



Project Review Reimbursable Agreement

Project Review Reimbursable Agreement		Applicant or Local Agency City of Tumwater	
Agreement Number J C8659		Billing Address 555 Israel Rd. SW Tumwater, WA 98501	
SWV # 0007172			
Region Olympic		Contact Email blindauer@ci.tumwater.wa.us	
Contact Name Bill Lindauer		Contact Phone (360) 754-4140	
Estimated Costs This estimate is based on the best available information to date and includes WSDOT's Indirect Cost Rate \$10,000		Surety Amount \$ <input type="checkbox"/> Not Applicable	
SR n/a	MP n/a	Project Name Deschutes Valley Trail Connection	
Detailed Description of Work by WSDOT <input checked="" type="checkbox"/> Project Review Allow compensation for WSDOT labor in reviewing environmental documents for the City of Tumwater. <input type="checkbox"/> Inspection <input type="checkbox"/> Other			

This AGREEMENT is entered into by and between the Washington State Department of Transportation, hereinafter "WSDOT," and the above named "APPLICANT OR LOCAL AGENCY," hereinafter the "ENTITY;" herein after referred to individually as the "Party" and collectively as the "Parties."

Recitals

- The ENTITY has requested WSDOT to perform the above described work, and WSDOT is authorized and willing to perform the work.
- The ENTITY is responsible for the costs associated with the work.
- WSDOT is prohibited from the costs of mitigating utilities without a real property right under chapter 47.44 RCW

NOW THEREFORE, pursuant to the terms, conditions and performances contained herein and/or attached hereto, and by this reference made a part of this Agreement,

It Is Mutually Agreed to As Follows:

1. GENERAL

- The WSDOT agrees to perform the above described work requested by the ENTITY, using state labor, equipment and materials.
- To secure payment of the potential costs incurred in the review process, WSDOT requests that a Surety Amount in the form of Bond, Assignment of Escrow, Certificate of Deposit, Irrevocable Letter of Credit, Check or Money Order in the amount listed above accompany the endorsed original copy of this Agreement.
- All WSDOT reviews, and/or inspections provided by WSDOT are solely for the benefit of WSDOT and not for the ENTITY or any other third party.

2. PAYMENT

- 2.1 The ENTITY, in consideration of the faithful performance of the work by WSDOT, agrees to reimburse WSDOT for the actual direct and related indirect costs associated with the work, including WSDOT's current administrative indirect cost rate.
- 2.2 The ENTITY agrees to make payment for the work by WSDOT within thirty (30) calendar days from the date of a state invoice.
- 2.3 The ENTITY agrees that if it fails to make payment within thirty (30) calendar days of the invoice, the WSDOT may charge interest in accordance with RCW 43.17.240 and may elect to send the outstanding invoice(s) to a WSDOT contracted collection agency resulting in the assessment of additional fees and/or penalties.
- 2.4 Upon payment of all WSDOT invoices by ENTITY, WSDOT will release rights of remaining Surety Amount.

3. INCREASE IN COST

- 3.1 The Parties agree that the estimated cost of the work may be exceeded by up to twenty-five (25) percent. In the event costs exceed the estimated costs by more than twenty-five (25) percent the Parties agree to modify the estimated cost of work by written amendment, signed by both Parties.

4. ASSIGNMENT

- 4.1 This Agreement, and any claim arising under this Agreement, shall not be assignable or delegable by either Party, either in whole or in part.

5. INDEMNIFICATION

- 5.1 Indemnification: To the extent allowable in 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 defense and 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.
- 5.2 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.
- 5.3 This indemnification and waiver will survive the termination of this Agreement.

6. AMENDMENT

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

7. TERMINATION

- 7.1 Either Party may terminate this Agreement, with or without cause, by providing written notice to the other of such termination and specifying the effective date thereof at least thirty (30) calendar days before the effective date of such termination. The ENTITY will reimburse WSDOT for all charges up to the date of termination.

8. DISPUTES

- 8.1 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.

- 8.2 In the event that a dispute arises under this Agreement which cannot be resolved by the parties as outlined in Section 8.1, the dispute will be settled in the following manner: Each Party will appoint a member to a dispute board. The members so appointed will jointly appoint a third member to the dispute board who is not employed by or affiliated in any way with either Party. The dispute board will evaluate the facts, contract terms, and applicable statutes and rules and make a determination of the dispute. The determination of the dispute board will be final and binding on the Parties. Any costs associated with appointing the third member will be equally shared between the Parties. Each Party shall be responsible for its own costs, including attorneys fees.
- 8.3 The Parties agree that any legal action to enforce any right or obligation under this Agreement may only be brought in Thurston County Superior Court.

9. UTILITY MITIGATION

- 9.1 The Parties agree that should there be any utilities in conflict with the work, which are located within the ENTITY’S jurisdiction, they shall be identified in a timely manner that does not delay the work. The Parties agree to work together in good faith to identify all utilities in conflict with the work. The ENTITY shall develop a utility listing of all facilities in conflict with the work and include the mode of occupation or accommodation for each utility, including but not limited to a franchise, permit, lease, easement, etc. The Parties agree to work together to conduct a thorough utility conflict analysis. Further, the ENTITY agrees that they shall adequately mitigate all utilities so as to not be in conflict with the work, including temporary or permanent relocation. This includes mitigating all utilities who occupy the underlying right-of-way via franchise, permit, ordinance, lease, easement, or any other mode of occupation, in a timely manner that does not delay the work.
- 9.2 State law prohibits WSDOT from expending any funds to mitigate a utility conflict unless the utility’s facilities occupy the underlying right-of-way via a compensable, real property interest, such as an easement. WSDOT does not recognize ENTITY issued franchises, permits, ordinances, or other similar accommodation agreements issued by ENTITY as instruments that convey a compensable, real property interest to a utility. WSDOT, at its sole discretion, reserves the right to alter, de-scope or terminate any of the work within the ENTITY’s jurisdiction at any time if the terms of this section are not satisfied.

10. TERM OF AGREEMENT

- 10.1 The term of the Agreement shall begin upon the date of execution and shall remain in effect until WSDOT has completed the above described work and the ENTITY has made full payment, whichever comes last, unless modified according to Section 6, “AMENDMENT,” above.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date last signed by the PARTIES below.

REQUESTING ENTITY	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
By: _____	By: _____
Printed: _____	Printed: <u>John Ho</u>
Title: _____	Title: <u>Local Programs Engineer</u>
Date: _____	Date: _____