

CITY OF MARYSVILLE
PUBLIC WORKS DEPARTMENT
HAUL ROUTE AGREEMENT

THIS AGREEMENT, made and entered into this 8 March, 2020, by and between City of Marysville Public Works, hereinafter designated as the "City", and Aero Construction hereinafter designated as the "Contractor",

WHEREAS, the Contractor plans to use city roads in transporting any item, including but not limited to products, equipment, materials, and/or supplies over the city roads listed in a Road Use Plan attached as Exhibit A; and

WHEREAS, the City is responsible for constructing, altering, improving, and maintaining city roads under the supervision and direction of the Public Works Director and/or the City Engineer; and

WHEREAS, the City may limit or prohibit classes, types or weights of vehicles which travel on City roads pursuant to RCW 36.75.270 and 46.44.080; and

WHEREAS, the City and the Contractor anticipate that as a result of the Contractor's use of City roads, accelerated deterioration may occur. Thus, repairs or improvements may be required and additional maintenance expenses may be incurred by the City; and

WHEREAS, the City is authorized to issue Haul Route Permits under the provisions of RCW 36.75.270 and 46.44.080.

NOW, THEREFORE, in consideration of the terms, conditions, and covenants contained herein, it is mutually agreed as follows:

1. PURPOSE STATEMENT:

This Haul Route Agreement shall be completed for existing, new, and expanded hauling operations that may cause accelerated deterioration of City roads. These hauling operations shall include but not be limited to: Exhibit A, pits and quarries, contractors, and developers.

2. DEFINITIONS:

- A. Routine Maintenance. "Routine Maintenance" means grading, reshaping, repair and/or modification of the road prism which would occur in the absence of the use of a road as a haul route, as indicated in a regular maintenance schedule, or at the same intervals or frequency as would normally be included in such a schedule.

- B. Additional Maintenance. "Additional Maintenance" means grading, reshaping, repair, and/or modification performed on City roads in excess of the same operations performed as routine maintenance by the City.
- C. Extraordinary. "Extraordinary" means beyond what is common or usual, or used for a special service.
- E. Contractor. "Contractor" means the person/corporation entering into this Agreement, and shall include any owner or designee, operator, manufacturer, developer, or supplier that uses City roads for the transport of any item including, but not limited to, products, equipment, materials, and/or supplies where such use may cause accelerated deterioration of such City roads.
- F. City Road. "City Road" means a street, road, or other public way, including shoulders, designated for the purpose of vehicular traffic and under the jurisdiction of the City.
- G. Director. "Director" means the City's Director of Public Works and/or the City Engineer, or his/her authorized designee.
- H. Haul Road. "Haul Road" means any City road, bridge, or other structure which is used for transporting items including, but not limited to products, equipment, materials, and/or supplies and as a result incurs deterioration.
- I. Haul Route. "Haul Route" means the system of haul roads between a source site and the destination and/or the source site and the nearest major intersection as determined by the City.
- J. Improvements. "Improvements" mean roadway prism improvements required by the Director because of the Contractor's use of the haul road.
- K. Right of Way. A general term denoting public land, property, or interest therein, usually in a strip acquired for or devoted to transportation purposes.
- L. Road Prism. "Road Prism" means the driving surface of a road (including constructed roadbed), shoulders, ditches; including backslopes, fillslopes, curbs, gutters, storm drainage facilities and sidewalks.

3. **GENERAL AGREEMENT AS TO ROAD USE:**

The Contractor understands and agrees that, although the haul roads covered by this Agreement are on the City Road System and are subject to normal traffic use the Contractor, by virtue of its extraordinary use of the roads, assumes responsibility for all damage and additional maintenance and signing costs on such roads resulting from its use of such roads as a haul route. Such costs are to be reimbursed by the Contractor as outlined in Section 7.

The City hereby agrees to the Contractor's use of the haul roads covered by this Agreement subject to the conditions contained herein. The Contractor shall be responsible for obtaining any other permits or licenses, which the City or any other governmental entity may require to operate, or move its vehicles on city roads. This Agreement shall not serve to relieve any operator of a Contractor's vehicle from complying with applicable speed limits, weight restrictions, or other posted restrictions.

Any improvements to or widening of the road necessitated by the Contractor's operations, including modification of roadway approaches to accommodate transport vehicles, shall be considered incidental to the hauling performed, shall be made at the Contractor's sole expense unless otherwise authorized in addendum to this Agreement, and shall remain in place or be removed at the Director's choice. Any such improvement shall be authorized by City permit.

4. ASSUMPTION OF RISK AND LIABILITY OF CONTRACTOR:

The City has not made and does not herein make any representation as to the present or future conditions of its roads, or the character of the traffic on any of its roads, and the Contractor assumes all risks of damage to property of or injury to Contractor, or anyone acting under the authority granted to the Contractor by this Agreement.

The Contractor agrees and covenants to indemnify, defend, and save harmless the City against and from any loss, damage, costs, charges, liability, claims, demands, or judgments, whether to persons or property, arising out of any act, action, neglect, omission, or default on the part of the Contractor, or anyone acting under the Contractor's authority, granted by this Agreement.

In case any suit or cause of action shall be brought against the City on account of any act, action, neglect, omission, or default on the part of the Contractor, or anyone acting under the Contractor's authority granted by this Agreement, the Contractor agrees and covenants to pay all costs, charges, attorney fees, and other expenses and any and all judgments that may be incurred by, or obtained against the City, including all such costs incurred by the City to enforce this provision.

The Contractor shall have Public Liability and Property Damage Insurance.

5. ROAD USE PLAN:

The Contractor and the City have agreed to the Road Use Plan, which is attached hereto and incorporated herein as Exhibit A. The Road Use Plan designates which City roads are to be used in this Haul Route Agreement. In addition, the Road Use Plan contains the following information:

- A. Vehicle trips per day of travel;
- B. Hours and dates of travel;

- C. Gross weight loadings;
- D. Vehicle types, trailers, and combinations, number of axles, distance between axles, and tire sizes; and
- E. Products, equipment, materials and/or supplies to be transported and estimated quantities of same.

Any variance from the approved Road Use Plan requires (1) an advance written request to the Director by the Contractor, and (2) if the Director agrees to such use, this Agreement shall be amended to include such additional roads. Roads so added are subject to all Sections of this agreement and may be subject to the additional provisions. The City will require a new application annually at the start of the Contractor's hauling operations.

The Director at his/her discretion may halt hauling rights under this agreement immediately, should it be found that substantial damage is being caused and or unsafe conditions have been created until such time as the Contractor rectifies the condition to the satisfaction of the Director. The City shall not be responsible for additional costs incurred by the Contractor.

6. INSPECTION AND DOCUMENTATION:

Prior to the signing of this Agreement, and prior to the start of Contractor's hauling operations on City Roads covered by this Agreement, representatives of the City and the Contractor shall make a joint pre-inspection to determine the existing condition of the road prism of such roads. The City will complete a pre-inspection report indicating the condition of such road prism and attach and incorporate such report herein as Exhibit B. The pre-inspection report will include a statement of the extent and frequency of routine maintenance on such road prism and may include photographs, video logs, or other recording devices showing the condition of the existing road prism.

The haul route will be reinspected twice each year, before and after the Summer/Fall haul period. The haul route shall also be inspected within 15 days of the City's receipt of the Contractor's certified mail notice (pursuant to Section 12D) that it has permanently ceased hauling operations. Any additional inspections shall be at the Contractor's expense. After such reinspection, the City shall complete and give to the Contractor a report of (1) the condition of the road prism(s) used by the Contractor for hauling and (2) the costs of additional maintenance and additional signing, if any, performed by the City as a result of the Contractor's operations since the previous inspection. All subsequent inspections shall be documented and attached as exhibits to this agreement and used for determining the Contractor's reimbursement obligation under Section 7.

Upon written notification of completion of the hauling operation, a joint post-inspection will be conducted, documented, and attached hereto and incorporated herein as Exhibit E.

7. CONTRACTOR REIMBURSEMENT OF CITY EXPENSES:

During the period for which this Agreement is in effect, the Contractor agrees to reimburse the City for all costs of (1) additional maintenance and (2) additional signing necessitated by the Contractor's use of City roads. It is expressly understood that the Contractor shall be responsible only for that additional maintenance and additional signing, which is caused by the Contractor's use of City roads.

Reimbursement for such additional maintenance and additional signing shall be limited to the actual cost to the City of labor (including fringe benefits), equipment, and materials, plus fifteen percent (15%) for administration. The Contractor shall make payment to the City upon receipt of detailed invoices supported by written documentation equivalent to that normally supplied by the City. The Contractor shall pay the invoiced amount to the City within 30 days from the invoice date.

9. RESTRICTIONS:

The Director has the authority to immediately restrict, during the life of this agreement, the weight or speed of the vehicles on the roadway below the legal limits applicable to such roads and vehicles for the following reasons, included but not limited to:

- A. Temporary road closures;
- B. Temporary weight restrictions caused by weather conditions;
- C. Weight restrictions posted on City bridges; and/or
- D. Where continued unrestricted use of roads under this Agreement will endanger public health, safety or welfare thereon.

10. GENERAL TERMS:

Once this Agreement has been executed and is on file with the City, the City will issue a haul route permit to the Contractor. A copy of the permit shall accompany each vehicle of the Contractor using any City haul road, and shall be shown upon demand to representatives of the City, or any law enforcement officer.

11. COMPLIANCE WITH LAWS AND REGULATIONS:

The Contractor shall comply with all Federal, State, and local laws and regulations.

12. REVOCATION AND TERMINATION:

This Agreement may be terminated by the Director and the haul route permit revoked when any of the following occurs:

- A. Violation by the Contractor of any of the terms of this Agreement.
- B. Untimely Contractor payment of any City invoice.

- C. Where continued use by the Contractor of City roads under this agreement will endanger public health, safety or welfare.
- D. The Contractor notifies the Director by certified mail that he/she has permanently ceased hauling operations, at which time a post-inspection will be conducted and an invoice issued for final payment.

Upon termination of this Agreement, for any reason, the Contractor shall immediately discontinue hauling operations covered by this Agreement.

The termination of this Agreement shall not prejudice the City's right to collect damages incurred theretofore, or thereafter accruing, on account of Contractor's use of the road.

If, after revocation of this agreement, the Contractor wishes to resume operation, the Contractor shall request to enter into a new agreement.

13. SEVERABILITY:

If any portion of this Agreement is held invalid it shall have no effect upon the validity of the remaining portions of this Agreement.

14. SCOPE AND CONSTRUCTION OF TERMS:

The definitions in this Agreement shall control the meaning of terms used herein. Where no definition is expressly stated herein, a term shall have that meaning clearly indicated by, or reasonably implied from, the context in which such term is used.

15. NOTIFICATION:

All notices and oral or written communications relating to this agreement may be forwarded to:

On behalf of the City:

Ken McIntyre, PE

Title Development Services Manager

Phone No. (360) 363-8224

On behalf of the Contractor:

Verne Wolley

Verne Wolley

Title General Manager

Phone No. 425-334-0082

IN WITNESS WHEREOF, the parties hereto execute this Agreement as of this 8th day of March, 2021, ~~2020~~, this Agreement shall remain in effect until revoked or terminated as provided under Section 13.

City of Marysville

CONTRACTOR

Signature _____

Signature Verne Wolley

Name Kenneth J. McIntyre, PE
Development Services Manager

Name Verne Wolley

By _____

Title General Manager

Address 3827 Bickford Ave, Snohomish

Phone 425-334-0082

ACKNOWLEDGMENT

STATE OF WASHINGTON)

) SS

(Individual Acknowledgment Form)

CITY OF Snohomish)

This is to certify that on this 8th day of March, 20 21, before me, the undersigned, a notary public, personally appeared Verne Wolley, to me known to be the person(s) who executed the foregoing instrument, and acknowledged to me that he signed the same as his free and voluntary act and deed; that he/she/they have the authority to sign this document as he/she/they have indicated, and for the uses and purposes therein mentioned.

Given under my hand and official seal this 8th day of March, 20 21.

Monica L. Lawson

Notary Public in and for the State of Washington
Residing at Snohomish, WA



ACKNOWLEDGMENT

STATE OF WASHINGTON)

) SS

(Corporation Acknowledgment Form)

CITY OF _____)

This is to certify that on this ____ day of _____, 20____, before me, the undersigned, _____ a _____ notary _____ public, _____ personally appeared _____ and _____, of the corporation that executed the foregoing instrument and acknowledged said instrument and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that _____ authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

Given under my hand and official seal this _____ day of _____, 20____.

Notary Public in and for the State of Washington
Residing at _____

EXHIBIT A

EXHIBIT B