



**CITY COUNCIL**

**AGENDA BILL # AB23-0072**

**City of Algona  
200 Washington Blvd.  
Algona, WA 98001**

ITEM INFORMATION			
<b>SUBJECT:</b>  <b>ROW Lease Agreement</b>	<b>Agenda Date: March 27<sup>th</sup>, 2023</b>		
	Department/Committee/Individual	Created	Reviewed
	Mayor		X
	City Administrator		X
	City Attorney		
	City Clerk		X
	Finance Dept		
	PW/Utilities		X
	Planning Dept	X	X
		Community Services	
<b>Cost Impact:</b>	Police Dept		
<b>Fund Source:</b>	Finance Committee		
<b>Timeline: 1<sup>st</sup> review – 3/27/23</b>	Planning Commission		X
	Civil Service Committee		
<b>Staff Contact: James Schrimpsheer, Acting City Administrator</b>			
<b>Attachments: ROW Lease Agreement; ROW Vacation Map</b>			
<b>SUMMARY STATEMENT:</b>			
<p>King County has reached out to staff and asked how to handle the ROW Lease agreement that is in place near the current Transfer Station. Council has previously agreed to a ROW vacation for the same area (Ordinance 1211-22, passed 10/11/22). The City has met with Karen Herndon, Project Manager with King County for the SCRTS project, and the County is preparing a letter to the City requesting the lease agreement to be terminated.</p>			
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b>			
<b>RECOMMENDED ACTION:</b>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date:</i>	<i>Action:</i>	<i>Vote:</i>	

**CITY OF ALGONA  
RESOLUTION NO. 1221-20**

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A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALGONA, WASHINGTON, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A RIGHT-OF-WAY USE AGREEMENT WITH KING COUNTY FOR VEHICULAR PARKING AND STORMWATER MANAGEMENT ON A PORTION OF THE WEST VALEEY HIGHWAY PUBLIC RIGHT-OF-WAY.

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WHEREAS, pursuant to AMC 10.29.030, the City Council may by resolution authorize the extended use of certain City right-of-way for vehicular parking by the owner or occupant of the adjacent property; and

WHEREAS, King County, by and through its Solid Waste Division, owns the property located at 35315 West Valley Highway S. in Algona, and is currently developing said property as a solid waste transfer station; and

WHEREAS, King County has requested permission from the City to use a portion of the West Valley Highway public right-of-way, comprised of approximately 10,000 square feet and located outside the travel lane thereof, for purposes of parking trucks and retaining storm runoff in conjunction with King County's development of the adjacent property; and

WHEREAS, the City Council has evaluated King County's request under the decisional criteria enumerated at AMC 10.29.030, and has determined to authorize the County's requested use of the West Valley Highway public right-of-way as provided herein;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALGONA, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Findings. The City Council has evaluated King County's request under the decisional criteria enumerated at AMC 10.29.030(C)(1), and has determined that the request satisfies said criteria as set forth below:

- a. *The size and location of the designated right-of-way area.* The size of the designated right-of-way area that has been requested by King County for extended use is relatively small in scale relative to the larger right-of-way itself and the surrounding area. The location of the right-of-way is within an area that is not residentially developed or otherwise heavily used for public and/or private purposes.
- b. *The number and size of vehicles that would be parked within the designated right-of-way area.* As set forth in the Right-of-Way Use Agreement attached

hereto as Exhibit A, the number of vehicles that would use the designated right-of-way area (i.e., no more than eight (8) trucks) is relatively small.

- c. *The anticipated impact upon the surrounding neighborhood.* King County's use of the designated right-of-way area is anticipated to have a *de minimus* impact on the surrounding neighborhood. Vehicles have historically used the designated right-of-way area for parking; contractually authorizing this use through the attached agreement will essentially extend and formalize a longstanding practice.
- d. *The anticipated impact upon vehicular, nonmotorized and pedestrian travel by the public.* King County's use of the designated right-of-way area is anticipated to have a modestly beneficial impact upon vehicular, nonmotorized and pedestrian travel by the public. By allowing for the trucks at issue to be parked immediately adjacent to King County's property, this will eliminate the necessity for the trucks to be relocated to off-site parking areas on a daily basis, thereby reducing the total number of vehicular trips on City streets.
- e. *The anticipated impact upon the public health, safety and welfare.* King County's use of the designated right-of-way is not anticipated to have any negative impact on the public health or welfare. For the reasons explained above, there will be a modest beneficial impact on public safety.

Section 2. Use of Public Right-of-Way Area Authorized; Execution Authority. Pursuant to AMC 10.29.030(C), the City Council hereby authorizes King County to use a portion of the West Valley Highway for vehicular parking and stormwater management subject to the terms and conditions identified in the Right-of-Way Use Agreement provided in Exhibit A, attached hereto and incorporated herein by this reference as if set forth in full. The Mayor is hereby authorized to execute said Agreement on behalf of the City, inclusive of any minor revisions deemed reasonably necessary and appropriate by the Mayor and approved as to form by the City Attorney.

Section 3. Effective Date. This resolution shall take effect immediately upon passage.


PASSED by the City Council of the City of Algona, at its regular meeting thereof this 24th day of August, 2020.

CITY OF ALGONA, WASHINGTON

  
\_\_\_\_\_  
David E. Hill, Mayor

(SEAL)

ATTEST:

  
\_\_\_\_\_  
Jennifer Garnica  
City Clerk/Treasurer

## Exhibit A

### RIGHT-OF-WAY USE AGREEMENT

THIS RIGHT-OF-WAY USE AGREEMENT ("Agreement") is made and entered into this 24th day of August, 2020, by and between the CITY OF ALGONA, Washington municipal corporation (**the "City"**) and KING COUNTY SOLID WASTE DIVISION, a Washington municipal corporation ("**Grantee**").

#### RECITALS

WHEREAS, the City owns or otherwise controls the West Valley Highway public right-of-way located at 35315 West Valley Highway Algona, WA 98001, legally described in Exhibit A and depicted in Exhibit B, each of which exhibits are attached hereto and incorporated herein by this reference as if set forth in full ("**Right-of-Way Area**"); and

WHEREAS, Grantee owns and is currently developing as a regional transfer station the parcel immediately adjacent to the Right-of-Way Area, identified as APN 3356407870 ("**Grantee's Parcel**"); and

WHEREAS, Grantee desires to utilize the Right-of-Way Area for the purpose of parking trucks and retaining storm runoff in conjunction with Grantee's development and use of Grantee's Parcel; and

WHEREAS, pursuant to AMC 10.29.030, the City Council may in its discretion authorize the extended use of designated City right-of-way for vehicular parking by the owner of the adjacent property in accordance with the standards and procedures set forth therein; and

WHEREAS, on August 24, 2020, the City Council passed Resolution No. 1221-20 authorizing the City's execution of this Agreement subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, as well as other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantee and the City (collectively, "**the parties**") agree and covenant as follows:

#### TERMS

Section 1. Right-of-Way Use Authorized. The City hereby grants to Grantee, its employees, contractors and agents a temporary, nonexclusive license to enter upon and utilize the Right-of-Way Area, subject to the terms and conditions set forth herein.

1.1 **Right-of-Way Area.** The license granted under this Agreement is expressly limited to the Right-of-Way Area as herein defined. Grantee shall not enter upon or use any City-owned or City-operated property, including without limitation any other portion of the West Valley Highway public right-of-way for the Permitted Uses except the Right-of-Way Area without the City's express written permission, which permission may be withheld for any reason in the City's sole discretion.

1.2 **Permitted Uses.** The license granted hereunder shall be for, and only for, the following activities and uses (collectively, the "**Permitted Uses**") by Grantee and Grantee's employees, contractors, and agents, that are directly related to Grantee's development and use of Grantee's Parcel:

- a. The portion of the Right-of-Way Area designated on Exhibit B as "Truck Parking" may be utilized by Grantee for the purpose of parking no more than 10 heavy trucks.

- b. The portion of the Right-of-Way Area designated on Exhibit B as "Stormwater Facility" may be utilized by Grantee for the purpose of installing, operating, maintaining and repairing a stormwater retention facility.

Grantee shall not enter upon or use the Right-of-Way Area, or allow such entry and use, for any purpose other than the Permitted Uses without the City's express written permission, which permission may be withheld for any reason in the City's sole discretion.

1.3 **Costs.** Grantee shall bear all costs and expenses associated with the Permitted Uses and Grantee's entry upon and use of the Right-of-Way Area hereunder.

1.4 **Maintenance.** Grantee shall keep and maintain the Right-of-Way Area in a clean, orderly and safe condition.

**Section 2. Payment.** In consideration for Grantee's entry upon and use of the Right-of-Way Area hereunder, Grantee shall remit payment to the City in the amount of FOUR HUNDRED FIFTY-NINE DOLLARS and seventy-five cents (\$459.75) no later than the 5<sup>th</sup> day of each month during the term of this Agreement. Such payment shall be in the form of a business check or money order made payable to the City of Algona. The parties mutually agree that said payment represents the full and true value of the Right-of-Way Area in accordance with RCW 43.09.210. The parties further mutually agree that Grantee's entry upon and use of the Right-of-Way Area is exempt from leasehold tax pursuant to Chapter 82.29A RCW and Chapter 458-29A WAC.

**Section 3. Improvements; Site Remediation.** Grantee shall not improve or otherwise alter the surface of the Right-of-Way Area without the City's express written permission, which permission may be withheld in the City's sole discretion. Upon the expiration or termination of this Agreement, Grantee shall, at its sole expense, promptly remove its vehicles, personal property and any authorized improvements from the Right-of-Way Area and shall reasonably restore the Right-of-Way Area to the condition approximately extant prior to Grantee's entry and use thereof. The provisions of this section shall survive the expiration or termination of this Agreement.

**Section 4. Term; Termination.** This Agreement shall commence on the date first written above, and shall expire automatically after five (5) years, unless terminated earlier by either party or extended by mutual written agreement of the parties. Either party may terminate this Agreement upon 30 days written notice to the other party.

**Section 5. Condition of Property; Disclaimer.** Except as expressly provided herein, for purposes of this Agreement, Grantee knowingly accepts the Right-of-Way Area in its present condition on the terms noted in this Agreement. Grantee accepts the Right-of-Way Area "AS IS" "and "WITH ALL FAULTS," and the City makes no, and hereby expressly disclaims any, warranty of any kind, express or implied, with respect thereto. Without limiting the generality of the preceding sentence, it is expressly agreed that the City makes no warranty as to the marketability or fitness of the Right-of-Way Area for any particular purpose.

**Section 6. Regulatory Compliance.** At all times relevant to this Agreement, Grantee shall comply fully with all applicable federal, state and local laws, regulations and permitting requirements in conjunction with Grantee's entry upon and use of the Right-of-Way Area.

**Section 7. Risk of Loss.** It is expressly understood that Grantee's performance under this Agreement is to be undertaken at Grantee's sole risk, and that Grantee assumes the responsibility and risk of all loss or damage to persons, materials, tools, equipment, or work which may arise from any cause whatsoever.

**Section 8. Indemnification and Hold Harmless.** Grantee shall fully indemnify, protect, defend and hold the City, its officers, officials and employees harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or in connection with the Agreement, Grantee's use of the Right-of-Way Area, or from any activity, work, or thing done, permitted, caused or suffered by Grantee upon or about the Right-of-Way Area, except for injuries and damages caused by the sole negligence of the City. Grantee's obligations under this section shall specifically include, but are not limited to, responsibility for any claims, injuries, damages, losses and suits arising out of or in connection with:

(i) Grantee's entry upon and use of the Right-of-Way Area, including without limitation any authorized improvements and/or site remediation work;

(ii) The transportation of any personnel, materials, supplies, tools and/or equipment to, and their removal from, the Right-of-Way Area;

(iii) Any damage or injuries to persons or property caused by or otherwise resulting Grantee's acts and omissions, including without limitation any damage or injuries resulting in whole or in part from storm runoff; and

(iv) Any personal injury suffered and/or caused by any employee, contractor, subcontractor, licensee or agent of Grantee.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Grantee and the City, its officers, officials, employees, and volunteers, Grantee's liability hereunder shall be only to the extent of Grantee's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes Grantee's waiver of immunity under the Industrial Insurance provisions of Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this section shall survive the expiration or termination of this Agreement.

**Section 9. Insurance.** Grantee shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the obligations hereunder by Grantee, its agents, representatives or employees.

A. **Minimum Scope of Insurance.** Grantee shall obtain insurance of the types described below:

1. **Commercial General Liability** insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises, contractual, operations, products-completed operations, and stop-gap liability. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under such policy using ISO Additional Insured - Managers or Lessors of Premises Form CG 20 11 or substitute endorsement providing equivalent coverage and shall be furnished with a certificate of such insurance, which shall bear an endorsement that the same shall not be canceled except upon not less than 30 days' prior written notice to Owner.
2. **Automobile Liability** insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be as least as broad as Insurance Service Office (ISO) form CA 00 01.

B. Minimum Amounts of Insurance. Grantee shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 for personal injuries or property damage.
2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. Grantee's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of Grantee's insurance and shall not contribute with it.
2. Grantee's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice has been given to the City.

D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage. Grantee shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance of Grantee.

F. No Limitation. Grantee's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity.

Section 10. Safety. Grantee shall take all necessary precautions for the safety the public, Grantee's employees, contractors, licensees and agents at all times relevant to this Agreement, and shall comply with all applicable provisions of federal, state and local regulations, ordinances and codes regarding safety.

Section 11. Regulatory Authority Preserved. Grantee expressly acknowledges that the City is a municipal corporation organized under the laws of the state of Washington and has executed this Agreement in its capacity as owner or operator of the Right-of-Way Area. Nothing in this Agreement shall be construed as waiving, abridging or otherwise limiting the City of Algona's regulatory authority, police power and/or legislative discretion, which are hereby expressly reserved in full. Without prejudice to the foregoing, nothing in this Agreement shall be construed as entitling Grantee to receive any permit, license or other regulatory approval, or as waiving or excusing Grantee's compliance with any applicable regulatory process.

Section 12. Jurisdiction/Venue. This Agreement shall be construed in accordance with the laws of the State of Washington and the exclusive venue for any litigation arising out of this Agreement shall be in King County Superior Court. The prevailing party in any litigation brought to enforce the terms of this Agreement shall be entitled to its reasonable attorney's fees and costs.

Section 13. No Waiver. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

Section 14. Severability. Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision.



Section 15. Entire Agreement. Other than the documents attached to this Agreement as exhibits, there are no other verbal or written agreements that modify this Agreement, which contains the entire understanding of the parties regarding the subject hereof.

Section 16. Notices. Notices to the parties under this Agreement shall be sent to the following addresses:

City of Algona  
Attn: City Administrator  
200 Washington Blvd.  
Algona, WA 98001

King County Solid Waste Division  
King Street Center  
201 S. Jackson St., Suite 701  
Seattle, WA 98104

Section 17 No Third-Party Beneficiaries. This Agreement is for the exclusive benefit of the signatory parties and may only be enforced thereby. Nothing in this Agreement shall be construed as vesting any rights in or for any third-parties.

Section 18. Prescriptive Rights Disclaimed. The parties mutually acknowledge that Grantee's entry upon and use of the Right-of-Way Area under this Agreement is permissive, and shall in no manner ripen into or otherwise form the basis for any claim of prescriptive easement, adverse possess or other prescriptive right to use or occupy the Right-of-Way Area. This disclaimer is made without concession that the Right-of-Way area is, or could be, subject to any such prescriptive claim under Washington law.

Section 19. Recording. This Agreement shall be filed with the King County Recorder's Office at Grantee's expense.

Section 20. Cost Recovery. In addition to the payment specified in Section 2, Grantee shall separately remit to the City a one-time, nonrefundable payment in the amount of ONE THOUSAND DOLLARS and no cents (\$1,000.00) to defray the City's staff and legal expenses incurred in the drafting, negotiation and processing of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

KING COUNTY SOLID WASTE DIVISION

By:

  
Date

Date

CITY OF ALGONA

By:

  
David E. Hill, Mayor

Date

Date

9-9-2020

ATTEST:

  
Jennifer Garnica, City Clerk

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Pat D. McLaughlin is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that she was authorized to execute the instrument as the Division Director of King County Solid Waste Division, and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: September 14, 2020



Joycelyn A. Matsukawa  
Printed: Joycelyn A. Matsukawa  
Notary Public in and for Washington  
My appointment expires: 4/24/2022

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that **David Hill** is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Algona to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: September 9, 2020



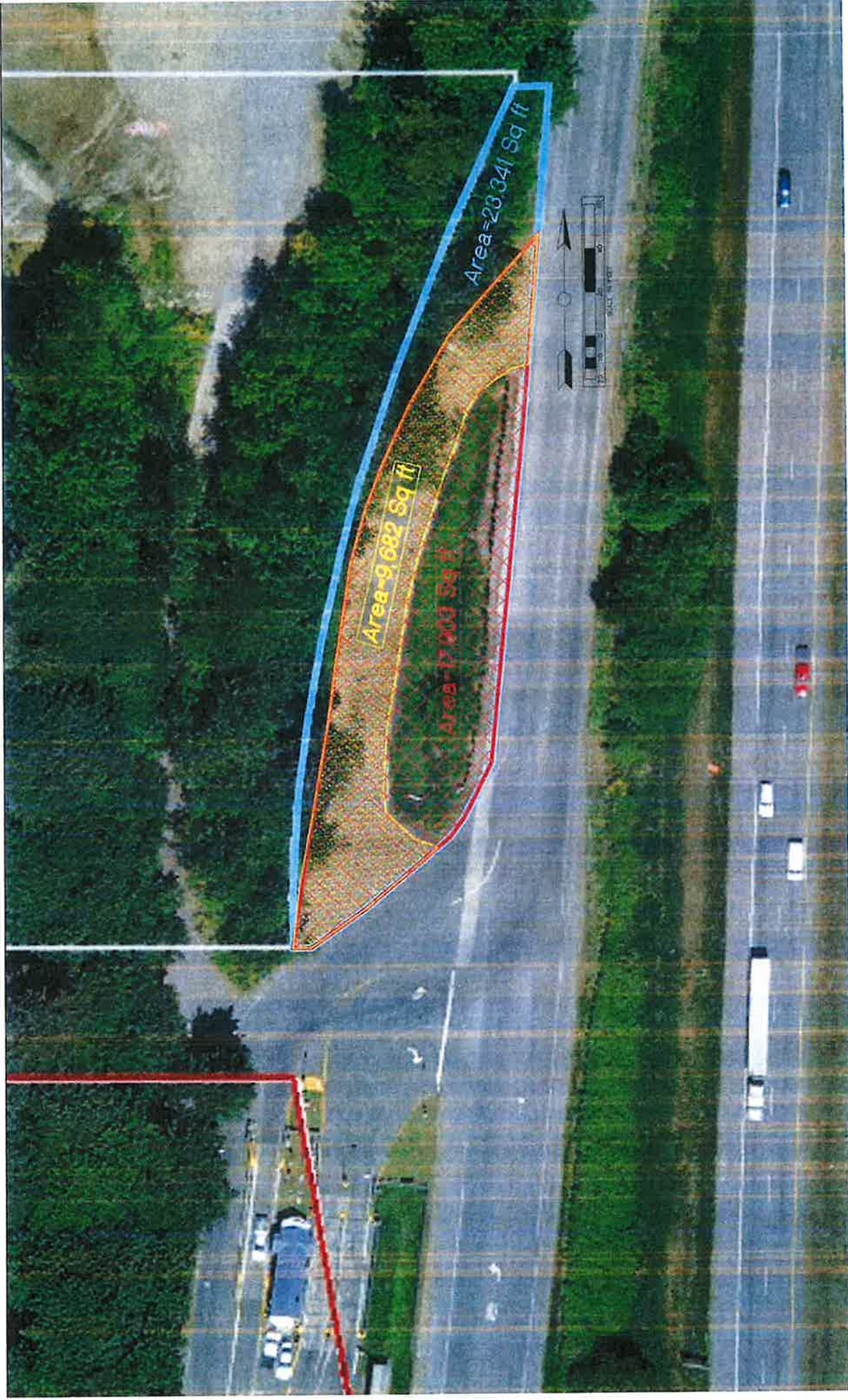
Julie Knauss  
Printed: Julie Knauss  
Notary Public in and for Washington  
My appointment expires: 4/30/2022

**EXHIBIT A**

**RIGHT-OF-WAY LEGAL DESCRIPTION**

35101 West Valley Highway. Parcel #3356407890.

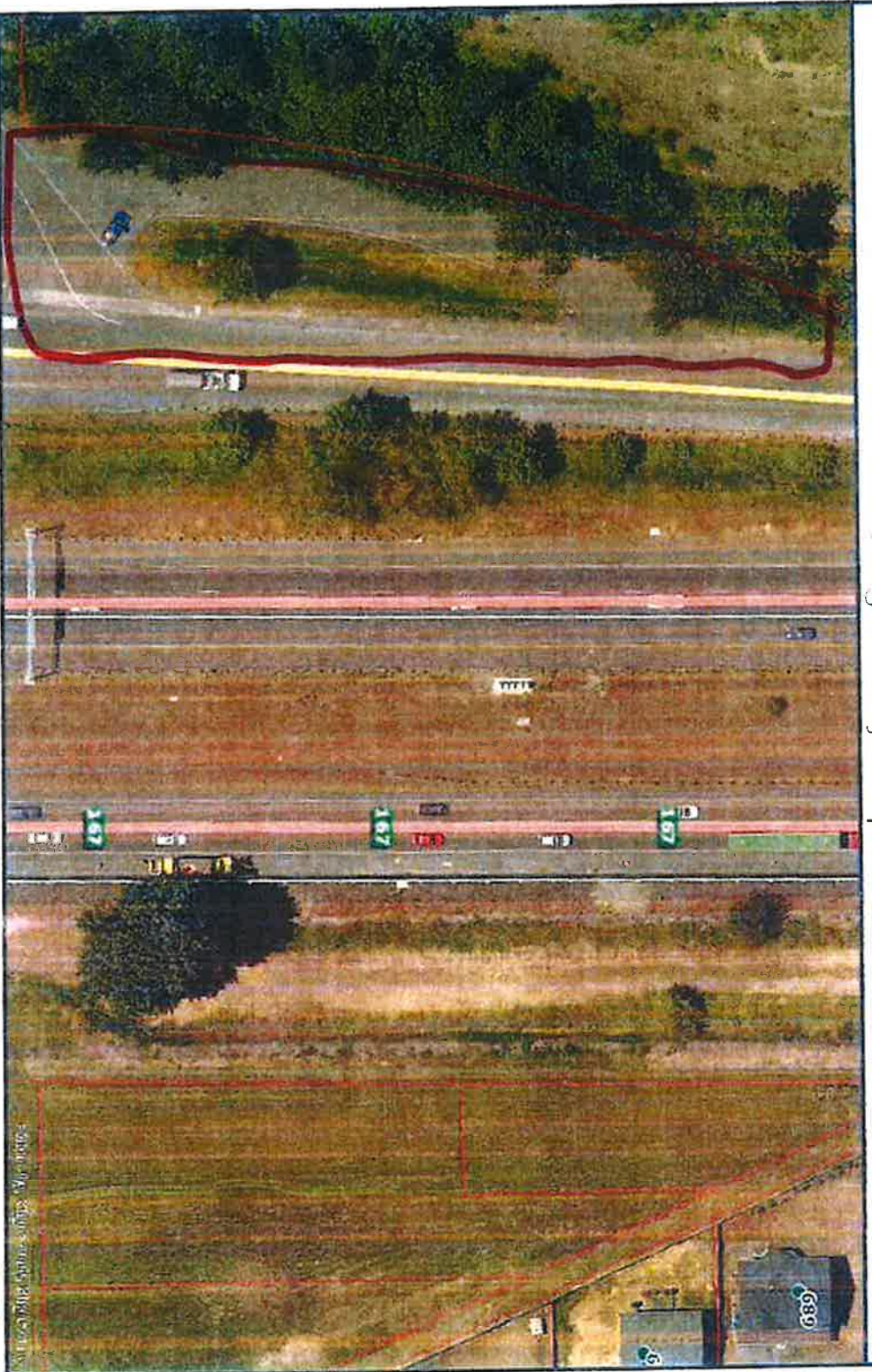
City Right-of-Way directly in front of the address and Parcel number above.



Algona Transfer Station-Empty Trailer Parking

**EXHIBIT B**

**RIGHT-OF-WAY SITE DEPICTION**



This information is derived from the King County Assessor's Office and is provided for informational purposes only. It is not intended to be used as a legal document. The accuracy of the information is not guaranteed. The King County Assessor's Office is not responsible for any errors or omissions in this information. The information is provided as a service to the public and is subject to change without notice. For more information, please contact the King County Assessor's Office at (206) 462-3000.

Date: 12/19/2018

Notes:



Area IN Red, JUST outside of the existing Transfer Station.

# WVH ROW Vacation Map

