



<b>Project Review Reimbursable Agreement</b>		Applicant or Local Agency <b>Port of Vancouver</b>							
		Billing Address <b>3103 NW Lower River Road Vancouver, WA 98660</b>							
Region <b>Southwest</b>	Contact Email <b>Ap@portvanusa.com</b>								
Agreement Number <b>J D1574</b>	Contact Name <b>Mindy Pennington, Accounts Payable</b>		Contact Phone <b>360-693-3611</b>						
<b>Estimated Costs</b> This estimate is based on the best available information to date and includes WSDOT's Indirect Cost Rate			Surety Amount \$ <input checked="" type="checkbox"/> Not Applicable						
<table border="1"> <tr> <td>SR</td> <td>MP</td> <td>Project Name</td> </tr> <tr> <td>N/A</td> <td>N/A</td> <td>Flagger Certification (Initial Certification and Re-certification)</td> </tr> </table>		SR	MP	Project Name	N/A	N/A	Flagger Certification (Initial Certification and Re-certification)		
SR	MP	Project Name							
N/A	N/A	Flagger Certification (Initial Certification and Re-certification)							
Detailed Description of Work by WSDOT									
Project Review <input type="checkbox"/> Inspection <input type="checkbox"/> Other <input checked="" type="checkbox"/> <small>(see description of work)</small>		<table border="1"> <tr> <td>           Certified flagging instructor to provide flagger certification class(es) for Port employees. Flagger re-certification** classes are available on an as needed basis.             *Current Indirect Cost Rate is 10.36% and is valid through June 30, 2016.            **Re-certification is required every three (3) years to maintain flagging card.         </td> </tr> </table>		Certified flagging instructor to provide flagger certification class(es) for Port employees. Flagger re-certification** classes are available on an as needed basis.  *Current Indirect Cost Rate is 10.36% and is valid through June 30, 2016. **Re-certification is required every three (3) years to maintain flagging card.					
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This AGREEMENT is made and entered into by and between the Washington State Department of Transportation, hereinafter "WSDOT," and the above named "APPLICANT OR LOCAL AGENCY", hereinafter the "ENTITY,"

WHEREAS, the ENTITY has requested WSDOT to perform the above described work, and WSDOT is authorized and willing to perform the work, and

WHEREAS, the ENTITY is responsible for the costs associated with the work,

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 between the Parties hereto as follows:

**1. GENERAL**

1.1 The WSDOT agrees to perform the above described work requested by the ENTITY, using state labor, equipment and materials.

1.2 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.

1.3 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 The ENTITY shall defend, protect and hold harmless WSDOT, its officers, officials, employees, and/or agents from and against all claims, suits or actions arising from the negligent acts or omissions of ENTITY, its officers, officials, employees, assigns, contractors, sub-contractors, tenants, sub-tenants, licensees, invitees and/or agents while performing under the terms of this Agreement. This defense and indemnity obligation shall not include such claims, actions, costs, damages, or expenses which may be caused by the sole negligence of WSDOT, its officers, officials, employees, contractors, sub-contractors and/or agents; provided, however, that if the claims, suits or actions are caused by or result from the concurrent negligence of (a) WSDOT, its officers, officials, agents, contractors, sub-contractors or employees and (b) the ENTITY, its officers, officials, employees, assigns, contractors, sub-contractors, tenants, sub-tenants, licensees, invitees and/or agents, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the ENTITY or its officers, officials, employees, assigns, contractors, sub-contractors, tenants, sub-tenants, licensees, invitees and/or agents. ENTITY specifically assumes potential liability for the actions brought by ENTITY'S employees and solely for the purposes of this indemnification and defense, ENTITY specifically waives any immunity it may be afforded in connection with such claims under the State industrial insurance law, Title 51 RCW. ENTITY recognizes that this waiver was the subject of mutual negotiations.

This indemnification and waiver shall 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. TERM OF AGREEMENT**

9.1 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.

