

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

MOTION NO. 21-351

APPROVING A LICENSE AGREEMENT WITH AMERICAN CIVIL CONSTRUCTORS WEST COAST, LLC FOR USE OF TRAFTON PIT FOR A TEMPORARY LAY DOWN YARD

WHEREAS, the County is owner of certain real property identified by tax parcel number 32063000400500 under the custodianship of Public Works and known as a portion of Trafton Pit property ("Premises."); and

WHEREAS, American Civil Constructors West Coast, LLC ("licensee") has been contracted to perform a countywide curve improvement project for the County; and

WHEREAS, American Civil Constructors West Coast, LLC has requested certain privileges across, over and upon said County property for the purpose of a temporary construction storage yard; and

WHEREAS, Public Works has agreed to allow certain privileges to American Civil Constructors West Coast, LLC for said purposes; and

WHEREAS, materials and equipment necessary for the completion of the project will be stored at the County property for one week; and

WHEREAS, the Licensee shall be responsible for the premises and return the same in a neat and clean condition upon termination; and

WHEREAS, this license agreement is being entered into in light of the parties' existing contract for \$788,000 dated 7/9/21 and no additional consideration shall be due or owing as the use of the Premises will provide the County additional benefits; and

WHEREAS, American Civil Constructors West Coast, LLC is responsible at its sole cost and expense to repair any damage to the County's property;

NOW, THEREFORE, ON MOTION, the County Council on motion approves and authorizes the County Executive to sign the attached license agreement allowing the temporary use of County owned property identified by tax parcel number 32063000400500 known as a portion of Trafton Pit with an initial term to commence upon full execution by all parties to the License Agreement and end October 31, 2021, and authorizes the Snohomish County Executive to sign said License Agreement.

PASSED this 29th day of September, 2021.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington



Council Vice-Chair

ATTEST:



Asst. Clerk of the Council

**LICENSE AGREEMENT
SNOHOMISH COUNTY TRAFTON PIT PROPERTY
TAX PARCEL 32063000400500 (TRAFTON PIT)**

This License Agreement (the "Agreement") is between **Snohomish County**, a political subdivision of the State of Washington, herein referred to as the "**County**" and **American Civil Constructors West Coast, LLC**, a foreign corporation registered to do business in the State of Washington, herein referred to as the "**Licensee.**"

WITNESSETH

WHEREAS, the County is owner of certain real property situated in the County of Snohomish, State of Washington, described as follows (the "Property") and more specifically described as follows:

Tax Parcel Number: 32063000400500

Legal Description: Section 30, Township 32 North, Range 6 East, W.M., described as follows: The Northeast quarter of the Southeast quarter lying South of SR 530 State Highway and East of Arnot Road. Less the East 500 feet.

Situate in the County of Snohomish, State of Washington.

WHEREAS, the Licensee is desirous of acquiring certain privileges across, over and upon approximately 1.74 acres or 76,163 square feet of the Property as shown on Exhibit A attached hereto (the "Premises") as temporary access for construction laydown use for materials and equipment as part of a countywide curve improvement project and including rights of ingress and egress over the County's Property,

NOW, THEREFORE, the Parties agree as follows:

1. GRANT AND SCOPE OF LICENSE. The County hereby grants to the Licensee a nonexclusive license over and upon the Premises for the following purposes only: construction storage yard to include staging, stockpiling and storing one (1) tanker of HFST resin with necessary and proper containment; forty (40) pallets of calcined bauxite aggregate; one (1) dumpster; one (1) portable toilet; and applicator equipment.

Minor equipment maintenance including fueling will be performed on the Premises. All maintenance operations will be performed to ensure any and all materials are contained and removed from the site. A spill prevention, control and countermeasures plan will be completed and approved by Snohomish County prior to commencement of this Agreement.

The Licensee will ensure that the portable toilet is pumped no less than twice a month and will be responsible for payment of all costs associated with the placement, maintenance and rental fees owed to the provider/contractor for the portable toilet.

The Licensee will ensure that the dumpster is emptied no less than once a week and will be responsible for payment of all costs associated with the placement, maintenance and rental fees owned to the provider/contractor for the dumpster.

The Licensee will be allowed to place a temporary chain link fence with a locked gate around the perimeter of the Premises to prevent access to the general public. The Licensee will be

responsible for payment of all costs associated with the installation of the chain link fence and gate including any applicable rental fees owed to the provider/contractor. The Licensee shall provide the County with a gate key to access the Premises.

No illegal use shall be made thereof, nor shall any property that creates any nuisance or fire, explosive, or other hazard be stored therein. Licensee's authority to use the Premises shall not be considered exclusive possession or control. The County may enter the Premises at any time to determine whether improper or hazardous use is being made of the Premises.

During the term of this Agreement, the Licensee will preserve all grades on the Property to ensure the existing wetland grades are maintained and vegetation is undisturbed. The Licensee will be responsible for the cleanup and removal of any spills on the Premises. Any laydown or staging areas will be restored by the Licensee as near to the Premises pre-existing condition and as acceptable to the County. Upon completion of the work authorized under this Agreement, the parties will walk the Property and Premises to ensure restoration and plant re-establishment is satisfactory to the County.

In the event the Premises shall at any time during the term of this Agreement become subject to any suit brought to enforce a lien or any statement of claim of lien filed to enforce a lien resulting from the furnishing of materials or labor to the Licensee on the Premises and contracted for or agreed to by the Licensee, the Licensee may contest such a lien by legal proceedings but shall, in that event, cause such a lien, at its sole cost, to be discharged within thirty (30) calendar days after notice thereof by the substitution thereof of a mechanic's lien release bond, by posting of adequate security for the payment thereof (including all expenses incident thereto), or by such other method as shall be reasonably satisfactory to the County.

2. TERM. The initial term of this Agreement shall commence upon full execution by the County and the Licensee ("Commencement Date") and will terminate October 31, 2021, unless earlier terminated as provided in Section 15. The Licensee shall work with diligence, speed, and due regard for the rights, interest, and convenience of the public and the County. If, at the end of October 31, 2021, Licensee has not completed the work authorized by this Agreement, then the rights conferred on the Licensee will terminate unless an extension of time is approved as provided herein.

Prior to entering the Property for the first time, the Licensee shall provide County notice of the date it intends to enter and begin work under this Agreement. Licensee will provide the County with the construction schedule and any updates affecting the term of this Agreement.

3. CONSIDERATION. This Agreement is being entered into in light of the parties' existing contract for \$788,000.00, dated 7/9/21. No additional consideration shall be due or owing as the use of the Premises will provide the County additional benefits: The use of the Premises situates the Licensee's storage yard in close proximity to the work site which will lessen construction impacts to County roads and reduce travel times for the parties and the general public.

4. ACCESS. During the term of this Agreement the Licensee will be granted ingress and egress over the County's Property to access the Premises at any time for the purposes herein described under Section 1 of this Agreement.

5. CARE AND CONDITION. The Licensee shall be responsible for the Premises herein described and return the same in a neat and clean condition upon termination. If any property of Licensee or its invitees is not removed by the date of termination, the County shall have the right to take possession of and store, use and/or sell the property in such a manner as it deems appropriate, and collect all unpaid fees, storage fees, costs of sale, reasonable attorney's fees, and other expenses from the proceeds of such sale. Licensee expressly agrees that any sale, public or

private may occur not less than thirty (30) days after the date of termination and may occur with or without notice from the County.

The County shall not be liable to the Licensee for any loss or damage to the Licensee's property or any other property from theft, fire, or any other cause either before or after termination. The County is under no obligation to maintain, replace or repair any of its facilities or any other obligation not stated in this Agreement.

Licensee has examined the Premises and accepts the same in its present condition. It is agreed that the County shall not be bound by any warranty or representation as to the condition of the Premises, or in any other manner except as stated herein.

This Agreement shall not limit any legal remedies of the County not stated herein. If the County is required to expend any money to enforce any of its rights, or to clean or renovate the premises, such sum, including reasonable attorney's fees, shall be immediately due and payable to the County.

6. RESTORATION AND REPAIR. In the event that any damage of any kind is caused by Licensee in the course of performing work authorized by this Agreement, Licensee will repair the damage at its sole cost and expense on or before October 31, 2021 or earlier termination of this Agreement. If the Property is not restored at the expiration or termination of this Agreement, the County may complete the work and upon demand Licensee shall pay to the County all reasonable and appropriate costs of such work, including materials and other expenses. Licensee agrees not to disturb any pre-existing critical areas on the Property except as authorized under applicable County and State law, including but not limited to SCC 30.62A.510. Any disturbance of these areas by Licensee except as permitted by law will require Licensee to restore critical areas at Licensee's sole cost and expense and upon final approval of the County.

The County may at any time do, order, or have done any and all work considered necessary to restore to a safe condition any real or personal property left by Licensee in a condition that appears dangerous to life or property and upon demand Licensee shall pay to the County all reasonable and appropriate costs of such work, including materials and other expenses.

7. EROSION, HAZARDOUS WASTE AND HAZARDOUS MATERIALS. Licensee shall take all necessary measures and follow all applicable laws to prevent erosion and spills of any hazardous materials and noxious waste substances onto the Premises and to keep the Premises free from any debris and waste.

To the best of the County's knowledge, the Premises is not in violation of any law, ordinance, rule or regulation relating to the environmental conditions thereon. Moreover, to the best of the County's knowledge, there is no hazardous waste or other substance, including but not limited to those that would be a hazardous waste, material or substance, toxic substance, gas or pollutant, as defined under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et. seq., the Washington Model Toxics Control Act, RCW Ch. 70.105D, RCW Ch. 70.95, and the regulations promulgated thereunder or under any applicable local or state environmental ordinance, statute, law, rule or regulation ("Hazardous Substances"), on or about the Premises or on any parcels of land which about the Premises. Further, to the best of the County's knowledge: (i) there has been no release, spill, leak, discharge, emission, leak or disposal, (ii) there are no substances or conditions, in or on the Premises or any other parcels of land which may affect the Premises or use thereof that may support a claim or cause of action under any federal, state or local environmental statute, regulation, ordinance or other environmental regulatory requirements and (iii) there is no asbestos, PCBs or underground storage tanks located on the Premises or which have been removed therefrom.

The Licensee agrees to indemnify, hold harmless and defend the County, its appointed officials, officers, employees, agents and representatives, from and against any and all claims, actions, suits, liability, loss, cost, expenses and damages of any nature whatsoever, including costs and attorneys' fees, which are caused by or arise out of (i) the existence of Hazardous Substances on the Premises or the migration of Hazardous Substances originally released or deposited on the Premises onto other parcels of land; (ii) the Licensee's failure or insufficient compliance with any federal, state or local laws applicable to Hazardous Substances; or (iii) any claim, in law or equity, brought by any third party or the Licensee's own officials, officers, employees, agents or representatives alleging any cause of action relating to the existence of Hazardous Substances on the Premises or any migration of Hazardous Substances originally released or deposited on the Premises onto other parcels of land, and, with respect to (i), (ii) and (iii), that existed, or in the case of migration commenced due to a condition that existed, as of or prior to the commencement of this Agreement.

8. EQUIPMENT. The Licensee will be responsible for providing all equipment required for the uses specified under this Agreement.

9. MAINTENANCE. The County shall not be called upon to make any repairs occasioned by the negligence of the Licensee, its agents or employees.

10. UTILITIES. The County will not provide or pay for any utility services to the Premises.

11. INDEMNIFICATION AND HOLD HARMLESS. The Licensee agrees:

(a) to protect, hold harmless, indemnify, and defend at its own expense, Snohomish County, its appointed and elected officials, officers, employees, and agents, from any loss or claim for damage of any nature whatsoever, arising out of this permit or activities authorized by this permit, including claims by Licensee's employees or third parties, except for those damages solely caused by the negligence or willful misconduct of Snohomish County, its appointed and elected officials, officers, employees, or agents. If a claim subject to RCW 4.24.115 is caused by or results from the concurrent negligence of the County, its appointed or elected officials, officers or employees, and Licensee, its officers or employees, this section shall be valid and enforceable only to the extent of the negligence of Licensee, its officers or employees.

(b) that County shall not be held liable for any claim or damage to Licensee's property, or appurtenances constructed or placed on the Premises by Licensee; and

(c) that Licensee specifically and expressly waives any immunity under Industrial Insurance, Title 51 RCW, and acknowledges that this waiver was mutually negotiated by the parties.

12. INSURANCE. The Licensee 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 Activities.

Licensee's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Licensee to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance.

Licensee shall obtain insurance of the Licensee described below:

1. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01. The County shall be named as an additional insured on Licensee's Commercial General Liability insurance policy.

2. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.

B. Minimum Amounts of Insurance.

Licensee shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence / aggregate.

2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 per accident.

C. Other Insurance Provisions.

The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:

1. Snohomish County, its officers, elected and appointed officials, agents, employees and volunteers shall be named as an additional insured with respect to the activities to be performed by or on behalf of the Licensee.

2. To the extent of Licensee's negligence, the Licensee's insurance coverage shall be primary insurance with respect to the County. Any insurance or self-insurance coverage maintained by the County shall be in excess of the Licensee's insurance and shall not contribute with it.

3. The Licensee's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the County.

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.

Licensee shall furnish the County with an original Certificate of Liability Insurance and a copy of the amendatory endorsements including, but not necessarily limited to, the ***Additional Insured endorsement form CG 20 26, or its equivalent, evidencing the insurance requirements of the Licensee.***

F. Waiver of Subrogation.

Licensee and County hereby release and discharge each other from all claims, losses, and liabilities arising from or caused by any hazard covered by property insurance on, or in connection with, the Property. This release shall apply only to the extent that such claim, loss, or liability is covered by insurance.

13. ASSIGNMENT OR SUBLETING. This Agreement may not be assigned, sublet, or possession thereof transferred voluntarily or involuntarily by the Licensee.

14. NOTICES. Notice as required by any term of this Agreement shall be given by registered or certified mail or fax. Such communication or notice shall be deemed to have been given and received when deposited in the United States Mail, property addressed, with postage prepaid or upon receipt by the sender of a facsimile transmission report. Such notice or communication shall be given as follows:

If to the County: **Snohomish County Property Management**
 Attention: Property Officer
 3000 Rockefeller Avenue M/S 404
 Everett, Wash. 98201
 Telephone: 425.388.3035
 Fax: 425.388.7008
 Email: janae.nelson@co.snohomish.wa.us

If to the Licensee: **American Civil Constructors West Coast, LLC**
 Attention: Kaitlyn Walker, Project Manager
 2990 Bay Vista Ct.
 Benicia, CA 94510
 Telephone: 707-742-6445
 Email: Kaitlyn.Walker@accbuilt.com

In case of emergency the County will contact the Licensee through its agent Chris Parshall at 360-597-6803 for 24/7 notification.

In case of emergency the Licensee will contact the Mel Reitz, Operations Manager, Snohomish County Public Works Road Maintenance Division, at 425-422-6165 for 24/7 notification.

15. TERMINATION.

(a) If Licensee breaches any term of this Agreement and fails to cure the same within five (5) days of written notice to do so by the County, the County may terminate this Agreement by providing written notice to Licensee.

(b) Either party may terminate this Agreement by providing sixty (60) days prior written notice to the other party.

(c) Termination shall not affect the rights of the County under any other section in this Agreement.

16. NO INTEREST IN PROPERTY. Licensee agrees that Licensee does not and shall not at any time claim any interest or estate of any kind or extent whatsoever in the Property by virtue of this Agreement or the use authorized by this Agreement.

17. NO INTERFERENCE OR OBSTRUCTION. Licensee agrees that it will not interfere or obstruct the County's use of the remaining Property during the term of this Agreement.

18. MODIFICATION. This Agreement may only be modified in writing and such modification shall take effect only after such modification is duly executed by both parties.

19. POSSESSORY LIEN. In the event of default in payment, or breach of any other condition of this agreement, or for any and all damages caused to the property of the County by Licensee, it agents, employees or invitees, the County shall have a possessory lien upon any and all property stored, used or located on any property of the County and upon any sums of money advanced to or otherwise in the possession of the County.

20. CONFLICTS BETWEEN ATTACHMENTS AND TEXT. Should any conflict exist between any attached exhibit or schedule and the text of this agreement, the text shall prevail.

21. GOVERNING LAW, STIPULATION OF VENUE, AND ATTORNEY FEES. This Agreement shall be governed by the laws of the State of Washington and the parties stipulate that any lawsuit regarding this agreement must be brought in Snohomish County, Washington. The prevailing party in any lawsuit brought to enforce the terms of this Agreement shall be entitled to attorney fees and costs.

22. NON-DISCRIMINATION. It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The Licensee shall comply with Chapter 2.460 SCC, which is incorporated herein by this reference. Execution of this Agreement constitutes a certification by the Licensee of the Licensee's compliance with the requirements of Chapter 2.460 SCC with respect to this Agreement. If the Licensee is found to have violated this provision, or furnished false or misleading information in an investigation or proceeding conducted pursuant to Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Licensee's obligations under other federal, state, or local laws against discrimination.

23. SEVERABILITY. Should any clause, phrase, sentence or paragraph of this Agreement be declared invalid or void, the remaining provisions of this Agreement shall remain in full force and effect.

24. COMPLIANCE WITH LAW AND PERMITTING REQUIREMENTS. Any use or work performed by the Licensee under this Agreement shall be performed by Licensee in accordance with applicable local, state and federal law and regulations. Licensee shall acquire all necessary permits required to perform the activities licensed under this Agreement.

25. COMPLIANCE WITH STORM WATER POLLUTION PREVENTION PLAN. The Licensee is required to comply with the Snohomish County Trafton Storage Site, Storm Water Pollution Plan ("SWPPP") attached hereto and reference herein as Exhibit B.

26. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the parties regarding the subject matter contained herein.

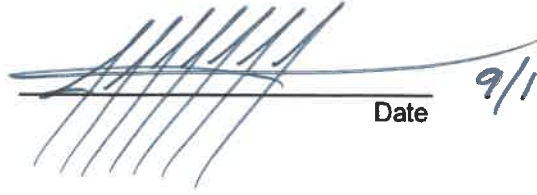
27. EXHIBITS. Exhibit A – Premises Mapping Exhibit
Exhibit B – SWPPP

28. AUTHORITY. Each party signing this Agreement, if on behalf of an entity, represents that s/he has full authority to sign this Agreement on behalf of such entity.

Snohomish County:

Snohomish County Executive Date

American Civil Constructors West Coast, LLC:



Date 9/15/21

Approved As To Form:

Rebecca J. Guadamud 09-09-2021
Deputy Prosecuting Attorney

Insurance Approval:

Barker, Sheila
Digitally signed by Barker, Sheila
Date: 2021.09.10 07:48:09 -07'00'

Risk Management

EXHIBIT A
THE PREMISES

EXHIBIT B
STORM WATER POLLUTION PREVENTION PLAN

EXHIBIT A THE PROPERTY

The Property is shown in grey in the image below.

