

WHEREAS, the Licensee has requested, and the City of Corpus Christi ("City") desires to extend, a ten annual payments of \$5,000.00 for a total of \$50,000.00 for this License for Street Right of Way Use ("License"), in order to accomplish the purpose and use intended by the Licensee within the public right-of-way.

WHEREAS, in accordance with Article IX, Section 1 of the City Charter, the City Council authorizes the City Manager or his designee to enter into the License for the benefit of the City and the Licensee, subject to the Licensee' compliance with the specified provisions of the License for Street Right of Way Use.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS:

SECTION 1. The City Manager, or his designee ("City Manager"), is authorized to execute a ten annual payments of \$5,000.00 for a total of \$50,000.00 for this License for Street Right of Way Use ("License") with the B-Y 4918 Ayers, LTD. ("Licensee") to allow the Licensee to construct a parking lot expansion project to better serve the needs of the Ayers Plaza Shopping Center tenants in full compliance with the City of Corpus Christi and with the approval of the Texas Department of Transportation, at all times subject to the Licensee' compliance with the conditions specified in the License. A copy of this License for Street Right of Way Use is attached to this ordinance, the terms and content of such License being incorporated by reference into this ordinance as if fully set out herein in their entirety.

SECTION 2. Indemnification. By its acceptance of this license, the Licensee covenants and agrees fully to indemnify and hold harmless the City and the elected officials and officers and employees of the City, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the City, directly or indirectly arising out of, resulting from or related to Licensee's activities under this license, including any acts or omissions of Licensee, and any respective agent, officer, director, representative, employee, consultant, or sub-licensee of Licensee, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this license, all without, however, waiving any governmental immunity available to the City under Texas law and without waiving any defense of the parties under Texas law. The provisions of this indemnification are solely for the benefit

of the parties to this license and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Licensee shall promptly advise the City in writing of any claim or demand against the City or Licensee known to the Licensee related to or arising out of Licensee's activities under this license and shall see to the investigation and defense of the claim or demand at Licensee's cost. The City shall have the right, at its option and at its own expense, to participate in the defense without relieving Licensee of any of its obligations under this paragraph. The City shall cooperate with Licensee in the defense of all claims, proceedings, actions, and suits subject to this indemnification. This indemnification shall not extend to any costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability, or suit to the extent they directly or indirectly arise out of, result from or relate to the negligent or wrongful acts or omissions of City or its officers, agents, employees, representatives, consultants, or contractors. This indemnification survives the termination or expiration of this license.

SECTION 3. The License authorized in Section 1 of this ordinance is subject to the Licensees' compliance with the conditions of the License including, but not limited to, the provisions specified below:

- a. In exchange for the City's authorization for use of the public right-of-way by the Licensee for the stated purpose, the Licensee agrees to pay ten annual payments of \$5,000.00 for a total of \$50,000.00
- b. All costs incurred to install, operate, maintain, repair, and remove the parking lot expansion is the sole responsibility of the Licensee.

The foregoing ordinance was read for the first time and passed to its second reading on this the _____ day of _____, 20____, by the following vote:

Nelda Martinez	_____	Brian Rosas	_____
Rudy Garza	_____	Lucy Rubio	_____
Chad Magill	_____	Mark Scott	_____
Colleen McIntyre	_____	Carolyn Vaughn	_____
Michael Hunter	_____		

The foregoing ordinance was read for the second time and passed finally on this the _____ day of _____, 20____, by the following vote:

Nelda Martinez	_____	Brian Rosas	_____
Rudy Garza	_____	Lucy Rubio	_____
Chad Magill	_____	Mark Scott	_____
Colleen McIntyre	_____	Carolyn Vaughn	_____
Michael Hunter	_____		

PASSED AND APPROVED this the _____ day of _____, 20____.

ATTEST:

Rebecca Huerta
City Secretary

Nelda Martinez
Mayor

**License for
Street Right Of Way Use**

STATE OF TEXAS §
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COUNTY OF NUECES §

This right of way license ("License") is entered into by and between the City of Corpus Christi ("City"), a Texas home-rule municipal corporation, and B-Y 4918 Ayers, LTD ("Licensee"), property owner of 4918 Ayers St, Corpus Christi, Texas, 78415, whose business address is 4629 Marco, San Antonio, Texas, 78218-5420.

In accordance with Article IX, Section 1, of the City's City Charter and in consideration of a fee of Forty Six thousand and nine Hundred and fifty three Dollars (\$46,953.00) payable by Licensee in ten annual installment payments of \$5,000, each subsequent payment due on the first through ninth anniversaries of this agreement, to account for the fee plus appropriate and lawful interest in a total amount of \$50,000, the receipt of the first payment of \$5,000 which is acknowledged, the City has granted and conveyed, and by these presents does grant and convey to Licensee, for the term and upon the conditions stated in this License, a License for Street Right of Way Use to allow the Licensee to construct a parking lot expansion project to better serve the needs of Ayers Plaza Shopping Center tenants in full compliance with the City of Corpus Christi and with the conditional approval letter dated 04-13-15 Exhibit D of the Texas Department of Transportation, at all times subject to the Licensee's compliance with the conditions specified in this License, as shown in Exhibit "A" (Location Map), Exhibit "B" (Plan View) are attached to this License and incorporated into this License by reference as if fully set out herein in their entirety. The area in which the License is granted for the location of the Licensee's Parking Lot is referred to in this License as the "License Area."

TO HAVE AND TO HOLD the same granted unto Licensee, its successors, and assigns, together with the right under the conditions specified in this License, to at any time enter upon the above described License Area to install, operate, maintain, repair, or remove Licensee's Parking Lot, and being further understood that the License granted by this License is subject to the Licensee's compliance at all times with the following conditions, the City and Licensee agree as follows:

- A. This License, and the rights granted under the License, may be revoked at any time by the City upon providing the Licensee not less than 30 calendar days' notice in writing by the City's City Manager, or his designee ("City Manager"). In the event of a revocation by the City Manager or earlier termination of this License by either party, any unpaid portion of the \$50,000 due under this License is forgiven by the City to the Licensee, but such portion already paid to City is not refundable to the Licensee.

- B. This License is perpetual unless the Licensee or the City or Texas DOT provides written notice of intent to amend or terminate this License.
- C. This License may not be assigned by Licensee without the City Manager's prior written consent.
- D. The Licensee shall acquire and maintain at all times for the term of this License insurance coverage pertaining to the License Area granted under this License and the activities authorized by this License. The types of required insurance coverage's must be in the minimum amounts set forth in the attached Exhibit "C," the substantive content of Exhibit "C" being incorporated by reference into this License as if fully set out here in its entirety. The insurance policies must name the City as an additional insured and may not be canceled, renewed, or materially changed by Licensee unless at least ten (10) days advance written notice has been provided to the City. Upon the City Manager's or his designee written request, Licensee shall provide copies of all requested insurance policies to the City's City Attorney.
- E. Should construction be deemed necessary by Licensee in the License Area, construction plans and specifications for all proposed work shall be submitted in advance by the Licensee to the City's City Engineer for approval prior to beginning the construction process. The plans must show the depth, and location of the proposed construction and distance from existing water, storm water, wastewater, and gas lines. The Licensee shall also comply with any other laws, rules, regulations, and ordinances applicable to construction in the City and in the public right-of-way, including obtaining all required permits.
- F. Prior to the start of any approved construction, Licensee shall require every contractor and subcontractor to provide a Certificate of Insurance reflecting insurance in coverage amounts as set forth in Exhibit "C." Additionally, Licensee shall require their contractors and subcontractors to indemnify the City, its officers, officials, employees, representatives, agents, and invitees in the same manner that Licensee has provided indemnification to the City pursuant to this License.
- G. Licensee shall provide all necessary and proper safety devices so as to prevent injuries or accidents in the License Area, in as much as possible.
- H. At least 48 hours prior to beginning any approved construction, Licensee shall contact 1-800-DIG-TESS and the Lone Star Notification Center (1-800-669-8344), and any other required agency or authority. Additionally, at least 48 hours prior to beginning any approved construction, Licensee shall give notice and verify depth and location of communication lines or communication fiber optic cables, whichever is applicable, to the following:

- City Utility Departments, including Water, Storm water, Wastewater and Gas;
- American Electric Power (AEP);
- American Telephone and Telegraph (AT&T);
- CenturyTel;
- Time Warner;
- Grande Communications; and
- Any and all other certified telecommunications providers.

A City inspector may request a utility line be uncovered to verify its depth or location.

- I. Any construction process and use of the License Area by Licensee shall not interfere with the construction, installation, operation, maintenance, repair, removal or replacement by the City or any of its agents, contractors, or franchisees of any existing or future proposed sidewalks, utility lines, or other uses. If the City or any franchisee with utilities currently located in said public right-of-way needs access to the right-of-way, Licensee shall pay for removing the Parking Lot in the License Area to allow access to utility lines for maintenance, repair, removal, or replacement of the utility lines. The Licensee shall repair the License Area to its original condition or cease to use the License Area, at which time this LICENSE terminates immediately.
- J. Traffic Engineer requirements pertaining to this License, if applicable in context:
 1. At least 48 hours prior to commencing any approved construction, the Licensee shall file and obtain approval for a traffic control plan with the City's Traffic Engineer. No closure or barricading of a public right-of-way or any portion of a public right-of-way may occur before approval of the traffic control plan and, if applicable, approval of a detour or barricade plan has been obtained from the City's Traffic Engineer.
 2. Should Licensee require a trench, pit, or similar excavation be dug during approved construction, the Licensee shall file and obtain approval for barricading said trench, pit, or excavation in accordance with the Texas Manual on Uniform Traffic Control Devices from the City's Traffic Engineer. [See paragraph "P" of this License for additional requirements regarding trenches, pits and similar excavations.]
- K. If, as determined by the City Manager, damage occurs to any gas, water, storm water, or wastewater line, Licensee shall allow the City immediate access to the License Area to perform an assessment, make repairs, or take any other action deemed necessary by the City. Determination of the extent of damage and repairs necessary to restore the utility line(s) shall be made by the City Manager. All costs of the City associated with said damage and

repair, including labor and materials, shall be paid by Licensee within 30 days of the City's invoice.

- L. Should construction become necessary near existing water or wastewater lines, Licensee shall take every precaution not to disturb the soil surrounding any such lines, including all thrust blocks.
- M. If any approved work is conducted near any existing water main, it shall be done under the inspection of a City inspector at a daily rate of three-hundred ten dollars and thirty-five cents (\$310.35) for each day spent inspecting construction, installation, maintenance, repair, removal, or replacement in the License Area. A half-day, being four hours or more of work time by the City inspector, constitutes a whole working day for purposes of calculation. Any time in excess of eight hours a day, or on Saturday, Sunday or holidays, shall be calculated at a daily rate of fifty-eight dollars and eighteen cents (\$58.18) per hour. Any assessed inspection fees shall be paid by the Licensee to the appropriate City department within 30 days of the City's invoice. These amounts will be adjusted annually each year on August 1 to reflect any pay increases that may be attributable to the rates charged.
- N. The parties acknowledge that the Parking Lot is not owned by the City. At any and all times Licensee shall be solely responsible for the repair and maintenance of the Parking Lot and License Area, including any costs associated with damage occurring due to natural weather elements/occurrences or man-made forces. Should damage occur to the Parking Lot or License Area, regardless of the type of damage, Licensee shall repair the damage upon notice by the City. Failure to so repair terminates this License without any further action needed on the part of the City.
- O. Licensee shall repair, or cause to be repaired, any damage to driveways, culverts, head walls, landscaping, sidewalks, curbs, gutters, and any other structure, public or private, resulting from or caused by reason of construction, installation, maintenance, repair, removal, replacement or operation of the Parking Lot and License Area.
- P. If a trench, pit, or other excavation is required during approved construction, no trenches, pits, or other excavation, other than bore pits, shall be left open overnight, except as specifically authorized by the City's Director of Development Services and City's Engineer. Bore pits are not allowed open for a period of longer than 14 calendar days, regardless of location. All trenches, pits, or other excavations, other than bore pits, shall be backfilled by the Licensee promptly and in accordance with current City standards and specifications and as per the City inspector's request. All trenches, pits, and other excavations, *including* bore pits, shall be barricaded by the Licensee in accordance with the Texas Manual on Uniform Traffic Control Devices and as

approved by the City's Traffic Engineer. [See paragraph "J.2." for additional requirements pertaining to trenches, pits, and other excavations.]

- Q. If backfilling becomes necessary, all backfill, specifically including that in and around existing utilities, shall be made by Licensee according to current City standards and specifications and as required by a City inspector.
- R. Use of the Parking Lot authorized by this License is strictly limited to providing service to the Ayers Plaza Shopping Center, located at 4918 Ayers St., in the License Area.
- S. **INDEMNIFICATION.** *By its acceptance of this license, the Licensee covenants and agrees fully to indemnify and hold harmless the City and the elected officials and officers and employees of the City, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the City, directly or indirectly arising out of, resulting from or related to Licensee's activities under this license, including any acts or omissions of Licensee, and any respective agent, officer, director, representative, employee, consultant, or sub-licensee of Licensee, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this license, all without, however, waiving any governmental immunity available to the City under Texas law and without waiving any defense of the parties under Texas law. The provisions of this indemnification are solely for the benefit of the parties to this license and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Licensee shall promptly advise the City in writing of any claim or demand against the City or Licensee known to the Licensee related to or arising out of Licensee's activities under this license and shall see to the investigation and defense of the claim or demand at Licensee's cost. The City shall have the right, at its option and at its own expense, to participate in the defense without relieving Licensee of any of its obligations under this paragraph. The City shall cooperate with Licensee in the defense of all claims, proceedings, actions, and suits subject to this indemnification. This indemnification shall not extend to any costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability, or suit to the extent they directly or indirectly arise out of, result from or relate to the negligent or wrongful acts or omissions of City or its officers, agents, employees, representatives, consultants, or contractors. This indemnification survives the termination or expiration of this license.*

- T. All signatories signing this License warrant and guarantee that they have the authority to act on behalf of the entity represented and make this License binding and enforceable by their signatures.
- U. Unless otherwise stated in this License, any notice required or permitted to be given under this License must be in writing and sent by certified mail, return receipt requested to the following addresses:

If to Licensee: B-Y 4918 Ayers, LTD
4629 Marco Drive
San Antonio, TX 78218-5420

If to the City: City of Corpus Christi
Attn: Director, Development Services Department
P. O. Box 9277
Corpus Christi, TX 78469-9277

Any party shall, by notice to the others in accordance with the provisions of this paragraph, specify a different address or addressee for notice purposes within 10 days of any address change.

- V. This License shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created pursuant to this License are performable in Nueces County, Texas. Venue for all actions arising from, out of, or related to this License must be brought in Nueces County, Texas.
- W. The Licensee further agrees, in compliance with the City of Corpus Christi Ordinance No. 17112, to complete, as part of this License, the completed "Disclosure of Interests" form is attached and incorporated by reference into this License as Exhibit "E" as if set out here in their entireties..
- X. This instrument, including exhibits, constitutes the entire License between the City and the Licensee, and no prior written, oral, or contemporaneous promises, warranties, or representations shall be binding upon any parties. This License may only be amended by written instrument signed by authorized representatives of the City and Licensee, approved by Texas DOT and approved as required by City law.

EXECUTED IN DUPLICATE this _____ day of _____, 20____.

B-Y 4918 Ayers, LTD

Date

_____, President
Board of Trustees

ACKNOWLEDGMENT

STATE OF TEXAS §

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COUNTY OF NUECES §

This instrument was acknowledged before me on _____, 2015, by
_____, President, B-Y 4918 Ayers, LTD, on behalf of
said Corporation.

Notary Public's Signature

ATTEST:

CITY OF CORPUS CHRISTI

City Secretary

By: _____
Daniel M. Grimsbo, P.E.
Director, Development Services Department

Approved as to legal form: _____, 2015

Julian Grant
Senior Assistant City Attorney
for the City Attorney

STATE OF TEXAS §
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COUNTY OF NUECES §

This instrument was acknowledged before me on _____, 2015, by Daniel M. Grimsbo, P.E., as Director, Development Services Department, of the City of Corpus Christi, a Texas Municipal Corporation, on behalf of said corporation.

Notary Public's Signature