

RESOLUTION NO. 1636

A RESOLUTION ENTERING INTO A LICENSE AGREEMENT TO ALLOW CONSTRUCTION OF A TRASH ENCLOSURE ON CITY PROPERTY

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:


1. The City owns Tract A of the Troutdale Town Center commercial subdivision. Tract A consists of a public parking lot with associated driveways, pedestrian walkways, and various landscape islands and landscape strips.
2. In order to have a safe, attractive, and shopper-friendly atmosphere for those businesses located on the rear side, lower level of the development, the City requires that the trash from businesses within the Troutdale Town Center subdivision be stored within each building or within an enclosure built to City standards.
3. The most suitable location for an enclosed commercial trash and recycling area for use by Town Center businesses is within Tract A. Granting a license to construct and maintain the commercial and trash recycling facility on the City's property will promote the general welfare, including but not limited to, providing a safe, attractive and shopper-friendly atmosphere downtown.
4. Several lot owners and private business owners within Troutdale Town Center subdivision will benefit from the shared commercial trash enclosure on the City's property. In exchange for the license to use the City's property for this purpose, these lot owners and businesses have the responsibility for the construction, placement, and maintenance of the enclosure as well as sharing in the cost for trash hauling service.
5. A license agreement between the City and Jay Ellis, a Town Center lot owner, to specify each party's responsibilities with respect to the trash enclosure is necessary to achieve its completion.


NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The city administrator is authorized to sign the attached agreement on behalf of the City of Troutdale.

Section 2. This resolution shall take effect immediately upon adoption.

YEAS: 6
NAYS: 0
ABSTAINED: 0


Paul Thaler, Mayor
Dated: 12-12-02


Debbie Stickney, City Recorder
Adopted: December 10, 2002

After recording, return to:
City Recorder
City of Troutdale
104 SE Kibling Avenue
Troutdale, OR 97060

Recorded in the County of Multnomah, Oregon
C. Swick, Deputy Clerk
Total : 44.00
2002-233548 12/20/2002 11:24:46am ATKLM
A01 6 REC SUR DOR OLIS
30.00 3.00 10.00 1.00

**AGREEMENT FOR A SHARED TRASH STORAGE AREA
TROUTDALE TOWN CENTER PARKING LOT**

This agreement ("Agreement") is entered into this 10th day of December, 2002 by and between Jay Ellis, (dba Allow Properties, LLC) the owner of Lot 3, Troutdale Town Center, hereafter referred to as "LICENSEE", and City of Troutdale, hereafter referred to as "CITY".

RECITALS

1. CITY is the owner of Tract A of Troutdale Town Center subdivision which consists of a public parking lot with associated driveways, pedestrian walkways, and various landscape islands and landscape strips.
2. Commercial buildings have been developed on other lots in the Troutdale Town Center subdivision.
3. In order to have a safe, attractive, and shopper-friendly atmosphere for those businesses located on the rear side, lower level of the development, CITY requires that the trash from businesses within the Troutdale Town Center subdivision be stored within each building or within an enclosure built to CITY standards.
4. The most suitable space for an enclosed commercial trash and recycling facility is within Tract A behind Lot 8 in the Troutdale Town Center, as shown on the attached Exhibit A ("CITY's Property"). Granting LICENSEE a license to construct and maintain the commercial and trash recycling facility on CITY's Property will promote CITY interests, including but not limited to, providing a safe, attractive and shopper-friendly atmosphere downtown.
6. Several lot owners and private business owners within Troutdale Town Center subdivision will benefit from the shared commercial trash enclosure on CITY Property. In exchange for the license to use CITY Property for this purpose, these lot owners and businesses have the responsibility for the construction, placement, and maintenance of the enclosure as well as sharing in the cost for trash hauling service.
7. CITY and LICENSEE (on behalf of those businesses within Troutdale Town Center that have a need for a shared trash enclosure) desire to enter into an agreement for the construction, placement, and maintenance of the commercial trash enclosure on the CITY Property and for costs related to trash hauling services. This Agreement shall specify each party's responsibilities with respect to such enclosure and trash storage area.

AGREEMENT

In view of the above recitals, which are incorporated herein by reference, CITY AND LICENSEE do mutually agree to the following terms and conditions for the construction, placement, and maintenance of the trash enclosure.

A. Grant of License. CITY hereby grants to LICENSEE an exclusive revocable license for the use of CITY's Property for the placement, construction and maintenance of a commercial trash enclosure as shown on the attached Exhibit A. LICENSEE shall not use CITY'S Property for any other purpose.

B. Term. The license shall become effective on the date this Agreement is entered into and shall continue for a period of twenty (20) years, unless earlier revoked in accordance with paragraph H below.

C. Relinquishment of Materials or Improvements. Upon expiration or earlier revocation of the license, the parties agree that CITY shall acquire ownership of the materials and improvements installed, constructed or located on CITY's Property by LICENSEE during the term of the license.

D. Construction. LICENSEE agrees to construct the commercial trash enclosure to standards specified in the *Construction Standards for Public Works Facilities (May 1997)*. CITY may permit modifications to the standards to the mutual satisfaction of both parties, provided that the enclosure is not constructed in manner that is unsafe.

E. Plans and Specifications. As soon as reasonably possible, LICENSEE shall submit plans relating to construction and maintenance of the trash enclosure. LICENSEE shall not make any changes to the enclosure nor add any other improvements to CITY Property without first obtaining CITY's written consent.

F. Maintenance. LICENSEE shall be responsible for maintaining the trash enclosure area in a clean, safe and tidy condition, at LICENSEE'S sole expense. LICENSEE shall arrange for trash pickup on a frequent enough schedule that trash dumpsters and recycling containers are not overflowing and do not create odor problems.

(1) LICENSEE shall not undertake or cause to be undertaken any construction, use or maintenance activity that would either interfere with the use of other portions of Tract A or cause any kind of public safety concern or hazard on Tract A or any portion thereof.

(2) LICENSEE shall be responsible for the maintenance of the enclosure if damaged or destroyed. If the enclosure is in need of repair or replacement due to damage or destruction, LICENSEE agrees to make the repairs or to construct the replacement enclosure in a timely manner at LICENSEE'S sole expense.

G. Trash Removal. LICENSEE shall be responsible for contracting with Waste Management, Inc., or its successor franchise garbage hauler, for trash hauling service. LICENSEE shall be responsible for determining the cost share arrangement among the different businesses that use the enclosure for their trash and recycling storage. CITY shall not be responsible for the costs associated with trash removal.

H. Termination. CITY may revoke the license and terminate this Agreement at any time during the term, upon thirty (30) days' prior written notice, with or without cause.

I. Independent Contractor. The performance of LICENSEE under this Agreement shall not be construed as conferring upon LICENSEE or LICENSEE's employees, contractors or agents the status of an employee of the CITY. Neither LICENSEE nor its employees, contractors or agents has authority to make any binding commitments on behalf of CITY. Nor shall CITY be responsible for providing LICENSEE or LICENSEE's employees, contractors or agents any "employee" benefits or coverage, including, but not limited to, workers compensation.

J. Indemnification. LICENSEE shall indemnify, hold harmless and defend CITY, its officials, agents and employees, from and against any and all claims, damages, losses and expenses, including attorney fees, both at trial and on appeal, arising out of or resulting from the license or LICENSEE's performance, or failure to perform, under this Agreement.

K. Binding Effect. LICENSEE's obligations under this Agreement concern and affect LICENSEE's Property. As such, LICENSEE's obligations, individually and collectively, constitute covenants running with the land and are binding upon LICENSEE's successors.

L. Entire Agreement. This license agreement constitutes the entire agreement between the parties relating to the use of City Property by LICENSEE. There are no promises, terms, conditions or obligations other than those contained herein. This license shall supersede all prior communications, representations or agreements, either verbal or written, between the parties.

M. Notices. Notices under this Agreement shall be in writing and shall become effective upon receipt. For purposes of this Agreement, the word "receipt" shall mean the earlier of any of the following: the date of delivery as shown on the return receipt of the records of the courier; the date of actual receipt by the office of the person or entity; or three (3) calendar days after the notice was sent via first-class, certified or registered mail. Notices shall be sent to the parties at the addresses shown below:

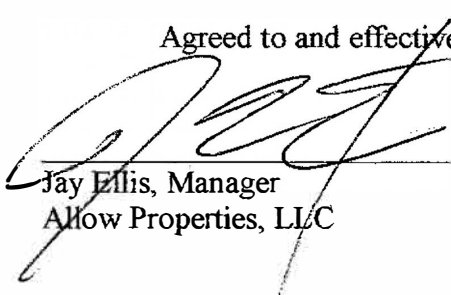
CITY: City of Troutdale
 Community Development Department
 104 S.E. Kibling Avenue
 Troutdale, Oregon 97060

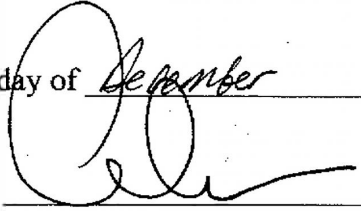
LICENSEE: Jay Ellis
PO Box 913
Fairview, Oregon 97024

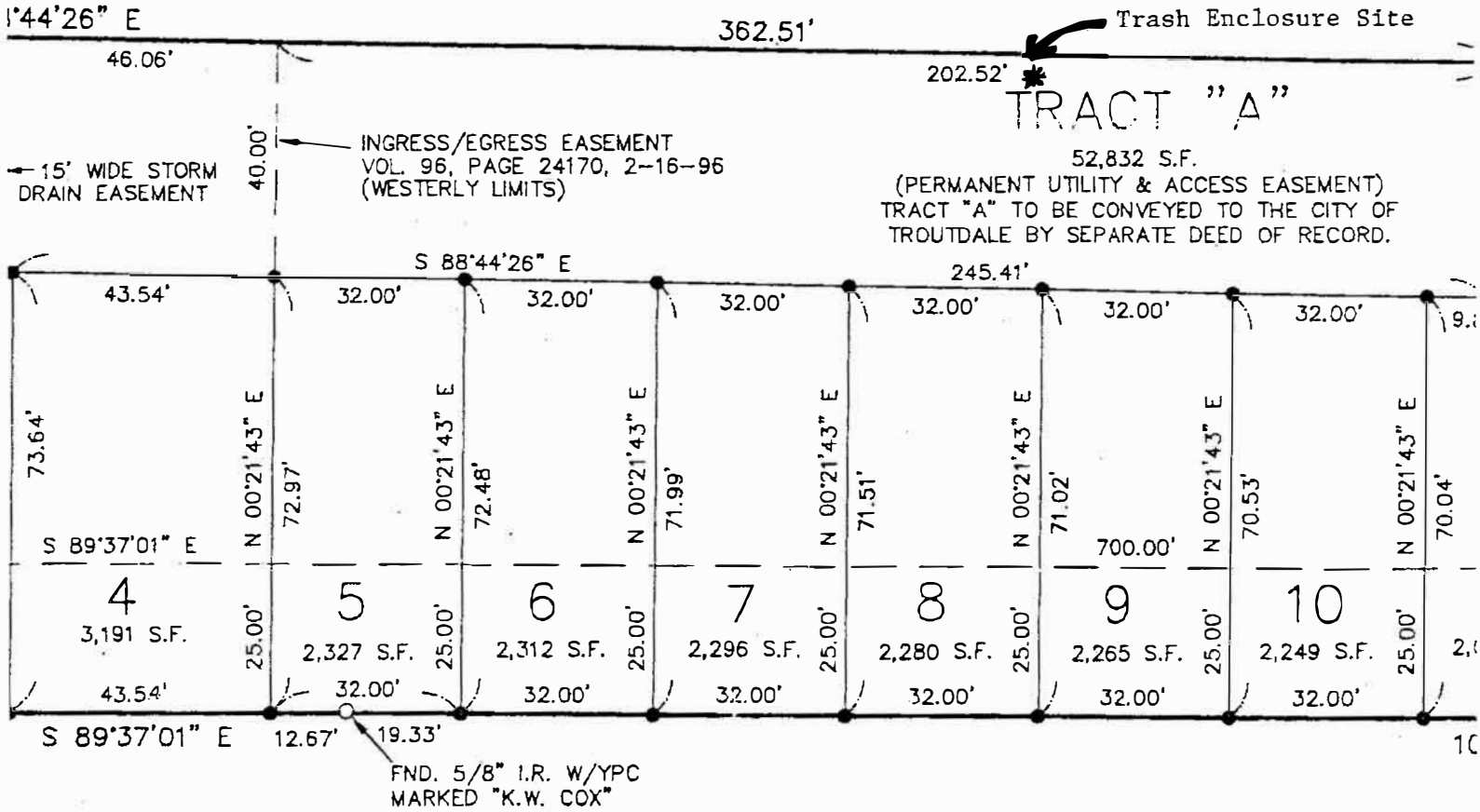
Either party may change its address by written notice to the other.

N. Waiver. Any waiver by CITY of any provision herein contained to be kept and performed by LICENSEE shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent CITY from declaring a breach either of the same provision or any other.

Agreed to and effective this 10th day of December, 2002.


Jay Ellis, Manager
Allow Properties, LLC


Erik Kvarsten, City Administrator
City of Troutdale



HISTORIC COLUMBIA HIGHWAY

DORA STREET 30'

REGISTERED PROFESSIONAL LAND SURVEYOR

Mark A. Lichtenthaler

OREGON
JANUARY 18, 1984
MARK A. LICHTENTHALER
2645

EXP. 12-31-96

I HEREBY CERTIFY THAT THIS IS A TRUE AND EXACT COPY OF THE PLAT OF "TROUTDALE TOWN CENTER".

CERTIFICATE OF ACCEPTANCE

I, Debbie Stickney City Recorder for the City of Troutdale, hereby certify that the foregoing License Agreement was approved by the City Council of the City of Troutdale on the 10th day of December, 2002 by Resolution No. 1636.

Dated this 13 day of December 2002.

Debbie Stickney
City Recorder

STATE OF OREGON)
)ss.
COUNTY OF MULTNOMAH)



Before me personally appeared the above named City Recorder and acknowledged the foregoing instrument to be the voluntary act and deed of the City of Troutdale.

Teresa Ann Hall

Notary Public for Oregon

My Commission Expires: 9-12-2003