

Reimbursable Agreement for State Materials Lab Engineering and/or Testing Services	Entity Name City of Tumwater	Agreement number GCB 3684
	Entity Billing Address 555 Isreal Road SW Tumwater, WA 98501	
	Contact Name Mary Heather Ames	Contact Phone and Email (360) 754-4140 mhames@ci.tumwater.wa.us
	Federal Tax ID# SW00071720 2	Agreement Title Mats Lab Services
Description of Work Upon request by City of Tumwater, WSDOT will provide materials fabrication, testing and inspection; asphalt mix design and verification; preparation of "Record of Materials" documents; test drilling; and other engineering/geologic/testing services.		

This AGREEMENT is made and entered into by and between the Washington State Department of Transportation, hereinafter "WSDOT," and the above-named entity, hereinafter the "ENTITY."

Where-as, WSDOT provides engineering and/or testing services to ensure that materials proposed to be used within WSDOT highway right of way comply with applicable WSDOT standards, or to determine whether existing state highway infrastructure can withstand impacts from proposed actions (may not apply to Local Agencies), and

Whereas, the ENTITY has requested WSDOT perform certain materials engineering and/or testing services as described above in the Description of Work above or as attached as Exhibit A (hereinafter "Work"), and

Whereas, WSDOT has the necessary personnel and equipment available and is willing to perform the Work, subject to the terms and conditions herein.

NOW, THEREFORE, pursuant to RCW 47.01.260 and/or Chapter 39.34 RCW, the above recitals that are incorporated herein as if set forth below, and in consideration of the terms, conditions, provisions, and Exhibits which are attached hereto and by this reference made a part of this Agreement, IT IS HEREBY AGREED AS FOLLOWS:

1. SCOPE OF WORK

1.1 The term "Work," as used herein, includes any and all work by WSDOT in its performance of the engineering and/or testing services specified in the "Description of Work," above or as in Exhibit A hereto attached. Subject to the terms and conditions herein, WSDOT agrees to perform the Work using WSDOT labor, equipment, and materials.

2. TERM OF AGREEMENT

2.1 Check one of the following as applicable to this Agreement:

- ☐ The term of this Agreement, is project specific and shall begin upon the date of execution by both Parties and shall remain in effect until WSDOT has completed the Work detailed above or in Exhibit A; OR should the ENTITY terminate this Agreement pursuant to Section 4, this Agreement shall terminate when the ENTITY has made full payment for all WSDOT-incurred costs up to the date of termination. The estimated end date shall be: xxxxxxxx.
- ☒ The term of this Agreement shall begin upon the date of execution by both Parties and shall remain in effect for ten (10) years, subject to renewal by the Parties. This Agreement may be terminated pursuant to Section 4. In the event of termination, this Agreement shall terminate when the ENTITY has made full payment for all WSDOT-incurred costs up to the date of termination. Exhibit A does not apply to this selection and further references within this agreement are not applicable.

3. PAYMENT

3.1 A cost estimate for the Work is detailed in Exhibit B. An Exhibit B is not applicable for a ten-year agreement. All work for a ten-year agreement is done by an as needed basis. WSDOT will invoice the ENTITY monthly for the actual direct and related indirect costs incurred by WSDOT in the performance of the Work completed during the previous month. These cost include but may not be limited to, labor, material, travel, and equipment.

3.2 The ENTITY agrees to reimburse the WSDOT for the actual direct and related indirect costs for the Work within thirty (30) calendar days of receipt of a WSDOT invoice. The ENTITY agrees further that if payment is not made to the WSDOT as herein agreed, WSDOT may charge late fees, interest or refer the debt to a collection agency, all in accordance with Washington State Law.

3.3 The Parties agree that any estimated costs for the Work may be exceeded by up to twenty five percent (25%) before an amendment to this Agreement is required. Once the costs reach the estimate in Exhibit B plus the 25% overrun allowance, WSDOT shall stop all Work until an amendment has been executed increasing the maximum dollar amount payable under this Agreement, or a decision is reached to terminate this Agreement.

4. TERMINATION

4.1 Either Party may terminate this Agreement upon thirty (30) calendar days written notice to the other Party. If this Agreement is terminated by either Party prior to completion of the Work specified herein, the ENTITY agrees to and shall reimburse WSDOT for all actual direct and related indirect expenses and costs incurred up to the date of termination associated with the Work.

5. MODIFICATIONS

5.1 This Agreement may be amended by the mutual agreement of the Parties. Such amendments or modification shall not be binding unless they are in writing and signed by persons authorized to bind each Party.

6.RECORDS

6.1 All records for performance of the Work, including labor, material, travel, and equipment records in support of all WSDOT costs shall be maintained by WSDOT for a period of six (6) years from the date of termination of this Agreement. The ENTITY shall have full access to and right to examine said records during normal business hours and as often as it deems necessary, and should the ENTITY require copies of any records, it agrees to pay the costs thereof. The Parties agree that the work performed herein is subject to audit by either or both Parties and/or their designated representatives and/or state and federal government

7. DISPUTES AND VENUE

7.1 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 concerning any dispute between the Parties:

- A. The representatives for each Party 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 and to resolve any disputes or issues related to the successful performance of this Agreement. 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.
- B. A Party's representative shall notify the other Party in writing of any dispute or issue that the representative believes may require formal resolution according to Section 7.1D. The representatives shall meet within five (5) working days of receiving the written notice and attempt to resolve the dispute.
- C. In the event the representatives cannot resolve the dispute or issue, the ENTITY, and WSDOT's Region Administrator, or their respective designees, shall meet and engage in good faith negotiations to resolve the dispute.
- D. In the event the ENTITY and WSDOT's Headquarters Administrator, or their respective designees, cannot resolve the dispute or issue, the ENTITY 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.

8. VENUE AND ATTORNEY FEES

8.1 In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action or proceedings shall be brought in a court of competent jurisdiction situated in Thurston County, Washington. Each Party further agrees that it shall be solely responsible for the payment of its attorney fees and costs.

9. INDEMNIFICATION

9.1 The Parties shall protect, defend, indemnify, and hold harmless each other and their employees

and/or authorized 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/or property), arising out of, or in any way resulting from, each Party's obligations to be performed pursuant to the provisions of this Agreement. The Parties shall not be required to indemnify, defend, or hold harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the negligence of the other Party; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) the WSDOT, its employees and/or authorized agents and (b) the ENTITY, its employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of each Party, its employees and/or authorized agents. 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.

9.2 The terms of this Section shall survive termination of this Agreement.

10. LEGAL RELATIONS

10.1 WSDOT's relation to the ENTITY shall be at all times as an independent contractor. Further, WSDOT shall perform the Work as provided under this Agreement solely for the benefit of the ENTITY and not for any third party.

11. SEVERABILITY

11.1 If any terms or provisions of this Agreement are determined to be invalid, such invalid term or provision shall not affect or impair the remainder of the Agreement, but such remainder shall remain in full force and effect to the same extent as though the invalid term or provisions were not contained in the Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Party's date last signed below.

ENTITY	Washington State Department of Transportation
By:	By:
Printed:	Printed:
Title:	Title:
Date:	Date:
	Approved As To Form on behalf of WSDOT
	/s/ Guy Bowman
	Date: July 8, 2021