



Agency Haul Road/Detour Agreement		Agency and Address
Agreement Number		Section / Location
State Route Number	Control Section Number	
Region		Description of Roads or Streets
Intended Use (Haul Road or Detour Road)		
Vehicle Restrictions		

This Agreement is between the Washington State Department of Transportation (WSDOT) and the above-named governmental entity (Agency) hereinafter referred to individually as the Party and collectively as the Parties.

Recitals

1. WSDOT is planning the construction or improvement of a section of state highway as shown above;
2. WSDOT plans to use the Agency roads or streets described above and as further detailed in red on the attached Exhibit "A" for detour routes or for hauling purposes during construction of the project, and
3. It is anticipated that use of the Agency's roads or streets for such purposes will result in the need for additional maintenance work on the roads or streets, the cost of which should be borne by WSDOT.

Now Therefore, pursuant to chapter RCW 47.28.140 and in consideration of the terms, conditions, and performances contained herein, the recitals as stated above which are incorporated and made a part hereof, and any Exhibits attached hereto, it is mutually agreed as follows:

1. PURPOSE

- 1.1 The Agency hereby agrees to WSDOT's use of the roads or streets covered by this Agreement subject to the conditions contained herein.
- 1.2 Immediately prior to the beginning of WSDOT's use of the roads or streets, the Parties shall make a joint condition inspection. WSDOT shall prepare a "Memorandum" of the existing condition of said roads or streets, attached hereto as Exhibit B. The Memorandum shall include a statement of the extent and frequency of routine maintenance operations normally carried out by the Agency, shall contain an explanation of any repair or maintenance required prior to WSDOT's use, and may include photographs showing condition of the existing roadway. The Memorandum shall establish the "Baseline Condition" of the roads or streets that are the subject of this Agreement.
- 1.3 In the event that the Memorandum establishes the need for the repair or maintenance of the roads or streets prior to WSDOT's use, the Parties shall prepare an addendum to the Memorandum that provides a detailed description of work to be performed and division of responsibilities for performance of the work. Any repair or maintenance of the roads and streets prior to WSDOT's use shall be documented in the addendum to the Memorandum.
- 1.4 The Agency agrees not to restrict the legal size, weight, or speed of vehicles using the roads or streets covered by this Agreement except as stated above under Vehicle Restrictions.

- 1.5 It is expressly understood that WSDOT shall be responsible only for the maintenance and repairs of the Local Agency's roads or streets specifically attributable to the project use. Upon completion of use of the roads or streets covered by this Agreement the Parties will conduct a joint inspection to identify any damage to the roads or streets occasioned by WSDOT's use thereof. The Baseline Condition as established in the Memorandum, and any addendum thereto, will be used for purposes of comparison. The Parties shall document the need for repair or maintenance of the roads or streets based on WSDOT's use and shall determine the cost of the required maintenance and repair to restore the roads or streets to the Baseline Condition.
- 1.6 WSDOT shall reimburse the Agency for the actual direct and related indirect costs of the required maintenance and repairs to restore the roads or streets to the Baseline Condition or WSDOT shall complete the repair to the satisfaction of the Agency.
- 1.7 When indicated by a check mark in the box the Agency is a county, WSDOT and the Agency acknowledge that the terms of this Agreement satisfies the requirements of WAC 468-18-030.

2. PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence on _____ and be completed on _____ unless terminated sooner as provided in this Agreement or extended through a properly executed amendment.

3. LEGAL RELATIONS

- 3.1 It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other Party. No joint venture or partnership is formed as a result of this Agreement.
- 3.2 The Parties shall be deemed independent contractors for all purposes, and the employees of the Parties or any of their contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the other Party.

4. INDEMNIFICATION

- 4.1 To the extent allowable under law, each Party to this Agreement will protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from, each Party's negligent acts or omissions with respect to the provisions of this Agreement. Neither Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, their agents, officials or employees, and/or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein will be valid and enforceable only to the extent of the negligence of the indemnifying Party, its agents, officials or employees.
- 4.2 The Parties agree that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees or agents. For this purpose only, the Parties, by mutual negotiation, hereby waive, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.
- 4.3 This indemnification and waiver will survive the termination of this Agreement.

5. DISPUTE RESOLUTION

- 5.1 The Parties shall work collaboratively to resolve disputes and issues arising out of, or related to, this Agreement. Disagreements shall be resolved promptly and at the lowest level of hierarchy. To this end, following the dispute resolution process shown below shall be a prerequisite to the filing of litigation:
 - 5.1.1. The Parties designated representatives shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. The representatives shall communicate regularly to discuss the status of the tasks to be performed hereunder. The representatives shall cooperate in providing staff support to facilitate the performance of this Agreement and the resolution of any disputes or issues arising during the term of this Agreement.

- 5.1.2. A Party's representative shall notify the other Party in writing, with email being acceptable, of any dispute or issue that they believe may require formal resolution. The representatives shall meet within five (5) working days of receiving the written notice and attempt to resolve the dispute.
- 5.1.3. In the event the representatives cannot resolve the dispute or issue, the Agency Public Works Director and WSDOT's Region Administrator, or their respective designees, shall meet and engage in good faith negotiations to resolve the dispute.
- 5.1.4. In the event the Agency and WSDOT cannot resolve the dispute or issue, the Agency and WSDOT shall each appoint a member to a Dispute Board. These two members shall then select a third member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. All expenses for the third member of the Dispute Board shall be shared equally by both Parties; however, each Party shall be responsible for its own costs and fees.

6. RECORDS AND AUDIT

All records related to the Work performed under this Agreement shall be held and kept available for inspection and audit for a period of six (6) years from the date of termination of this Agreement or any final payment authorized under this Agreement, whichever is later. Each Party shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. In the event of litigation or claim arising from the performance of this Agreement, the Agency and WSDOT agree to maintain the records and accounts until such litigation, appeal or claims are finally resolved. This section shall survive the termination of this Agreement.

7. TERMINATION

7.1 This Agreement may be terminated, without penalty or further liability as follows:

7.1.1 Termination for Convenience

This Agreement may be terminated for convenience by WSDOT at any time. The notice of intent to terminate for convenience shall be issued in writing no less than thirty (30) working days in advance of termination. WSDOT shall not be liable to the Agency for any direct, indirect, or consequential damages arising solely from termination of this Agreement.

7.1.2 Termination for Cause

This Agreement may be terminated for cause by either Party if the other Party does not fulfill in a timely and proper manner its obligations under this Agreement, or if the other Party violates any of the terms and conditions of this Agreement. The notice of intent to terminate for cause shall be issued by a Party in writing and the other Party shall have the opportunity to correct the violation or failure within fifteen (15) working days of the date of the notice. If the failure or violation is not corrected within the time allowed, this Agreement will automatically terminate.

7.1.3 Termination for Withdrawal of Authority

This Agreement may be terminated by WSDOT in the event that WSDOT's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement. The notice of intent to terminate for withdrawal of authority shall be issued by WSDOT in writing no less than seven (7) calendar days in advance of termination. No penalty shall accrue to WSDOT in the event termination under this section is exercised. This section shall not be construed to permit WSDOT to terminate this Agreement in order to acquire similar services from a third-party.

7.1.4 Termination for Non-Allocation of Funds

This Agreement may be terminated by either Party if insufficient funds are allocated or appropriated to the Party to continue its performance of this Agreement in any future period. The notice of intent to terminate for non-allocation of funds shall be issued in writing no less than seven (7) calendar days in advance of termination.

7.2 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

8. GENERAL

8.1 Assurances. The Parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, State, and local laws, rules, and regulations as they currently exist or as amended.

- 8.2 Interpretation. This Agreement shall be interpreted in accordance with the laws of the state of Washington. The titles to paragraphs and sections of this Agreement are for convenience only and shall have no effect on the construction or interpretation of any part hereof.
- 8.3 Amendments. This Agreement may be amended only by the mutual written agreement of the Parties executed by personnel authorized to bind each of the Parties.
- 8.4 Waiver. A failure by a Party to exercise its rights under this Agreement shall not preclude that Party from the subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing and signed by an authorized representative of the waiving Party and attached to the original Agreement.
- 8.5 All Writings Contained Herein. This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties.
- 8.6 Venue. The Venue of any action brought under this Agreement involving WSDOT shall be in Superior Court for County, State of Washington.
- 8.7 Severability. If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.
- 8.8 Authority to Bind. The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

9. COUNTERPARTS

This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each Party, for all purposes. Electronic signatures or signatures transmitted via email in portable document format (“PDF”) may be used in place of original signatures on this Agreement. Each Party intends to be bound by its electronic or PDF signature on this Agreement and is aware that the other Party is relying on its electronic or PDF signature.

In Witness Whereof, the parties hereto have executed this Agreement as of the party’s date signed last below.

AGENCY	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
By: _____	By: _____
Printed: _____	Printed: _____
Title: _____	Title: _____
Date: _____	Date: _____