

RESOLUTION NO. 2016-21

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF BENTON CITY TO SIGN THE RIGHT-OF-WAY LICENSE AGREEMENT BETWEEN BRYCE HILLMAN OWNER OF PROPERTY LOCATED AT 1600 DALE AVENUE AND THE CITY OF BENTON CITY

WHEREAS, Mr. Bryce Hillman, owner of real property at 1600 Dale Avenue in Benton City, Washington, desires to improve and utilize a certain 60' area of the City's right-of-way adjacent to his property as a large vehicle and equipment storage area/lay down yard; and

WHEREAS, the City does not currently foresee any plans to use this area of right-of-way in the near future and agrees to allow Mr. Hillman to use said property until such time as the City makes plans to develop it. **NOW, THEREFORE**,

THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON, hereby resolves as follows:

That the Mayor of the City of Benton City, Washington, is hereby authorized and directed to sign the Right-of-Way License Agreement between Mr. Bryce Hillman and the City of Benton City, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference; and to take all necessary steps required to complete this agreement.

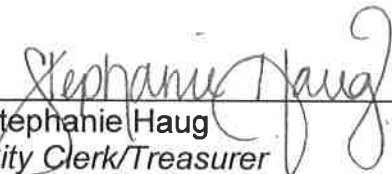
ADOPTED this 13 day of December, 2016, by the City Council of the City of Benton City, Washington, and signed in authentication of its passage this 13 day of December, 2016.

Resolution 2016-21 filed and recorded in the office of the City Clerk of the City of Benton City, Washington, this 13 day of December, 2016.




Linda Lehman
Mayor

Attest:



Stephanie Haug
City Clerk/Treasurer

Approved as to Form:



Leland B. Kerr
City Attorney

FILED FOR RECORD AT REQUEST OF:
City of Benton City, Washington

WHEN RECORDED RETURN TO:
City of Benton City, Washington
708 9th Street
Benton City, WA 99320

**RIGHT-OF-WAY ENCROACHMENT
LICENSE AGREEMENT**

THIS AGREEMENT entered into this 13 day of December, 2016, by and between Bryce Hillman, owner of the property located at 1600 Dale Avenue known as Parcel #113964020014000, hereinafter referred to as "Licensee", and the City of Benton City, Washington, a Municipal Corporation, hereafter referred to as "City."

WHEREAS, the Licensee desires to construct certain improvements which encroach upon the right-of-way and/or easement described herein, and desires to maintain such improvements within the City's right-of-way; and

WHEREAS, the Licensee recognizes that said improvements are subject to, and secondary to the City's primary public use of the right-of-way, and that such improvements may be required to be removed by Licensee or may be damaged as a result of the City's future use of its right-of-way/easement, per the terms of this Agreement; and

WHEREAS, the City is desirous to allow Licensee to make beneficial use of their improvements without creating a risk of adverse possession or easement by prescription, and without exposing the City to any liability arising out of such beneficial use; and

WHEREAS, the City and Licensee both agree that Licensee desires to make certain improvements to the right-of-way adjacent to Licensee's property and to use said right-of-way as a "lay down yard" to use for storage of certain large vehicles and equipment relating to Licensee's business; and

WHEREAS, the City and Licensee both agree that the City at any point in the future may choose to develop and use the right-of-way at this location for public use and at such time may require Licensee to remove all or part of improvements made to the right-of-way as a result of this Agreement and may require Licensee to vacate any use of said right-of-way.

NOW, THEREFORE, and in consideration of the mutual terms and covenants contained herein, this License is granted by the City to Licensee according to the following terms and conditions.

1. **Grant of License.** The City does hereby grant to Licensee a License to modify and maintain a lay down yard for the storage of large vehicles and equipment upon real property more particularly described as the sixty (60) foot right-of-way adjacent to Benton County Parcel No. 113964020014000, which right-of-way is described and depicted in Exhibit A to this Agreement.

2. **Term of License.** This License shall commence upon execution and shall be for a term of ten (10) years from the date of execution. After said ten (10) year term, this License shall renew on the anniversary of the date of execution each year for a one (1) year term, until such time as either party chooses to terminate this Agreement as provided in Section 3 below.

3. **Termination.** This Agreement may be terminated at any time by the City should the City choose to utilize the right-of-way that is the subject of this Agreement, at which time the City shall have the right to terminate this Agreement and require Licensee to remove any or all of Licensee's improvements at Licensee's cost, within ninety (90) days of written notice. In the event the Licensee does not complete removal of improvements and all encroachments upon right-of-way within the specified time, the City shall have the right to remove such improvements and encroachments, and the costs thereof shall be the responsibility of Licensee and shall be placed as a lien upon the parcel of property that is listed in Section 1 above. In the event the Licensee violates any term of this Agreement, this Agreement and the City's promises herein shall be null and void.

4. **Development.** Upon execution of this Agreement, the Licensee may improve the right-of-way by leveling the ground, laying gravel, and constructing a security fence around said right-of-way. Licensee shall make no other improvements upon the land other than what is described within this Agreement. Construction shall be completed within ninety (90) days of the execution of this Agreement. All modifications to the land shall be made in accordance with all provisions of Benton City Municipal Code. Prior to commencing construction of said improvements, Licensee shall provide detailed plans to the City Engineer for review. Licensee agrees that plans

must be approved by the City Engineer prior to commencing construction of improvements.

5. **Maintenance of Right-of-Way.** Licensee shall maintain the right-of-way encroachment areas as designated on Exhibit A, including maintaining the improvement thereon in a well maintained and working condition, free of defects, deterioration or damage which may pose a risk to users of the adjacent properties and any City utilities or property located thereon or adjacent thereto. Landscaped areas within the encroached licensed areas shall be maintained in a clean and litter-free condition with all landscaping kept in an attractive and pest-free condition. Failure to maintain the encroachment area and landscaping as herein described, shall constitute a default of this Agreement, resulting in its termination by the City and the removal of all improvements within the right-of-way, as determined by the Mayor with consent of the City Council

6. **Hold Harmless.** Licensee does hereby agree to hold harmless, defend and indemnify the City for any loss, claim, or damage arising out of Licensee's construction, maintenance, and use of the property subject to this License. In furtherance of this obligation, Licensee shall pay all costs and reasonable attorney fees associated with this obligation of indemnification.

7. **License Runs With the Land.** The terms and conditions of this License, while personal to the Licensee, shall run with the land described in the attached Exhibit A, for the benefit of its successors in interest, subject to the terms of this Agreement including the rights of termination as provided in Section 3 above, and shall not be assignable by the Licensee to any other party except on the prior written consent of the City. In the event a sale is negotiated of the real property and/or business subject to this License, the Agreement shall remain intact, and shall run with the land. To that effect, this Agreement shall be recorded with the Benton County Auditor upon its execution, and attached with the parcel of land that is the subject of the Agreement.

8. **Binding Terms.** All terms and conditions of this License shall be binding upon the parties hereto, their officers, employees, agents, subcontractors, heirs and assigns

9. **General Provisions.** Except for actions for injunctive relief or specific performance, should any dispute arise between the parties as a result of breach, interpretation, or performance of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. If the dispute is unresolved, with or without the assistance of mediation, the dispute shall be resolved by arbitration pursuant to RCW 7.04A, with venue being placed in Benton County, Washington, and the prevailing party shall be awarded its attorney fees and costs against the other as an additional judgment.

