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City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
R-2005-0071	Resolution	In Committee
Resolution to approve License Agreement by and between the City of West Allis and Mary Queen of Heaven Church located at 2360 S. 106 St.		
Introduced: 2/15/2005		Controlling Body: Public Works Committee

COMMITTEE RECOMMENDATION adopt

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>2-15</u>			Barczak				
			Czaplewski				
			Dobrowski	✓			
			Kopplin	✓			
			Lajsic				
			Narlock	✓			
			Reinke				
			Sengstock	✓			
			Vitale	✓			
			Weigel				
			TOTAL	<u>5</u>			<u>1</u>

SIGNATURE OF COMMITTEE MEMBER

Ruth Kopplin _____
 Chair Vice-Chair Member

COMMON COUNCIL ACTION **ADOPT**

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>FEB 15 2005</u>		✓	Barczak	✓			
			Czaplewski	✓			
			Dobrowski	✓			
			Kopplin	✓			
			Lajsic	✓			
	✓		Narlock	✓			
			Reinke				✓
			Sengstock	✓			
			Vitale	✓			
			Weigel	✓			
			TOTAL	<u>9</u>	<u>1</u>		<u>1</u>



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2005-0071

Final Action:

FEB 15 2005

Resolution to approve License Agreement by and between the City of West Allis and Mary Queen of Heaven Church located at 2360 S. 106 St.

WHEREAS, the Plan Commission of the City of West Allis has approved a site/landscape plan on December 8, 2004, submitted by Mary Queen of Heaven Church for a proposed parking lot on a dead-end street located in the right of way of South 106 Street, 360 feet south of W. Lincoln Ave. to 490 feet south of W. Lincoln Ave.; and,

WHEREAS, pursuant to Plan Commission approval, Mary Queen of Heaven Church requires the use of the dead-end street as a parking lot; and,

WHEREAS, Section 66.0425 of the Wisconsin Statutes authorizes the City of West Allis to grant privileges for obstructions within the public right of way; and,

WHEREAS, the City of West Allis is willing to grant the aforesaid privileges to Mary Queen of Heaven Church.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that it hereby grants a license and privilege to Mary Queen of Heaven Church to use the dead-end street located in the right of way of South 106 Street as a parking lot, in accordance with the terms, conditions and restrictions set forth in the attached License Agreement, which is hereby approved.

BE IT FURTHER RESOLVED that the City Attorney be and is hereby authorized to make such non-substantive changes, modifications, additions and deletions to and from the various provisions of the Agreement, including any and all attachments, exhibits, addendums and amendments, as may be necessary and proper to correct inconsistencies, eliminate ambiguity and otherwise clarify and supplement said provisions to preserve and maintain the general intent thereof, and to prepare and deliver such other and further documents as may be reasonably necessary to complete the transactions contemplated therein.

BE IT FURTHER RESOLVED that the proper City officers are hereby authorized and directed to execute and deliver the aforesaid License Agreement on behalf of the City.

cc: Development Department
Engineering Department
Public Works Division

h:\Dev-R379-2-15-05\jmg

ADOPTED

February 15, 2005

Paul M. Ziehler

Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

APPROVED

February 15, 2005

Jeannette Bell

Jeannette Bell, Mayor

LICENSE AGREEMENT

This License Agreement is made and entered into on Feb 21st, 2005, by and between the City of West Allis, a municipal corporation, with principal offices at 7525 West Greenfield Avenue, West Allis, Wisconsin 53214 (hereinafter called the "City"), and Mary Queen of Heaven Church, with principal offices at 2322 South 106 Street, West Allis, Wisconsin 53227 (hereinafter called "Mary Queen of Heaven");

WITNESSETH:

WHEREAS, the City is the owner of a dead-end street located in the right of way of South 106 Street, 360 feet south of W. Lincoln Ave. to 490 feet south of W. Lincoln Ave, in the City of West Allis; and,

WHEREAS, Mary Queen of Heaven has requested a license to use the dead-end street as a parking lot; and,

WHEREAS, the dead-end street is not necessary for City purposes at this time and the City is willing to grant a license to Mary Queen of Heaven upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, The City does hereby grant license and privileges to Mary Queen of Heaven to construct and maintain a parking lot on the premises described below upon the following terms, conditions and restrictions:

A. **Licensed Premises.** The premises subject to this License is a dead-end street located in the right of way of S. 106 St., 360 feet south of W. Lincoln Ave. to 490 feet south of W. Lincoln Ave. of the City of West Allis.

B. Acceptance. Mary Queen of Heaven accepts this License and permission upon the terms, conditions and restrictions set forth herein, and in consideration of the benefits to be derived does covenant to keep and observe each and every one of said terms, conditions and restrictions.

Further, Mary Queen of Heaven accepts the licensed premises in "AS IS" condition with all faults, known or unknown, including but not limited to the environmental and geotechnical conditions of said premises. It is Mary Queen of Heaven's sole responsibility and obligation to put the said premises in such condition as will be suitable for its intended use.

C. Term. The term of this License shall be fifteen (15) years from the date hereof, unless sooner terminated as hereinafter provided.

D. Termination. To the extent the public necessity requires the use of the premises for right of way purposes, the City may terminate this License upon ninety (90) days prior written notice to Mary Queen of Heaven. This License shall also terminate if the licensed premises is vacated and discontinued by the City.

E. License Fee. Mary Queen of Heaven shall pay to the City, a license fee for the licensed premises, in the amount of One and no/100 Dollars (\$1.00), payable upon execution of this License by the parties.

F. Use. Mary Queen of Heaven shall use the licensed premises for parking of automobiles only.

G. Improvements. Mary Queen of Heaven shall, at its own expense, make all necessary improvements to the licensed premises to permit its use, in accordance with a Site Plan approved by the West Allis Plan Commission.

H. Maintenance and Repairs. During the term of this License, Mary Queen of Heaven shall pay for and make all necessary repairs and perform all required maintenance to keep and maintain the licensed premises and the improvements in good condition and repair, in accordance with all applicable governmental rules and regulations.

I. Liens. During the term of this License, Mary Queen of Heaven will not cause or permit any liens of any kind or nature to be levied against the licensed premises for any work done or materials furnished therefore at its request or insistence.

J. Indemnification. The City shall not have any liability for and Mary Queen of Heaven agrees to indemnify and hold the City harmless from and defend the City against any and all claims, actions, damages, liabilities and expenses, including, without limitation, actual reasonable attorney fees in connection with any injury or loss of life to any person or damage to any property occurring in, on or about the licensed premises, arising out of:

1. The use and occupancy of the licensed premises.
2. The condition of the licensed premises.
3. Any breach or default by Mary Queen of Heaven in the performance of any term or condition of this License on Mary Queen of Heaven's part to be performed.
4. Any inaction or action of Mary Queen of Heaven, its agents, contractors, employees, invitees, licensees or other persons in or about the licensed premises.

K. Insurance. Mary Queen of Heaven agrees to keep the licensed premises insured at its own expense in a responsible company licensed to do business in the State of Wisconsin.

The Minimum Limits of Liability shall be:

Per Occurrence Limit:	\$1,000,000
Policy Aggregate:	\$2,000,000
Personal Injury Limit:	\$1,000,000
Medical Expense Limit:	\$ 10,000

The policy shall name the City as an additional party insured as its interest may appear and shall contain an acknowledgment by the underwriters that Mary Queen of Heaven shall indemnify and save harmless the City as provided in Paragraph J., above and in a form acceptable to the City Attorney.

This License shall not take affect until all insurance required under this paragraph has been obtained and evidence thereof in the form of certificates, with original endorsements effecting coverage, are filed with and approved by the City. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

L. Vacation. During the term of this License, it is the intent of the City to initiate proceedings for the vacation and discontinuance of the licensed premises pursuant to Wis. Stats. §66.1003. However, this License shall not be construed to obligate the City in any manner whatsoever to vacate and discontinue the licensed premises; the City reserves the right to exercise its sole and absolute discretion with respect to any such vacation and discontinuance as the public interest and the dictates of applicable law may require.

M. Compliance with Laws. Mary Queen of Heaven shall observe and comply with all rules, regulations and laws now in effect or which may be enacted or amended during the continuance of this License by any municipal, county, state or federal authorities pertaining to the licensed premises and the improvements to be made pursuant to Paragraph G., above.

N. Assignment. Mary Queen of Heaven shall not assign any part or all of the licensed premises without the City's prior written consent.

O. Surrender of Licensed Premises. Subject to the vacation and discontinuance of the licensed premises, upon termination of this License, Mary Queen of Heaven shall surrender said premises to the City. Within thirty (30) days after termination, Mary Queen of Heaven, at its own expense, shall remove all of its improvements from the licensed premises and restore said premises to the condition it was in prior to entering into this License. In the event Mary

Queen of Heaven fails to do so, the City may remove any such improvements and charge the cost thereof to Mary Queen of Heaven. Mary Queen of Heaven shall not be entitled to any damages for removal of its improvements.

P. Memorandum. The parties hereto will, at any time upon the request of either one, promptly execute a memorandum or short form of this License, in recordable form, containing such of the terms and provisions of this License as such party may desire to place on record.

Q. Default. If Mary Queen of Heaven defaults in the performance or observance of any covenant or condition herein, and such default shall continue for five (5) days after written notice thereof is given to Mary Queen of Heaven, then, the City may elect, without further notice, to terminate this License and declare the term ended, to reenter the licensed premises or any part thereof, to expel and remove Mary Queen of Heaven or any other person occupying the same and to regain, occupy and use the licensed premises. The foregoing rights shall be without prejudice to any other remedies, which the City may have under this License of at law or in equity.

R. Notice. Any notice required or permitted under this License shall be deemed sufficiently given or served if sent by registered or certified mail as follows:

If to Mary Queen of Heaven: Mary Queen of Heaven Church
ATTN: Reverend Michael Merkt
2322 South 106 Street
West Allis, WI 53227

If to the City: City of West Allis
ATTN: Director, Public Works Department
7525 West Greenfield Avenue
West Allis, WI 53214

Notice is given in accordance with the provisions of this paragraph and shall be considered received when mailed.

S. Amendments. This License contains the entire understanding of the parties with respect to the subject matter hereof, and no agreement or understanding, verbal or written, not contained herein will be recognized by either party. This License may be amended, modified, supplemented or extended only by written instrument signed by each party.

T. Successors and Assigns. The terms, covenants and conditions of this License shall be binding upon and inure to the benefit of the City and Mary Queen of Heaven and their respective heirs, successors and assigns.

U. This License shall be governed by, construed and enforced under and in accordance with the laws of the State of Wisconsin.

IN WITNESS WHEREOF, The parties hereto have caused this License to be duly executed as of the date, month and year first above written.

In the presence of:

Gerald R. Ponce

MARY QUEEN OF HEAVEN CHURCH

By: Michael West

By: _____

Diane Malin

Diane Malin

CITY OF WEST ALLIS

By: Jeannette Bell
Jeannette Bell, Mayor

By: Paul M. Ziehler
Paul M. Ziehler,
CAO-Clerk/Treasurer

Approved as to form this 21 day
of Feb, 2005

Scott Post
Scott Post, City Attorney