

City of Blaine
Request for Council Action
Meeting Date: February 11, 2019

Subject: Approval of Yorkston Parking License Agreement

Department: City Manager/Finance

Prepared By: Jeff Lazenby

Agenda Location: Consent Agenda Council Action Unfinished Business

Attachments:

1. Parking License Agreement
-

Background/Summary: This license agreement grants temporary, nonexclusive, revocable license to Yorkston Oil Company for semi-truck parking on the City's recently acquired property abutting Pacific Highway (SR 543). The agreement allows Yorkston to sub-license to Kam-Way for truck parking. The duration of the license is month-to-month with no more than 12 thirty (30) day written extensions approved by the City Manager. Yorkston will remit \$2,000 monthly to the City for the license.

Budget Implications: Current Budget New Budget Request Non-Budgetary

There is no cost to the City other than staff time to administer the license. Additional revenue in the amount of \$2,000 per month will go to the City's General Fund until the license is no longer renewed.

Recommendation:

Staff recommends that the City Council authorize the City Manager to enter into and sign the Parking License Agreement with Yorkston Oil Company, Inc.

Reviewed By:

City Manager _____ Finance Director _____ City Clerk _____
(Digital Signature) (Digital Signature) (Digital Signature)

ACCESS AND PARKING LICENSE AGREEMENT

THIS ACCESS AND PARKING LICENSE AGREEMENT ("License") is entered into this ____ day of _____, 2019 by and between **YORKSTON OIL COMPANY, INC.**, a Washington Corporation, ("Yorkston") and the **CITY OF BLAINE**, a Washington Municipal Corporation (the "City"), (Yorkston and the City are collectively referred to herein as the "Parties").

WHEREAS, the City recently purchased the real property along and abutting Pacific Highway (also known as SR 543) (the "Premises"), which is legally described as:

LOT B, AS DELINEATED ON THE BOBLETT PROPERTIES, LLC LOT LINE ADJUSTMENT, ACCORDING TO THE PLAT THEREOF RECORDED UNDER WHATCOM COUNTY AUDITOR'S FILE NO. 2018-1202475;

WHEREAS, prior to the City obtaining ownership of the Premises, Yorkston leased the Premises to Kamaljit Sihota d/b/a Kam-Way Transportation ("Kam-Way") for semi-truck parking that Yorkston represents has been terminated effective as of the City's acquisition of the Premises; and

WHEREAS, Yorkston presently leases to Kam-Way property adjacent to the Premises and requests that the City grant Yorkston permission to allow Kam-Way to continue to use the Premises after the City's acquisition of the Premises; and

WHEREAS, in response to Yorkston's request, the City would agree to grant a temporary license to Yorkston for ingress and egress and parking on the Premises in accordance with the terms and conditions herein that Yorkston may sub-license to Kam-Way under the terms and conditions agreed to herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. **Grant of Temporary License.** The City hereby grants to Yorkston a temporary, non-exclusive, revocable license for ingress and egress and semi-truck parking on the Premises and for no other use ("Authorized Use"). This License shall not be construed as authorization or approval of the Authorized Use by the City under any municipal codes or other laws or regulations. Yorkston shall obey and comply with all laws, ordinances, orders, rules, regulations, and permits, with respect to the Authorized Use or any activity on the Premises, a violation of which will constitute a breach and default under this License. This License shall not be deemed to transfer any interest in the underlying real property.

2. **License Fee.** Yorkston shall pay the City a monthly license fee of \$2,000.00 (the "License Fee"). The License Fee shall be paid to the City Finance Department at the address identified in the Notice Paragraph herein, by the fifth (5th) day of the month.

3. **Duration of License.** This License shall remain in full force and effect for one month, terminating on March 1, 2019 (the "Initial Term") without any further action or notice required, unless extended in writing by the Parties. The City Manager for the City of Blaine may approve up to and no more than twelve (12) thirty (30) day written extensions of this license without City Council approval, provided that (1) there are no changes to the other terms and conditions of this License, (2) Yorkston and any sub-licensee remains in good standing under the terms of this License, and (3) any extension is executed by Yorkston.

4. **Termination and Default.** If Yorkston breaches any term of this License, including, but not limited to, failure to pay the License Fee as provided herein, the City may immediately terminate the License. Should Yorkston sub-license this License, the City shall not be obligated to provide written notice of the termination to the sub-licensee.

5. **Site Access Control.** Yorkston shall be solely responsible for maintaining and securing the Premises, including maintaining any site access during this term of this License. The City shall have access to the Premises at all times without the need to provide notice to Yorkston or the sub-licensee.

6. **Sub-License or Assignment.** Yorkston may sub-license this License to Kam-Way without further written authorization from the City; provided, however: (i) that Kam-Way must execute a written acknowledgement of acceptance of all terms and conditions of this License, and (ii) Yorkston shall not be relieved of any obligation under this License as the Licensee, and effective upon such sub-license shall guarantee to the City Kam-Way's compliance with the terms of this License. Except as provided in this Paragraph, Yorkston may not assign or sub-license this License or grant any concession or license to use the Premises or any part thereof without prior written consent of the City, which consent may be withheld at the City's sole discretion. Consent by the City to one assignment or sub-license shall not be deemed as consent to any future assignment or sub-license. Any assignment or sub-license of this License without prior written consent of the City shall be void and shall, at the City's option, terminate this License. Any sub-license or assignment of this License by Yorkston, shall not release Yorkston from liability under this License.

7. **No Representation.** The City makes no representation or warranty regarding the condition or safety of the Premises for the purposes of Yorkston conducting the Authorized Use. Yorkston, or its assignees, enters the Property at their own risk.

8. **Indemnification, Defense and Hold Harmless.** Yorkston shall defend (with legal counsel acceptable to the City), indemnify, and hold the City, its elected officials, employees, and agents harmless from any and all losses, claims, or liability for damages for bodily injury (including death) and property damage arising out of or related to the use of the Premises by any party, including any sub-licensee, except to the extent such damages are caused by the City's sole negligence.

FOR PURPOSES OF THE FOREGOING INDEMNIFICATION PROVISION ONLY, AND ONLY TO THE EXTENT OF CLAIMS AGAINST THE CITY BY YORKSTON UNDER SUCH

INDEMNIFICATION PROVISION, YORKSTON SPECIFICALLY WAIVES ANY IMMUNITY IT MAY BE GRANTED UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW. THE INDEMNIFICATION OBLIGATION UNDER THIS LICENSE SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE TO OR FOR ANY THIRD PARTY UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

The foregoing provision was specifically negotiated and agreed upon by the Parties hereto.

Yorkston's Authorization: _____

The City's Authorization: _____

9. **Insurance.** Yorkston, and if Yorkston sub-licenses any part of this License, Yorkston's sub-licensee, shall obtain and maintain general liability insurance with minimum coverage limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The City shall be named as an additional insured. In addition, Yorkston, or its sub-licensee, shall maintain pollution legal liability insurance with minimum coverage limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. If the pollution coverage is written on a claims-made basis, Yorkston and its sub-licensee shall maintain such insurance for a period of at least three (3) years following termination of the License. Yorkston shall provide the City with a certificate of insurance evidencing the required coverages prior to occupying the Premises.

10. **Loss or Damage of Personal Property.** The City shall not be responsible to Yorkston, or its sub-licensee, for any property loss or damage done to personal property on the Premises. It shall be Yorkston's responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether such loss is occasioned by Yorkston, a third party, or act of nature.

11. **Restoration of the Premises.** Yorkston shall keep the Premises clean and free of debris and garbage. Prior to termination, Yorkston shall restore the Premises to its condition as of the date of this License, except for normal wear and tear. To ensure compliance with this provision, Yorkston shall take photos of the Premises and deliver them to the City within five (5) business days following the date of this License.

12. **Notices.** All notices, requests, demands, or other communications pursuant to this License shall be in writing and shall be deemed to have been given if personally delivered or mailed, registered or certified mail, return receipt requested, postage pre-paid upon deposit in the United States mail and mailed to the Parties at the following addresses:

The City:

The City of Blaine
Attn: Jeff Lazenby
435 Martin Street, Suite 3000
Blaine, WA 98230

Yorkston:

13. **Modification.** This License may not be amended in any manner except by an instrument in writing, signed by a duly authorized representative of each party hereto in the same manner as such party has authorized this License.

14. **Execution in Counterparts.** This License may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same License.

15. **Waiver.** No waiver by any party of any provision of this License or any breach thereof shall be of any force or effect unless in writing by the party granting the waiver; and no such waiver shall be construed to be a continuing waiver. The waiver by one party of the performance of any covenant, condition, or promise shall not invalidate this License, nor shall it be considered a waiver by such party of any other covenant, condition, or promise hereunder. The waiver by either or both Parties of the time for performing any act shall not constitute a waiver of the time for performing any other act, or an identical act required to be performed at a later time.

16. **Survival.** The provisions of this License shall be effective immediately upon execution by the Parties, and, unless otherwise provided herein, the obligations shall survive termination or expiration of this License.

17. **Governing Law, Jurisdiction and Venue/Attorney Fees.** This License, and the right of the Parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the Parties agree that in any such action, venue shall lie exclusively in Whatcom County, Washington and not in the federal courts of any jurisdiction. The prevailing party in any such action shall be entitled to an award of their reasonable attorneys' fees and costs.

18. **Interpretation.** This License shall be construed without regard to the party or parties responsible for its preparation and shall be deemed to have been prepared jointly by the Parties hereto. The Parties agree that any rule of construction to the effect that any ambiguities are to be or may be resolved against the drafting party shall not be employed in the interpretation of this License to favor one party against another.

19. **Severability.** In case any one or more of the provisions contained in this License shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this License shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

20. **Entire Agreement.** The entire agreement between the Parties with respect to the subject matter herein is contained in this License. This License supersedes all of the Parties' previous understandings and agreements, written and oral, with respect to the subject matter herein.

21. **Authorization.** The individual signing below personally represents and warrants that this License has been duly authorized by Yorkston and that all corporate actions necessary to make this a binding agreement on Yorkston have been taken.

YORKSTON OIL COMPANY, INC.

CITY OF BLAINE

Title: _____

Title: Michael Jones, City Manager

Date: _____

Date _____