

TO: Thomas Thomas, City Manager

Number: 2015-001

SUBJECT: License Agreement with Heritage Christian Church at 4801 44th Street

Date: 05/29/2015

Background:

The Heritage Church has requested the ability to lease or purchase park property to expand a parking area. A small portion of the property in question is considered to be flood area, however staff has worked with the Corps to get permission for the lot to be extended into this area. Staff has also worked with the Department of Natural Resources to fulfill their requirements. This was built off of work that was performed by the church.

As a result of the restrictions on this property, an agreement has been formed to enable the Heritage Church to expand the lot and conform to the requirements based upon discussions with DNR and the Corps.

The Park Board has reviewed the agreement and accepted it with the understanding that the Council will have to make the final approval of the agreement. This will allow Heritage Church to develop, construct and maintain a parking lot on this property. The primary purpose of this property is for recreational purposes. The agreement allows Heritage Church to request priority use of the property for specific occasions, to pave and maintain the property, and requires that the church maintain appropriate insurance to protect the City from liability. Attached is a copy of the license agreement and a map depicting the property to be licensed.

The area to be licensed is approximately 36 ft. by 492 ft., based upon a 2004 survey performed by Shive Hattery. The license agreement will be amended to include, Exhibit A and a legal description, which will be determined by a more recent survey. Additionally, this license agreement is subject to minor attorney modifications.

The Park Board and the City Attorney have reviewed this agreement and find it to be acceptable.

Options:

1. Approve the agreement with Heritage Church which enables them to construct parking on a portion of the park property.
2. Do not approve the Agreement.

Recommendation:

Heritage Church has actively pursued this agreement in an effort to help with their parking issues. The advantages to the City are overflow parking that will help the Backwater

Gambler's water ski shows. Staff has been able to work with the request so that compensatory wetland is not an issue for this change of use.

Submitted by:

William Nelson, Park and Recreation Director

David Morrison, City Attorney

APPROVED: Thomas Thomas, City Manager

LICENSE AGREEMENT
BETWEEN THE CITY OF ROCK ISLAND, ILLINOIS
AND THE HERITAGE CHURCH

For good and valuable consideration and the sum One Dollar (\$1.00) received on this ___ day of _____, 2015, by The City of Rock Island, Illinois, hereinafter Licensor, from Heritage Church, an Illinois not for profit religious institution located at 4801 44th Street, Rock Island, Illinois, hereinafter Licensee, said Licensor grants to said Licensee a license to develop, construct and maintain a parking lot which is to be located on City owned property located at Ben Williamson Park, hereinafter licensed property, more particularly described in Exhibit A which is attached hereto and incorporated into this License Agreement.

The term of this Agreement will be for five (5) years commencing on _____, 2015, until _____, 2020. Provided Licensee is not in default hereunder, Licensee is hereby granted the right and option to renew this License Agreement for five (5) additional terms of five years each. Each such renewal term shall automatically be extended unless Licensee notifies Licensor in writing at least 90 days prior to expiration of the original term or any renewal term that it does not desire to exercise its option to extend the term.

Said License is subject to the following terms and conditions:

1. Licensee must continue to operate as a non-profit religious institution, known as Heritage Church, located at 4801 44th Street, Rock Island, Illinois, for the duration of the license period.
2. The primary purpose of the licensed property is to be used for recreational purposes such as hiking, bicycling, walking, and jogging for parking for those individuals engaging in such activities as well as parking for those individuals attending the Back Water Gamblers water ski exhibitions and other related activities which take place at the Ben Williamson Park.
3. It is further agreed and understood that Licensee may request the priority use of the said licensed property. Requests must be given to Licensor in writing at least seventy-two (72) hours prior to the commencement of the proposed priority use. Priority use excludes the right of the Licensee to remove cars parked on the lot before the priority use period or any use in violation of the Boat Access Area Development Program <https://dnr.state.il.us/ocd/bamanual10.pdf> . Any other requests regarding the use of the lot will require prior approval from the Licensor.
4. Licensee will be responsible for the cost of paving and maintaining the licensed property.

5. Construction and maintenance of the licensed property will comply with all applicable Codes and Ordinances of the City of Rock Island, Illinois, and the laws of the State of Illinois.
6. That the Licensee agrees to maintain, and keep in good repair from both a structural and aesthetic aspect the licensed property and any improvements thereon for the duration of the License period. The Licensor, after determining that said Licensee is unable or unwilling to maintain the licensed property or its improvements in a proper condition, retains the right to exercise whatever remedies, it may have in law to remedy said situation, including the right to maintain, remove, or repair all or part of said improvements located on said licensed property. Licensee agrees to reimburse Licensor for all of its costs and expenses, including reasonable attorney's fees, should it become necessary for Licensor to undertake any remedial action to maintain or remove the improvements on said licensed property.
7. Licensee understands that there may arise in the future the need for Licensors to install future utilities or facilities as needed on or under the licensed property. Licensee agrees that should the Licensors need to remove all or part of said improvements to the licensed property in order to maintain or install any existing or future utilities or facilities, Licensors are not obligated to Licensee to repair or replace said improvements to the licensed property, nor are Licensors liable or obligated to compensate Licensee for any repair or replacement costs incurred as a result thereof.
8. Licensee agrees to obtain and maintain, with no lapse in coverage, minimum liability coverage of \$1,000,000.00 and with The City of Rock Island, Illinois, and the Rock Island Park Board being named as an additional insured on said policy or policies. Licensee shall provide to the Licensor, on an annual basis, proof of the maintenance of said policy or policies of insurance. Said minimum amount of coverage to be renegotiated between the parties at the conclusion of the first five years and subsequent renewal periods, up to twenty-five (25) years.
9. Licensee agrees that it shall indemnify, defend and hold harmless the City of Rock Island, Illinois, its officers, agents, representatives and employees from any and all acts of negligence and/or willful or wanton conduct on the part of said Licensee or its agents, representatives, heirs, assigns, contractors, subcontractors, or employees of any of the above, in the design, construction, operation and maintenance of the licensed property which is owned by the Licensor.
10. Licensee will indemnify and hold harmless the Licensor from any and all mechanics liens which may be filed as a result the development, construction, operation and maintenance of the licensed property.

11. The rights of Licensor under any provision of this Agreement shall not be affected by its prior failure to require the performance by the Licensee under such provision or any other provision of this Agreement, nor shall the waiver by the Licensor of a breach of any provision hereof constitute a waiver or any succeeding breach of the same or any other provision or constitute a waiver of the provision itself. A waiver of any right or obligation herein must be in writing and signed by the parties to this Agreement.
12. Failure of the Licensee to abide by any of the terms and conditions of this License Agreement will be considered a breach of this License Agreement and could result in Licensor terminating this License Agreement before the end of the term as referenced above.
13. Upon either early termination because of breach of the terms and conditions of this License Agreement or at the conclusion of this License Agreement Licensee agrees to return the licensed property, to Licensor in the same or similar condition as was present at the beginning of this License Agreement, excluding improvements approved by Licensor. The Licensee will provide access to the parking lot to the Licensor, through the Licensee's already existing parking lot or through the licensed property, at the expense of the Licensee. Removal of the parking lot may be required at the expense of the Licensee, upon early termination because of breach of the terms and conditions of this License Agreement.
14. The terms, conditions and obligations of this License Agreement are binding upon any heirs, assigns, purchasers, and future owners of the property, known as Heritage Church, owned by said Licensor.

Entered into this ____ day of _____, 2015.

The City of Rock Island, Illinois,
LICENSOR

Heritage Church
LICENSEE

By: _____
City Manager

By: _____

Attest: _____
City Clerk