

**INTERLOCAL AGREEMENT  
CITY OF EDMONDS AND CITY OF  
76<sup>th</sup> AVE OVERLAY PROJECT**

THIS INTERLOCAL AGREEMENT (“Agreement”) is entered into by and between the City of Edmonds, Washington (“Edmonds”) and the City of Lynnwood, Washington (“Lynnwood”) (individually, a “Party” and collectively, the “Parties”) as of the date entered below.

**RECITALS**

WHEREAS, Chapter 39.34 RCW 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, Edmonds is currently planning a capital improvement project known as the 76<sup>th</sup> Ave W Overlay Project (the “Project”); and

WHEREAS, the Parties each own approximately half of 76<sup>th</sup> Ave W, as described on Attachment 1, attached hereto and incorporated by this reference; and

WHEREAS, Edmonds plans to overlay its half of 76<sup>th</sup> Ave W from 196<sup>th</sup> St SW to Olympic View Drive as part of the Project (the “Edmonds Project Area”); and

WHEREAS, Lynnwood wishes to overlay its half of 76<sup>th</sup> Ave W from 196<sup>th</sup> St SW to Olympic View Drive as shown on Attachment 1 (the “Lynnwood Project Area”); and

WHEREAS, combining both cities’ overlays into one construction contract can create a mutual cost benefit by taking advantage of economy of scale; and

WHEREAS, Lynnwood concurred with Edmonds’ federal grant application and scope of work combining the Edmonds Project Area and Lynnwood Project Area into one project, and

WHEREAS, Edmonds received the federal grant to fund a significant portion of Edmonds Project Area, and

WHEREAS, Edmonds must design and construct the Project within timelines specified by the Puget Sound Regional Council and ensure grant funds are spent in a timely manner; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of defining their respective rights, obligations, costs and liabilities regarding this undertaking; and

WHEREAS, the City Council of the City of Edmonds has taken appropriate action to approve Edmonds’ entry into this Agreement; and

WHEREAS, the City Council of the City of Lynnwood has taken appropriate action to approve Lynnwood’s entry into this Agreement, if necessary;

NOW, THEREFORE, in consideration of the terms, conditions and covenants contained herein, Edmonds and Lynnwood agree as follows:

**TERMS**

**Section 1.** Requirements of the Interlocal Cooperation Act, Chapter 39.34 RCW.

A. Purpose. The purpose of this Agreement is to establish a formal arrangement under which Lynnwood will pay Edmonds to incorporate overlay work on its half of 76<sup>th</sup> Ave W into the Project and to construct said work in conjunction with Edmonds’ construction of the Project. The terms, conditions and covenants of this Agreement shall accordingly be interpreted to advance this purpose. This Agreement further seeks to allocate and define the Parties’ respective rights, obligations, costs and liabilities concerning the establishment, operation and maintenance of this undertaking.

B. No Separate Entity. The Parties agree that no separate legal or administrative entity is necessary to carry out this Agreement.

C. Ownership of Property. Except as expressly provided to the contrary in this Agreement, any real or personal property used or acquired by either Party in connection with the performance of this Agreement will remain the sole property of such Party, and the other Party shall have no interest therein.

D. Administrators. Each Party to this Agreement shall designate an individual (“Administrator”), which may be designated by title or position, to oversee and administer that Party’s participation in this Agreement. The Parties’ initial Administrators shall be:

Edmonds’ Administrator:  
City Engineer  
121 5<sup>th</sup> Ave  
Edmonds, WA 98020

Lynnwood’s Administrator:  
Deputy Public Works Director  
19100 44<sup>th</sup> Avenue W.  
P.O. Box 5008  
Lynnwood, WA 98046-5008

Either Party may change its Administrator at any time by delivering written notice of such Party’s new Administrator to the other Party.

**Section 2.** Term. This Agreement shall be effective upon filing with the Snohomish County Auditor in accordance with Section 17 below. Unless terminated in accordance with Section 3, this Agreement shall remain in effect until the sooner of the following events: (a) Lynnwood’s written acceptance of and payment for Edmonds’ overlay work provided to Lynnwood pursuant to this Agreement; or (b) December 31, 2023, when it shall expire automatically. The Parties may at their option renew this Agreement for a mutually agreed upon term by a writing signed by both Parties.

**Section 3.** Termination. The terms of the federal grant providing partial funding for the Project require the scope of work in the federal grant application, which includes both the Edmonds Project Area and Lynnwood Project Area, to be fully constructed with one construction contract. The failure by Edmonds to construct the entire scope of work in the federal grant application may result in the City being required to return or pay back federal funds received for the Project. Therefore, Lynnwood agrees to remain bound by the terms of this Agreement and shall take no action without the consent of Edmonds to terminate this Agreement. In the event that Lynnwood desires to terminate this Agreement, and Edmonds consents to the terms of such termination, neither such termination nor the

expiration of this Agreement shall alter Lynnwood's payment obligations under Section 6 for services already rendered, as well as for the normal and reasonable costs incurred by the contractor in terminating and closing out Lynnwood's portion of the work, and shall not alter the Parties' respective obligations under Section 10 of this Agreement.

Section 4. Obligations of Lynnwood. Lynnwood agrees to:

A. Reimburse Edmonds for design, construction engineering, inspection, management and construction costs incurred in the Lynnwood Project Area.

B. Provide periodic payments to Edmonds, pursuant to Section 6 of this Agreement, for design, construction engineering, inspection, management and construction costs as follows: a) at the documented hours invoiced to Edmonds by its retained design consultant and construction management firm for time spent on Lynnwood Project Area, plus b) the documented hours for Edmonds' employees at the employee's direct hourly rate of pay and overhead rate for time spent on Lynnwood Project Area.

C. Review the scope of work, consultant hours and fees provided by the design consultant and construction management firm retained by Edmonds. Lynnwood will coordinate all corrections, concerns and changes to the scope of work, consultant hours and fees through Edmonds Project Manager.

D. Respond promptly to information requests submitted by Edmonds or its agents regarding the Project work.

E. Provide timely review of designs prepared by Edmonds' consultant, and complete final design approval by the timelines established by Edmonds to meet its construction bidding schedule.

F. Obtain Bid Award Concurrence from the Lynnwood City Council within twenty-one (21) days of the bid opening.

G. Attend Edmonds' weekly construction coordination meetings.

H. Coordinate all corrections, concerns, issues, changes and contractor correspondence through the Edmonds Project Manager.

Section 5. Obligations of Edmonds. Edmonds agrees to:

A. Incorporate the overlay of Lynnwood's Project Area into Project documents.

B. Assume full responsibility for the design and construction of the Project, including the portion of the Project constructed in the Lynnwood Project Area, and including but not limited to securing all necessary consultants, contractors and subcontractors, awarding a bid for the Project, processing any and all change orders, conducting inspections, and obtaining all permits required for the Project work. The Project, including the portion of the Project constructed in the Lynnwood Project Area, shall be performed and constructed in accordance with all state and local laws, regulations, policies, and standards. All construction contracts shall be procured through a formal competitive bidding process consistent with applicable state law. Edmonds shall be solely and exclusively responsible for ensuring the compliance of the Project's bidding process with all applicable requirements of state and local laws and regulations.

C. Submit to Lynnwood for review the scope of work, consultant hours and fees provided by the design consultant and construction management firm retained by Edmonds. Edmonds will obtain Lynnwood's concurrence on the design and construction management contracts prior to work being performed under either contract.

D. Submit plans, specifications, and estimates to Lynnwood for review and approval prior to granting permission to advertise for construction bids. Lynnwood's concurrence with these documents will be obtained prior to advertisement.

E. Respond promptly to information request submitted by Lynnwood or its agents regarding the Project work.

F. Provide Lynnwood personnel reasonable access to the Project's construction area for purposes of inspecting and monitoring the progress of the work.

G. Submit to Lynnwood written invoices for payment in accordance with Section 6. Include copies of invoices from consultants and contractor, clearly indicating the Lynnwood portion of the invoices.

Section 6. Payment Schedule. The Parties agree to the following billing and payment schedule:

A. For design costs, construction contract costs, and construction engineering, inspection, and management costs incurred by Edmonds for the portion of the Project constructed in the Lynnwood Project Area, Edmonds shall within sixty (60) days of its receipt of invoices for said costs submit an invoice to Lynnwood for its share of said costs. Said invoice shall contain a reasonably detailed explanation of the methodology utilized by Edmonds in calculating the Lynnwood share of each expense. Construction contracts shall provide for separate bid schedules, or other means to clearly identify the Lynnwood portion of the project costs. Design contracts and consultant invoices shall identify all tasks and design work performed associated with Lynnwood Project Area.

B. Within thirty (30) days of receiving any undisputed invoice pursuant to subsection 6.A, Lynnwood shall tender payment to Edmonds in the form of a check, money order or other certified funds for the invoiced amount for work approved by Lynnwood, which approval shall not be unreasonably withheld.

C. In the event that the Parties disagree regarding Lynnwood's share of any cost incurred by Edmonds regarding the Project, the Parties may agree to submit the question for resolution by a mediator or arbitrator acceptable to both Parties.

Section 7. Construction Claims and Disputes. If construction claims for additional payment are made by the construction contractor and/or disputes result regarding work in the Lynnwood Project Area, Edmonds shall endeavor to resolve the claims/disputes. Provided however, Edmonds shall obtain Lynnwood approval prior to resolving the claims/disputes. Lynnwood will participate in resolving claims/disputes as necessary. Financial responsibility for approved construction claims/disputes arising from the Lynnwood Project Area shall be the sole responsibility of Lynnwood.

Section 8. Construction Project Acceptance. Upon satisfactory completion of Lynnwood Project Area, resolution of all claims for additional payment, completion of all contract closeout documents and agreement between Edmonds and the contractor, Edmonds shall recommend final acceptance to the Lynnwood Deputy Public Works Director. Approval by the Lynnwood City Council shall be the responsibility of Lynnwood staff.

Section 9. Ownership and Disposition of Property. The Project work within the Lynnwood Project Area pursuant to this Agreement shall become and remain the exclusive property of Lynnwood upon completion. All other work constructed under the Project shall become and remain the exclusive property of Edmonds upon completion. Each Party is and will remain responsible for the operation and maintenance of its portion of 76<sup>th</sup> Ave W.

Section 10. Release, Indemnification and Hold Harmless Agreement.

- A. Each Party to this Agreement shall be responsible for its own negligent and/or wrongful acts or omissions, and those of its own agents, employees, representatives, contractors or subcontractors, to the fullest extent required by the laws of the State of Washington. Each Party agrees to protect, indemnify and save the other Party harmless from and against any and all such liability for injury or damage to the other Party or the other Party's 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 its own fault or that of its agents, employees, representatives, contractors or subcontractors.
- B. Edmonds specifically promises to indemnify Lynnwood against claims or suits brought under Title 51 RCW by its own employees, contractors 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. Lynnwood specifically promises to indemnify Edmonds against claims or suits brought under Title 51 RCW by its own employees, contractors 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.

Section 11. Insurance. Each Party shall maintain its own insurance and/or self-insurance for its liabilities from damage to property and/or injuries to persons arising out of its activities associated with this Agreement as it deems reasonably appropriate and prudent. The maintenance of, or lack thereof of insurance and/or self-insurance shall not limit the liability of the indemnifying Party to the indemnified Party.

Section 12. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington. Any action arising out of this Agreement shall be brought in Snohomish County Superior Court.

Section 13. No Employment Relationship Created. The Parties agree that nothing in this Agreement shall be construed to create an employment relationship between Lynnwood and any employee, agent, representative or contractor of Edmonds, or between Edmonds and any employee, agent, representative or contractor of Lynnwood.

Section 14. No Third Party Rights. This Agreement is intended for the sole and exclusive benefit of the Parties hereto and no third party rights are created by this Agreement.

Section 15. Notices. All notices that are given by any Party pursuant to this Agreement shall be in writing and shall be delivered either in-person, by United States mail, or by electronic mail (email) to the applicable Administrator designated by the Party under Section 1.D above.

Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, and addressed to the Administrator, at the addresses set forth in Section 1.D above. Notice delivered by email shall be deemed given as of the date and time sent; provided that: (1) the sender does not receive any failure of delivery notice; and (2) any notice by email sent on a day other than a business day shall be deemed effective on the first business day after being sent.

Section 16. Dispute Resolution.

- A. Settlement Meeting. It is the Parties' intent to work cooperatively and to resolve disputes in an efficient and cost-effective manner. If any dispute arises between the Parties relating to this Agreement, then the Parties' respective Administrators, or the Administrators' designees, shall meet and seek to resolve the dispute, in good faith, within ten business (10) days after a Party's request for such a meeting. In addition to the Administrators or designees, each Party shall send any other persons with technical or other information relating to the dispute to the meeting.
- B. Mediation. If the Parties cannot resolve the issue within ten (10) days then they shall mediate the matter using a mediator from Judicial Dispute Resolution, LLC or any other mediation service mutually agreed to by the Parties, or as appointed by the court if the Parties cannot agree (collectively "JDR") within seven (7) days of their failure to agree pursuant to Section 14.A above. The Parties shall evenly split any fees charged by JDR, regardless of the outcome of the mediation. Each Party shall bear its own attorneys' fees in connection with the mediation.
- C. Notice of Default. If the Parties are unable to resolve their dispute through mediation, either Party may serve a written Notice of Default on the other Party. The Notice of Default shall describe the nature of the dispute and the noticing Party's requested resolution. Twenty (20) business days after service of a Notice of Default, either Party may file suit, seek any available legal remedy, or agree to alternative dispute resolution methods. At all times prior to resolution of the dispute, the Parties shall continue to perform any undisputed obligations and make any undisputed required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

Section 17. Duty to File Agreement with County Auditor. Edmonds shall, after this Agreement is executed by both Parties, file this Agreement with the Snohomish County Auditor.

Section 18. Integration/Modification. This document constitutes the entire embodiment of the Agreement between the Parties and, unless modified in writing by an amendment to this Agreement, shall be implemented as described above. This Agreement may only be modified or amended by a written amendment executed by the Parties.

Section 19. Non-Waiver. Waiver by any Party of any of the provisions contained within this Agreement, including but not limited to any performance deadline, shall not be construed as a waiver of any other provision.

DATED this \_\_19\_\_ day of February, 2021.

**CITY OF LYNNWOOD**

DocuSigned by:  
*Nicola Smith*  
By: \_\_\_\_\_  
284B3CE79E884DA...  
NICOLA SMITH, Mayor

**CITY OF EDMONDS**

By: \_\_\_\_\_  
MIKE NELSON, Mayor

ATTEST/AUTHENTICATED:

DocuSigned by:  
*Karen Fitzthum*  
\_\_\_\_\_  
549564C7EC90423...  
Karen Fitzthum, Acting City Clerk

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Scott Passey, City Clerk

Approved as to form only:

DocuSigned by:  
*Rosemary Larson*  
\_\_\_\_\_  
D23BAD973133428...  
City of Lynnwood, Office of the City Attorney

Approved as to form only:

\_\_\_\_\_  
City of Edmonds, Office of the City Attorney

Section 19. Non-Waiver. Waiver by any Party of any of the provisions contained within this Agreement, including but not limited to any performance deadline, shall not be construed as a waiver of any other provision.

DATED this 19th day of February, 2021.

**CITY OF LYNNWOOD**

By: \_\_\_\_\_  
NICOLA SMITH, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Karen Fitzthum, Acting City Clerk

Approved as to form only:

\_\_\_\_\_  
City of Lynnwood, Office of the City Attorney

**CITY OF EDMONDS**

By: \_\_\_\_\_  
MIKE NELSON, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Scott Passey, City Clerk

Approved as to form only:

\_\_\_\_\_  
City of Edmonds, Office of the City Attorney





No. E20CB/i052  
(City Clerk Use Only)

## CONTRACT ROUTING FORM

<b>DESCRIPTION</b>	<b>Originator:</b>	Rob English	<b>Routed by:</b>	Megan Luttrell
	<b>Department/Division:</b>	Engineering - Public Works	<b>Date:</b>	02/18/2021
	<b>Name of Consultant/Contractor:</b>	City of Lynnwood		
	<b>CONTRACT TITLE:</b>	ILA for 76th Ave Overlay Project		

<b>CONTRACT CONTENT</b>	<b>Type of Contract:</b>			
	<input type="checkbox"/> (GR) Grants	<input checked="" type="checkbox"/> (I) Intergovernmental Agreement	<input type="checkbox"/> (L) Lease Agreement	
	<input type="checkbox"/> (S) Purchase of Services	<input checked="" type="checkbox"/> (W) Public Works	<input type="checkbox"/> (O) Other	
	<b>Bid/RFP Number:</b>	E20CB/i052		
	<b>Effective Date:</b>	02/18/2021	<b>Completion Date:</b>	12/31/2023
	<b>Has the original City contract boilerplate language been modified?</b>	<input type="radio"/> Yes <input checked="" type="radio"/> No		
<b>If yes, specify which sections have been modified:</b>				
<b>Description of Services:</b> Agreement has been administratively approved by Phil Williams. The Agreement only requires Sharon signature.				

<b>FINANCIAL DETAILS</b>	<b>Total Amount of Contract:</b>	
	Budget #	Amount:
	Budget #	Amount:
	Budget #	Amount:
	<b>Are there sufficient funds in the current budget to cover this contract?</b>	
<input checked="" type="radio"/> Yes <input type="radio"/> No		
<b>Remarks:</b> See Section 6 of ILA		

<b>SIGNATURE</b>	<b>Authorization Level:</b>	Council	
	<input type="checkbox"/> 1. Project Manager	<input checked="" type="checkbox"/> 6. City Council Approval	02/16/2021
	<input type="checkbox"/> 2. Risk Management/Budget	Date (if applicable)	
	<input checked="" type="checkbox"/> 3. City Attorney	<input checked="" type="checkbox"/> 7. Mayor	
	<input type="checkbox"/> 4. Consultant/Contractor	<input checked="" type="checkbox"/> 8. City Clerk	
<input checked="" type="checkbox"/> 5. Other			