

COPY
CONTRACT # 1554

**City of Lynnwood/City of Edmonds
Traffic Signals
Maintenance and Operation Agreement**

THIS INTERLOCAL MAINTENANCE AND OPERATION AGREEMENT (hereinafter, "the Agreement") is entered into under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, between the City of Edmonds (hereinafter, "Edmonds"), a municipal corporation organized under the laws of the State of Washington, and the City of Lynnwood (hereinafter, "Lynnwood"), a municipal corporation organized under the laws of the State of Washington (collectively, "the Parties"), to define the rights, obligations, costs and liabilities of the Parties regarding the maintenance and operation of traffic signals located within Edmonds).

WHEREAS, Chapter 39.34 RCW (the Interlocal Cooperation Act) authorizes two or more political subdivisions or units of local government of the State of Washington to cooperate on a basis of mutual advantage to provide for services and facilities; and

WHEREAS, the Parties desire eventually to enter into an agreement with various other governmental entities for the purpose of maintaining and operating a multi-jurisdictional Intelligent Transportation System (ITS); and

WHEREAS, the Parties desire to operate and maintain existing traffic signal systems immediately and without the delay of waiting for the drafting, negotiation and execution of a multi-jurisdictional agreement; and

WHEREAS, the Parties desire to enter into an agreement to define their respective rights, obligations, costs and liabilities regarding the operation and maintenance of the existing traffic signal systems; and

WHEREAS, the Parties recognize that Lynnwood signal maintenance staff have the skills and proximity to provide timely assistance, and that they have unique knowledge of ITS components, they desire that Lynnwood personnel provide specific on-call services for maintaining and operating traffic signal systems in Edmonds;

NOW, THEREFORE, in consideration of the terms, conditions and covenants contained herein, or attached hereto and incorporated herein by reference, the Parties agree as follows:

Section 1. Purpose. The purpose of this Agreement is to provide for mutual cooperation between the Parties in maintaining and operating existing traffic signal systems within Edmonds. The terms, conditions, and covenants of this Agreement shall accordingly be interpreted to further this purpose. This Agreement further seeks to allocate and define the Parties' respective rights, obligations, costs and liabilities concerning the operation and maintenance of the traffic signal systems.

Section 2. Term. This Agreement shall be effective on the date of execution by the Parties hereto. This Agreement shall remain in effect unless terminated in accordance with Section 3,.

Section 3. Termination. Either Party may terminate this Agreement without cause by providing the other Party with 30 days written notice of its intent to terminate.

Section 4. Joint Owned Traffic Signals – Responsibilities At two signal locations along SR 99, the City limits of Edmonds and Lynnwood divide the intersection, placing two quadrants within each jurisdiction. It is agreed that the Parties will each assume complete maintenance responsibilities, including rebuilding, for one signal system, as follows:

- 216th Street SW / SR 99 City of Edmonds
- 212th Street SW / SR 99 City of Lynnwood

Section 5. Provision of On-Call Maintenance and Operation Services. Lynnwood shall provide on-call assistance in maintaining and operating the traffic signal systems within Edmonds, subject to available workforce. Edmonds shall reimburse Lynnwood for all services, materials, labor, and equipment necessary to maintain and operate Edmonds' traffic signal systems as requested. The services provided by Lynnwood shall fall into the following three general categories.

1. Emergency Call-Outs: Signal system emergencies in Edmonds shall be a high priority. Lynnwood technicians shall respond as soon as possible during the work day, and when on-call at night and weekends. Edmonds emergencies shall be rated a higher priority than non-critical work in Lynnwood. Night and weekend call-outs shall be subject to union negotiated minimum hourly charges.
2. Non-critical Repairs: Non-critical repairs will be responded to by Lynnwood technicians only after critical Lynnwood signal work has been completed. Edmonds will have the choice of asking for response on overtime, if regular time response is not adequate. Lynnwood technicians will not be required to work overtime for Edmonds.
3. Signal Engineering: Signal engineering, including signal timing, planning, and design will be responded to by Lynnwood engineers only after critical Lynnwood signal work has been completed. Edmonds will have the choice of asking for response on overtime, if regular time response is not adequate. Lynnwood engineers will not be required to work overtime for Edmonds.

Section 6. Billing, Payment and Rates for Services Provided.

A. Rates. Edmonds shall pay Lynnwood 100% of its expenses for maintenance and operation services performed by Lynnwood under this Agreement, including labor, equipment, and materials, plus 15% administrative overhead.

B. Billing and Payment. Lynnwood shall submit monthly invoices to Edmonds for services performed under this Agreement during the preceding month. Each invoice shall state the payment due for each service, by location. Invoices shall be mailed to Edmonds at the address listed in Section 15, care of the City of Edmonds Finance Department. Edmonds shall pay Lynnwood the appropriate amount within 15 days of receiving each monthly invoice.

C. Disputes. Any dispute arising between the Parties concerning rates or billing for services rendered under this Agreement shall be resolved using the dispute resolution procedures established by Section 7.

Section 7. Joint Administration – Dispute Resolution.

A. Joint Board. The provisions of this Agreement shall be administered by a Joint Board consisting of the Public Works Director of the City of Edmonds and the Public Works Director of the City of Lynnwood. If a dispute arises concerning the interpretation or application of the provisions, duties or obligations under this Agreement, the dispute shall be referred to the Joint Board for resolution.

B. Arbitration. If the Joint Board is unable to resolve a dispute referred to it for resolution, the Joint Board shall refer the dispute to binding arbitration. The arbitrator shall be selected by the Joint Board, PROVIDED that, if the Joint Board cannot mutually agree upon an arbitrator, either Board member may petition the Snohomish County Superior Court to appoint an arbitrator. Both members of the Joint Board shall consent to the arbitrator appointed by the Superior Court, and hereby waive any objection thereto.

Section 8. Failure to Perform. The failure of either Party to perform its duties and obligations under this Agreement shall constitute a breach of contract and shall be grounds for termination at the non-breaching Party's discretion.

Section 9. Non-waiver. Waiver by a Party of any provision of this Agreement shall not constitute a waiver of any other provision.

Section 10. Release, Indemnification and Hold Harmless.

A. In performing the work under this Agreement, Lynnwood agrees to protect, indemnify and save Edmonds harmless from and against any and all injury or damage to Edmonds or its property, and also from and against all claims, demands, and causes of action of every kind and character arising directly or indirectly, or in any way incident to, in connection with, or arising out of work performed under the terms hereof, caused by the fault of Lynnwood, its agents, employees, representatives or subcontractors. Lynnwood specifically promises to indemnify Edmonds against claims or suits brought under Title 51 RCW by Lynnwood's employees or subcontractors and waives any immunity that Lynnwood may have under that title with respect to, but only to, the limited extent necessary to indemnify Edmonds. Lynnwood shall also indemnify and hold Edmonds harmless from any wage, overtime or benefit claim of any Lynnwood employee, agent, representative or subcontractor performing services under this Agreement. Lynnwood further agrees to fully indemnify Edmonds from and against any and all costs of defending any such claim or demand to the end that Edmonds is held harmless therefrom. This paragraph shall not apply to damages or claims resulting from the sole negligence of Edmonds. In situations involving the negligence of Edmonds or its employees, the Parties' respective liability shall be as defined by the law of the State of Washington.

B. Edmonds agrees to protect, indemnify and save Lynnwood harmless from and against any and all injury or damage to Lynnwood or its property, and also from and against all claims, demands, and causes of action of every kind and character arising directly or indirectly, or in any way incident to, in connection with, or arising out of work

performed under the terms hereof, caused by the fault of Edmonds, its agents, employees, representatives or subcontractors. Edmonds specifically promises to indemnify Lynnwood against claims or suits brought under Title 51 RCW by Edmonds' employees or subcontractors and waives any immunity that Edmonds may have under that title with respect to, but only to, the limited extent necessary to indemnify Lynnwood. Edmonds shall also indemnify and hold Lynnwood harmless from any wage, overtime or benefit claim of any Edmonds employee, agent, representative or subcontractor performing services under this Agreement. Edmonds further agrees to fully indemnify Lynnwood from and against any and all costs of defending any such claim or demand to the end that Lynnwood is held harmless therefrom. This paragraph shall not apply to damages or claims resulting from the sole negligence of Lynnwood. In situations involving the negligence of Lynnwood or its employees, the Parties' respective liability shall be as defined by the law of the State of Washington.

Section 11. No Employment Relationship Created Between Lynnwood's Employees and Edmonds. The Parties intend that no employment relationship will be created by this Agreement between Edmonds and any employee, agent, representative or subcontractor of Lynnwood. No agent, employee or representative or subcontractor of Lynnwood shall be deemed to be an agent, employee or representative or subcontractor of Edmonds for any purpose. Lynnwood shall be solely responsible for all acts of its agents, employees, representatives and subcontractors during the performance of this Agreement.

Section 12. Insurance Coverage. Lynnwood shall secure, maintain and provide assurances of adequate insurance coverage or participation in a pool insurance program. Certificates of coverage shall be delivered to Edmonds within fifteen (15) days of execution of this Agreement. The City of Edmonds shall be a named insured. To the extent that Lynnwood incurs additional costs to obtain such coverage, the costs shall be billed as provided in §6(A) and paid by Edmonds.

Section 13. Assignability. The services to be provided by Lynnwood pursuant to this Agreement may be assigned or subcontracted to another party only with the express written consent of Edmonds. Notwithstanding any such assignment or subcontract, Lynnwood shall remain solely responsible to Edmonds for the quality and timeliness of the assigned or subcontracted work.

Section 14. Force Majeur. Neither Party shall be considered in default in the performance of its obligations under this Agreement to the extent that the performance of said obligation is prevented or delayed by any cause, existing or future, which is unforeseen and beyond the reasonable control of the affected Party.

Section 15. Notices. Notices to Edmonds shall be sent to the following address:

**STREET MANAGER
CITY OF EDMONDS PUBLIC WORKS**

7110 - 210TH STREET, SW
EDMONDS, WA 98026

Notices to Lynnwood shall be sent to the following address:

TRANSPORTATION MANAGER
CITY OF LYNNWOOD
P.O. BOX 5008
LYNNWOOD, WA 98046-5008

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U.S. mails, with proper postage and properly addressed.

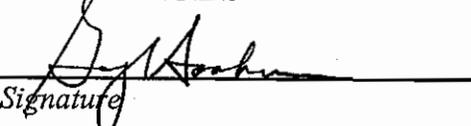
Section 16. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising from the interpretation or performance of this Agreement shall be within Snohomish County, Washington.

Section 17. Financing and Property. The Parties do not anticipate that this Agreement will necessitate either joint financing or budgeting, or the acquisition, holding, or disposition of property. If the need for such budgeting or property arises, the Joint Board shall administer any necessary budgeting or property acquisition, holding, or disposition.

IN WITNESS OF THEIR MUTUAL CONSENT, the parties hereto have executed this agreement as of the day and year as written below:

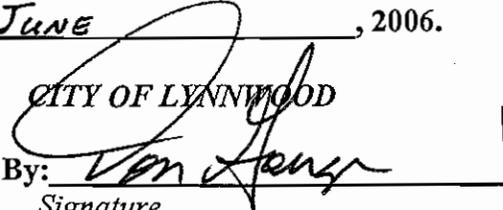
DATED THIS 2nd DAY OF JUNE, 2006.

CITY OF EDMONDS

By: 
Signature

Gary Haakenson
Mayor

CITY OF LYNNWOOD

By: 
Signature

Don Gough
Mayor

APPROVED AS TO FORM:


City Attorney


City Attorney

STATE OF WASHINGTON)
)ss
COUNTY OF)

On this _____ day of _____, 2001, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC

My commission expires:



CITY OF EDMONDS

PUBLIC WORKS DEPARTMENT • 7110 - 210TH ST. S.W. • EDMONDS, WA 98026

(425) 771-0235 • FAX (425) 744-6057 • E-MAIL: klein@ci.edmonds.wa.us

WEB SITE: www.ci.edmonds.wa.us

GARY HAAKENSON
MAYOR

Date: October 31, 2006

To: Lester O. Rubstello, P.E.
Transportation Division Manager
City of Lynnwood
PO Box 5008
Lynnwood, WA 98046

RE: Traffic Signal Maintenance and Operation Agreement

Transmitting: Original Executed Copy

AS YOU REQUESTED	_____	FOR YOUR FILE	_____ <u>X</u>
FOR YOUR INFORMATION	_____	FOR POSTING IN PUBLIC PLACE	_____
AS WE DISCUSSED	_____	FOR SIGNATURE AND RETURN	_____
FOR APPROPRIATE ACTION	_____		

Remarks: Les,

Thank you for getting this agreement finalized.

Sincerely,



Signature

Noel F. Miller, P.E., Public Works Director
Printed Name and Title