

**Interlocal Cooperation Agreement for  
OLYMPIC VIEW DRIVE WATER MAIN, SEWER/DRAINAGE  
LATERALS, FIBER OPTIC CONDUIT & STORM DRAINAGE  
INSTALLATION  
DESIGN AND CONSTRUCTION**

**between  
THE CITY OF EDMONDS  
and  
THE CITY OF LYNNWOOD**

THIS INTERLOCAL 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 provide for the design and construction of the EDMONDS Olympic View Drive Water Main Installation project, installation of sewer/drainage laterals, installation of fiber optic conduit, and upsizing of the storm drainage system in conjunction with the design and construction of the LYNNWOOD Olympic View Drive Improvements (76<sup>th</sup> Avenue West to 168<sup>th</sup> Street SW) project, and to define the Parties' respective rights, obligations, costs and liabilities regarding this undertaking.

**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, the EDMONDS 2002 Water Comprehensive Plan identifies a requirement to install 8-inch ductile iron pipe water main, fire hydrants, and appurtenances on Olympic View Drive from 76<sup>th</sup> Avenue West to 181<sup>st</sup> Place SW, and from 180<sup>th</sup> Street SW to 174<sup>th</sup> Street SW, and

WHEREAS, LYNNWOOD is presently designing their Olympic View Drive Improvements project to widen the roadway and provide sidewalks and bike lanes on Olympic View Drive from 76<sup>th</sup> Avenue West to 168<sup>th</sup> Street SW; and

WHEREAS, there are approximately thirteen private properties in EDMONDS located along Olympic View Drive between 76<sup>th</sup> Avenue West and 168<sup>th</sup> Street SW that are not presently connected to a sanitary sewer system, and

WHEREAS, it is likely that the septic systems for these properties will fail in the future, and it will become necessary to construct sewer laterals to connect them to the LYNNWOOD sewer trunk line on Olympic View Drive, and

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WHEREAS, the Parties have agreed that the sewer laterals to be constructed pursuant to this Agreement will extend from the existing sewer main to up to 10 feet beyond the right of way, where they will be capped and available for future connection by the owners of the private properties located as indicated in Exhibit A, but that the actual connections by the private property owners and the design standards for such private connections will be addressed separately from this Agreement, and made pursuant to the 1982 "Agreement for Joint Use of Sanitary Sewerage Facilities between City of Edmonds and City of Lynnwood, Trunk-Treatment-Disposal"; and

WHEREAS, Edmonds has offered to contribute \$250,000 for sidewalk improvements benefiting Edmonds' residents; and

WHEREAS, as part of its efforts to move to "smart" water metering, public safety wireless communication, and other municipal uses, EDMONDS seeks to install underground fiber optic cable along Olympic View Drive; and

WHEREAS, during design of the storm drainage system for the project, a localized flooding situation was discovered adjacent to the intersection of Olympic View Drive and 181<sup>st</sup> Pl. SW, as well as adjacent 183<sup>rd</sup> Place SW, east of 72<sup>nd</sup> Avenue. W; and

WHEREAS, the Parties have agreed that correcting the localized flooding problem as part of the Olympic View Drive Improvements by upsizing the proposed drainage system is prudent and fiscally responsible, and the Parties have agreed to evenly divide the construction costs to do so; and

WHEREAS, integrating EDMONDS' new water main, sewer/drainage laterals, and fiber optic conduit installation into LYNNWOOD's construction process for the Olympic View Drive Improvements project would be more expedient, less expensive, and less disruptive to the public than undertaking the projects separately; and

WHEREAS, the Parties mutually desire to establish a formal arrangement under which EDMONDS will pay LYNNWOOD a specified sum in exchange for LYNNWOOD's construction of the EDMONDS water main, sewer/drainage laterals, fiber optic conduit, and upsized drainage system; and

WHEREAS, LYNNWOOD has selected a qualified design consultant through a competitive process for their roadway improvements, it therefore becomes more expedient, less expensive, and more efficient for EDMONDS to select and separately contract with the same consultant for the design services needed for their water main, sewer/drainage, fiber optic, and storm drainage improvements, 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 Councils of the City of Edmonds and the City of Lynnwood have taken appropriate action to approve their respective City's entry into this Agreement;

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

## TERMS

Section 1. Purpose. The purpose of this Agreement is to establish a formal arrangement under which EDMONDS will pay LYNNWOOD to construct the EDMONDS Olympic View Drive water main, sidewalks, sewer/drainage laterals, fiber optic conduit, and storm drainage improvements in conjunction with LYNNWOOD's design and construction of the proposed LYNNWOOD Olympic View Drive Improvements (collectively, "the Project"). The terms, conditions, and covenants of this Agreement shall accordingly be interpreted to advance the new Olympic View Drive water main and sewer laterals installation 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.

Section 2. Term. This Agreement shall be effective upon execution by the Parties hereto. Unless terminated in accordance with Section 3, this Agreement shall remain effective until the sooner of the following events: (a) EDMONDS' written acceptance of all infrastructure provided pursuant hereto, or (b) December 31, 2011, 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. Either Party may terminate this Agreement with or without cause by providing the other Party with 30 days written notice of its intent to terminate. Termination or expiration shall not alter EDMONDS' payment obligations under Section 6 for services already rendered and shall not alter the Parties' respective obligations under Section 9 and Section 13 of this Agreement.

Section 4. Obligations of EDMONDS. EDMONDS agrees to:

- A. Provide periodic payments to LYNNWOOD to reimburse LYNNWOOD for its costs in constructing the EDMONDS Olympic View Drive water main, sidewalks, sewer/drainage laterals, and fiber optic conduit pursuant to Section 6 of this Agreement.
- B. Respond promptly to information requests submitted by LYNNWOOD or its agents regarding the new water main, sidewalks, sewer/drainage laterals, and fiber optic conduit.
- C. Review and approve plans and specifications prepared by the consultant for the water main, sidewalks, sewer/drainage laterals, fiber optic conduit, and storm drainage installation. Approval shall not be unreasonably withheld.
- D. Provide (apply for and obtain) City of Edmonds permits for water main, sidewalks (if required), sewer/drainage laterals, fiber optic conduit and storm drainage work within the City of Edmonds at no cost to LYNNWOOD. Provided, that nothing herein shall be construed as waiving or otherwise abridging the City of Edmonds regulatory authority for work within the City of Edmonds.

- E. Obtain Temporary Construction Easements from all property owners adjacent to new sewer lateral locations to allow the laterals to be extended beyond the right-of-way line.
- F. Provide timely review of utility designs prepared by its consultant, and complete final design by the timelines established by Lynnwood to meet the construction bidding schedule.
- G. Obtain Bid Award concurrence from the EDMONDS City Council in accordance with section 7 within 30 days of the bid opening. If EDMONDS City Council fails to act within the 30 day time period, LYNNWOOD has the option to eliminate the EDMONDS work schedules from the contract.
- H. Contribute up to Two Hundred Fifty Thousand Dollars (\$250,000) for sidewalk improvements within the designated project.

Section 5. Obligations of LYNNWOOD. LYNNWOOD agrees to:

- A. Incorporate the EDMONDS Olympic View Drive water main, sidewalks, sewer/drainage laterals, fiber optic conduit and storm drainage designs into the LYNNWOOD design for roadway improvements
- B. Assume responsibility for constructing the new Olympic View Drive water main, sidewalks, sewer/drainage laterals, fiber optic conduit and storm drainage improvements in accordance with the design plans approved by EDMONDS (including but not limited to securing all necessary consultants, contractors, and subcontractors). All construction contracts shall be procured through a formal competitive bidding process consistent with applicable State law. LYNNWOOD shall be solely and exclusively responsible for ensuring the compliance of said bidding process with all applicable procedures required under state and local regulations.
- C. Submit to EDMONDS written invoices for payment in accordance with Section 6. Include copies of invoices from contractors, clearly indicating the EDMONDS portion of the invoices. Provide EDMONDS a brief written progress report with each invoice, describing in reasonable detail all work performed on the new water main, sidewalks, sewer/drainage laterals, fiber optic conduit and storm drainage improvements during the period covered by the invoice.
- D. Assume lead agency status and sole responsibility for applying for and obtaining any and all regulatory permits necessary to complete the new water main, sidewalks, sewer/drainage laterals, fiber optic conduit and storm drainage improvements in conjunction with the LYNNWOOD Olympic View Drive Improvements, including but not limited to SEPA and building permits.

- E. Provide EDMONDS personnel reasonable access to the Project's construction area for purposes of monitoring the progress of work performed on the new water main, sidewalks, sewer/drainage laterals, fiber optic conduit and storm drainage improvements.
- F. Respond promptly to information requests submitted by EDMONDS or its agents regarding the Project.

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

- A. For each outside construction contract expense incurred by LYNNWOOD regarding the Project, LYNNWOOD shall within 30 days submit an invoice to EDMONDS for the EDMONDS share of said expense for the new water main, sidewalks, sewer/drainage laterals, fiber optic conduit and storm drainage improvements. Said invoice shall contain a reasonably detailed explanation of the methodology utilized by LYNNWOOD in calculating the EDMONDS share of each expense. Contracts for construction shall provide for separate bid schedules, or other means to clearly identify the EDMONDS portion of the Project cost for the new water main, sidewalks, sewer/drainage laterals, fiber optic conduit and storm drainage improvements.
- B. Within 30 days of receiving any invoice pursuant to subsection 6.A, EDMONDS shall tender payment to LYNNWOOD in the form of a check, money order or other certified funds for the undisputed portion of the invoiced amount; PROVIDED, that the total payment by EDMONDS for invoices submitted by LYNNWOOD shall not exceed \$575,000 (plus 8.5 % of actual direct construction contract cost for construction management and administration per Section 6.C) for construction of the water main, \$345,000 (plus 8.5 % of actual direct construction cost for construction management and administration per Section 6.C) for construction of the sewer/drainage laterals, and the actual cost of the change order or bid response for the fiber optic conduit (plus 8.5 % of actual direct construction cost for construction management and administration per Section 6.C), and the actual cost to upsize from an 18-inch to a 24-inch storm drainage pipe between Station 50+31 and Station 25+00, as shown on construction drawings for Olympic View Drive Phase II 76<sup>th</sup> Avenue West to 178<sup>th</sup> Place SW, whereby the EDMONDS share is estimated to be approximately \$81,000, without prior written approval by EDMONDS for each expense incurred in excess of said amount. Written notice of any dispute shall be provided within said thirty-day period and shall be resolved in accordance with subparagraph D below. LYNNWOOD shall inform EDMONDS in writing in advance if expenditures necessary to complete the water main sewer/drainage laterals, and storm drainage improvement installations are expected to exceed these amounts. In the event that the start of construction (award of construction contract) for the new Edmonds utilities is delayed for a period in excess of two years from the date of signing of this agreement, the parties agree that the not-to-exceed construction cost amounts

stated in paragraph 6.B will be increased based on 90% of the Department of Labor Consumer Price Index for the Seattle metro area, for each year the project start is delayed beyond the two year period.

- C. Recognizing that LYNNWOOD shall be reimbursed for their costs of incorporating the EDMONDS utilities work into the construction contract for the LYNNWOOD roadway improvement project, EDMONDS agrees to pay LYNNWOOD an amount equal to 8.5% of the actual construction contract cost for the EDMONDS utilities work for all Construction Management (including resident engineer, inspection, materials testing, etc.) and additional in-house administrative costs incurred by LYNNWOOD to accomplish the construction of the new water main, sewer/drainage laterals, fiber optic conduit, and storm drainage improvements in conjunction with the LYNNWOOD Olympic View Drive Improvements. This amount will be invoiced by LYNNWOOD and paid by EDMONDS as an 8.5% markup on construction contractor invoices submitted to EDMONDS for payment in accordance with Section 6B above.
- D. Within thirty (30 ) days of notice of completion, EDMONDS shall tender payment to LYNNWOOD for its proportionate share of sidewalk improvements. EDMONDS shall pay a total of Two Hundred Fifty Thousand Dollars (\$250,000) toward its proportionate share of sidewalk construction costs. EDMONDS' share is an amount equal to the ratio of \$250,000 to the total estimated cost of sidewalk construction and shall not exceed \$250,000 in total. Receipt of \$107,974 paid toward such construction costs is hereby acknowledged.
- E. In the event that the Parties disagree regarding the EDMONDS share of any expense incurred by LYNNWOOD 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 Bid Acceptance. Upon opening of construction bids, LYNNWOOD shall obtain concurrence from EDMONDS prior to award of the water main, sewer/drainage laterals, fiber optic conduit, and storm drainage improvements portion of the construction contract. Within 15 days after bid opening and prior to acceptance of the bid and award of a contract, LYNNWOOD shall inform EDMONDS of its financial responsibility. Concurrence with bid award by EDMONDS shall be within thirty (30) days of receipt of notice of the bid amounts and EDMONDS financial responsibility. EDMONDS agrees to, if contract award is authorized in a bid amount acceptable to their City Council, authorize an additional 10% of the contract award amount for the EDMONDS utilities work as a construction contingency, subject to the change order authorization limitations in Section 8. The EDMONDS Public Works Director is authorized to determine the water main and/or sewer/drainage laterals and/or fiber optic conduit, and/or storm drainage improvements bid items/schedules, or combinations thereof, for which a contract will be awarded, provided that the total cost does not exceed the limits established in Section 6.

Section 8. Construction Change Orders. The following change order authorizations are hereby established:

- A. The LYNNWOOD resident engineer may authorize change order requests up to \$2,000 per change order and shall immediately provide a copy of the change order authorization to the EDMONDS City Engineer.
- B. The LYNNWOOD Public Works Director, with the prior written concurrence of the EDMONDS City Engineer, may authorize change order requests up to \$10,000 per change order.
- C. The Mayor of LYNNWOOD, with the prior written concurrence of the Mayor of EDMONDS, may authorize change order requests up to \$50,000 per change order.
- D. Change order requests exceeding \$50,000 per change order will be reviewed by the respective City Councils of LYNNWOOD and EDMONDS for approval or denial, and any such approval shall require the concurrence of both City Councils.
- E. In no event shall the total aggregate amount of change orders cause the total construction cost to exceed the maximum amounts in Section 6, without prior written approval by EDMONDS.
- F. Change orders involving a change in scope shall have the scope change authorized in writing by EDMONDS, and be subject to the 8.5% LYNNWOOD construction management and administration fee in Section 6.C.

Section 9 Construction Claims and Disputes. In the event construction claims for additional payment are made by the construction contractor and/or disputes result, LYNNWOOD will endeavor to resolve the claims/disputes and obtain EDMONDS approval prior to finalizing resolution. EDMONDS will assist in resolving claims/disputes as necessary. Financial responsibility for legitimate construction claims/disputes arising from water main, sidewalk, sewer/drainage laterals, fiber optic conduit, and/or storm drainage improvements construction for EDMONDS shall be the sole responsibility of EDMONDS. In the event such claims exceed the financial parameters established in Section 6, EDMONDS will authorize additional funding to cover the cost of the claim/dispute.

Section 10. Construction Project Acceptance. Upon satisfactory completion of the water main, sidewalk, sewer/drainage laterals, fiber optic conduit, and storm drainage improvements work, resolution of all claims for additional payment, completion of all contract closeout documents and agreement between LYNNWOOD and the contractor regarding the final contract quantities for the water main, sidewalk, sewer/drainage laterals, fiber optic conduit, and storm drainage improvements portions of the project, LYNNWOOD shall recommend final acceptance to the EDMONDS City Engineer. Approval by the EDMONDS City Council shall be the responsibility of EDMONDS staff.

Section 11. Ownership and Disposition of Property. The new water main and appurtenances constructed pursuant to this Agreement shall become and remain the exclusive property of EDMONDS upon completion. The new sewer/drainage laterals (and collectors where applicable) constructed pursuant to this Agreement, from the edge of the right-of-way to the point of connection to the LYNNWOOD sewer trunk line or the roadway drainage system as applicable, shall become and remain the exclusive property of EDMONDS upon completion. The new fiber optic conduit and appurtenances constructed for Edmonds pursuant to this Agreement shall become and remain the exclusive property of EDMONDS upon completion. The new drainage system within the Olympic View Drive right-of-way shall become and remain exclusive property of LYNNWOOD upon completion. The Olympic View Drive street improvements including sidewalks constructed shall become and remain the exclusive property of LYNNWOOD upon completion.

Section 12. Administration; No Separate Entity Created. Pursuant to RCW 39.34.030, the parties hereby appoint a Contract Administrator who will be responsible for administering this Agreement, and at the direction of the parties, this Contract Administrator shall take such action as is necessary to ensure that this Agreement is implemented in accordance with its terms. The parties hereby designate the LYNNWOOD Public Works Director, or his designee, as the Contract Administrator for this Agreement. No separate legal entity is formed by this Agreement.

Section 13. Release, Indemnification and Hold Harmless Agreement. 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 or subcontractors, to the fullest extent required by 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 or subcontractors.

Each party specifically promises to indemnify the other party against claims or suits brought under Title 51 RCW by its own employees, contractors, or subcontractors, and waives any immunity that each party may have under that title with respect to, but only to, the limited extent necessary to indemnify the other party. This waiver has been mutually negotiated by the parties. Each party shall also indemnify and hold the other party harmless from any wage, overtime or benefit claim of any of the first party's employees, agents, representatives, contractors or subcontractors performing services under this Agreement. Each party further agrees to fully indemnify the other party from and against any and all costs of defending any such claim or demand to the end that the other party is held harmless therefrom.

Section 14. 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 15. No Employment Relationship Created. The Parties agree that nothing in this Agreement shall be construed to create an employment relationship between EDMONDS and any employee, agent, representative or contractor of LYNNWOOD, or between LYNNWOOD and any employee, agent, representative or contractor of EDMONDS.

Section 16. Notices. Notices to EDMONDS shall be sent to the following address:

**City of Edmonds  
City Engineer  
121 Fifth Avenue N.  
Edmonds, WA 98020**

Notices to LYNNWOOD shall be sent to the following address:

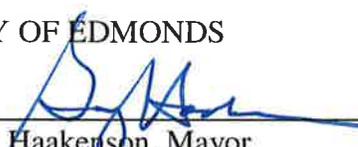
**City of Lynnwood  
Public Works Director  
19100 44<sup>th</sup> Avenue W., P.O. Box 5008  
Lynnwood, WA 98046-5008**

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. This document constitutes the entire embodiment of the Agreement between the Parties, and, unless modified in writing by an amendment to this Interlocal Agreement signed by the Parties hereto, shall be implemented as described above.

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 provisions.

CITY OF EDMONDS

By:   
Gary Haakenson, Mayor

Date: 3/3/2009

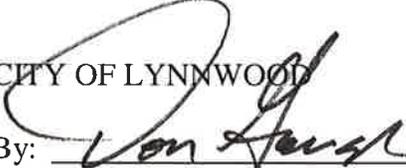
ATTEST:

  
Sandra S. Chase, City Clerk

APPROVED AS TO FORM:

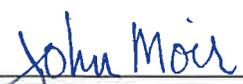
  
Scott Snyder, City Attorney

CITY OF LYNNWOOD

By:   
Don Gough, Mayor

Date: 3-20-09

ATTEST:

  
John Moir, Finance Director

APPROVED AS TO FORM:

  
Eric Frimodt, City Attorney

## **Exhibit A**

### **Approximate List of Properties within City of Edmonds Requiring Construction of Sewer Laterals in Conjunction with LYNNWOOD Olympic View Drive Improvement Project**

- 7101 Olympic View Drive
- 7109 Olympic View Drive
- 7115 Olympic View Drive
- 7327 Olympic View Drive
- 7333 Olympic View Drive
- 7530 184<sup>th</sup> Place SW
- 17632 Olympic View Drive
- 17708 Olympic View Drive
- 17626 Olympic View Drive
- 17806 Olympic View Drive
- 17810 Olympic View Drive
- 17910 Olympic View Drive
- The unaddressed property between 17810 and 17910 Olympic View Drive

The EDMONDS Public Works Director is authorized to modify the list of properties for which to provide sewer laterals, provided that the project cost does not exceed the limits established in Section 6 of the Agreement.