

**AN INTERLOCAL AGREEMENT BETWEEN
THE CITY OF LAKEWOOD AND THE STATE DEPARTMENT OF SOCIAL AND
HEALTH SERVICES
REGARDING THE CONSTRUCTION OF A TRAFFIC SIGNAL AT STEILACOOM
BOULEVARD AND CHAPEL GATE ROAD**

THIS AGREEMENT is entered into by and between the CITY OF LAKEWOOD, a municipal corporation of the State of Washington (the “City”) and the DEPARTMENT OF SOCIAL AND HEALTH SERVICES, an agency of the State of Washington (“DSHS”).

WHEREAS, the parties to this agreement, pursuant to RCW Chapter 39.34, are authorized to enter into an interlocal agreement for the purposes of cooperatively and efficiently providing services to the citizens of Lakewood; and

WHEREAS, the purpose for this agreement is to allow coordination between the parties during the construction of a new temporary traffic signal at Steilacoom Boulevard SW and Chapel Gate Road (hereinafter, “the Project”); and

WHEREAS, the Project is located within the boundaries of the City and Western State Hospital; and

WHEREAS, the Project is served by Steilacoom Boulevard SW a city street; and

WHEREAS, the City and DSHS recognize the value of a coordinated effort for the Project; and

WHEREAS, DSHS has budgeted funds to design and construct the Project; and

WHEREAS, the City has expertise and staffing availability to conduct the engineering design and construction bidding and construction management of the Project; and

WHEREAS, the City is the owner and operator of all traffic signals within the city rights of way with the knowledge and capability to design, construct and operate traffic signals, a necessary component of the Project; and

WHEREAS, the City and DSHS recognize that it is in the best interest of the public to coordinate the design and construction of the Project as the coordination will minimize public inconvenience during construction and will result in faster installation of a signal and enable DSHS to meet targets for their larger construction project on-site; and

WHEREAS, the City and DSHS both recognize the complexity and challenges associated with implementing the Project and pledge to work cooperatively together to assure a mutual successful implementation.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, it is mutually agreed by and between the City and DSHS as follows:

SECTION 1. PURPOSES

The purposes of this Agreement are to: (1) document the agreement reached between the City and DSHS regarding the design and construction of the Project, and (2) establish the roles and responsibilities of the City and DSHS relating to the design, construction, oversight, and administration of the Project.

SECTION 2. IDENTIFICATION OF GOALS

The goals entering into this Agreement are to: (1) facilitate the design and construction of the Project; (2) produce a project that meets the applicable standards and approval of both the City and DSHS; (3) achieve maximum cost savings for the benefit of the public served by both the City and DSHS; (4) minimize inconvenience to the traveling public during construction of the Project; (5) perform appropriate levels of construction administration and construction quality assurance and quality control; (6) create a Project schedule maximizing coordination among the City, DSHS, and the Project's contractor(s); (7) provide DSHS with planning input during all aspects of Project; (8) create a Project sequencing schedule to insure continuity of traffic services to all areas of affected community throughout the duration of the Project.

SECTION 3. THE CITY'S RESPONSIBILITY

- A. The City shall designate a construction lead administrator to administer the cooperative undertaking of the Project.
- B. The City shall lead development of design and bid documents for the traffic signal improvements.
- C. The City shall complete all necessary environmental documentation for the Project and shall serve as the lead agency in ensuring that the Project complies with all applicable requirements of the State Environmental Policy Act (SEPA).
- D. Should easements be required for installation of the temporary or permanent traffic signal, the City will inform DSHS and DSHS will respond to the City as provided in Section 4. The City will be responsible for providing the legal descriptions and documents necessary for execution of any easements.
- E. The City shall be the lead in development of the contract provisions and plans for the Project including: (1) inclusion of plans and specifications; (2) advertisement and posting for bids; (3) instructions to bidders; (4) bid form, bid schedules, and bidder information and signature form; (5) establishment of the naming and scope of each of the various bid schedules; (6) deposit or bid bond form; (7) non-collusion affidavit form; (8) subcontractor list; (9) bidder's construction experience form; (10) contract agreement; (11) contract bond (performance and payment); and (12) state wage rates.
- F. The City shall be the lead in the bidding process for the Project.

- G. Prior to advertising the Project, the City shall provide to DSHS the draft contract provisions prepared by the City. The City shall not advertise the Project until DSHS has responded to the draft contract provisions as described in Section 4 of this Agreement.
- H. No more than three (3) business days after identifying the lowest responsible and responsive bidder for the Project, the City shall submit that bidder's bid proposal to DSHS for review and response as described in Section 4.B of this Agreement.
- I. The City shall not award the Project construction contract to that bidder before DSHS has responded to the bidder's proposal as described in Section 4 of this Agreement.
- J. Prior to commencement of any work on the Project, the City shall organize a preconstruction conference and shall provide DSHS with no less than five (5) business days' prior notice of the scheduled preconstruction conference.
- K. The City shall be the lead on the construction administration for the Project including: (1) constructability analysis (construction staging, utility conflicts, utility staging, etc.); (2) submittal management; (3) inspection services; (4) setting agendas for, facilitating, and preparing meeting minutes from weekly construction meetings; (5) setting agendas for, facilitating, and preparing meeting minutes from monthly management meetings; (6) construction contract scheduling; (7) reviewing of contractor payment requests; (8) document reviews; and (9) record drawings.
- L. The City shall bill DSHS for costs related to the temporary traffic signal in accordance with the payment provisions set forth in this Agreement. Future work for the installation of a permanent traffic signal will be covered under a separate agreement.
- M. The City shall promptly notify DSHS of any issues related to the Project that the City believes are inconsistent with the design or construction documents of the Project, or with this Agreement. The City shall work cooperatively with DSHS to resolve any such issues to the mutual satisfaction of both Parties. If the Parties are unable to resolve the issues cooperatively, the Parties shall engage in the dispute resolution procedures identified in this Agreement.

SECTION 4. DSHS Responsibility

- A. DSHS shall pay for all work necessary to design, bid, construct, administer, and manage the Project as outlined in Section 5 of this Agreement.
- B. After receiving a copy of the lowest responsible and responsive bidder's bid proposal from the City, DSHS shall, within five (5) business days of receipt of the City's notice, issue written notification to the City of any issues with the proposal or of acceptance of the proposal. If DSHS notifies the City of any issues with the proposal, the City shall have the option to address the issues. If the City does not address the issues to DSHS's satisfaction, DSHS may terminate this Agreement as set forth in this Agreement. If, after the five (5) day period, DSHS has not responded to the City or otherwise notified the City of any issues with the proposal or of acceptance of the proposal, the proposal shall be considered accepted by DSHS.
- C. DSHS shall promptly respond to the City notify the City of any issues related to the Project that DSHS believes are inconsistent with the design or construction documents of the Project, or with this Agreement. DSHS shall work cooperatively with the City to resolve any such issues to the mutual satisfaction of both Parties. If the Parties are unable

to resolve the issues cooperatively, the Parties shall engage in the dispute resolution procedures identified in this Agreement.

- D. DSHS will agree to the location of any easements the City identifies as necessary or convenient for the Project and will fund the efforts required to obtain the easements. Should easements be required on DSHS land for the signal, temporary or permanent, DSHS agrees to grant such easements at no cost to the City and in a timely fashion so installation is not delayed.

SECTION 5. COSTS AND PAYMENTS

- A. DSHS agrees to set aside funds for payment to the City for all costs associated with the design and installation of a temporary traffic signal at Steilacoom Boulevard SW and Chapel Gate Road.
- B. The City shall provide DSHS with properly executed invoices and other appropriate documents segregating and identifying the contractor's payments, equipment, materials, and labor expended on Project.
- C. The City shall provide DSHS invoices for City staff time spent on the Project. Any associated costs such as survey, geotech, etc., directly related to the project will be invoiced to DSHS at cost with no markup.
- D. Approved invoices describing costs consistent with Section 5.B above and meeting the description in Section 5.C above shall be paid by DSHS within forty-five (45) days of receipt by DSHS. Notice of any potential dispute regarding payment on an invoice shall be made in writing within the same time period. Payment by DSHS shall not constitute agreement as to the appropriateness of any item or acceptance of the work so represented. If the Parties are unable to cooperatively resolve the dispute, they shall engage in the dispute resolution procedures identified in this Agreement. Interest, at the simple interest rate of 2% per year, shall be charged on all past due payments until paid except for any portion of the past due payment for which it is determined that DSHS is not responsible.

SECTION 6. CHANGES AND CONTRACTOR CLAIMS

- A. There may be unforeseen conditions requiring immediate resolution during the construction phase of this Agreement such as construction disputes and claims, changed conditions, and changes in the construction work. Reimbursement for increased construction engineering and/or construction contract amounts shall be limited to costs covered by a modification, change order, or extra work orders approved as described below.
- B. No change shall be permitted to the approved construction, scheduling, or sequencing plans for temporary traffic signal unless the City provides notice of the change to DSHS as provided in Section 5.
- C. Should it be determined that any change from the Project contract plans and specifications is required that would result in an increased cost to DSHS of \$2,500 or more, the City shall provide DSHS with no less than 24-hours' notice of the proposed change. If DSHS approves the change or does not respond before the expiration period of the notice period, the City is authorized to make the change. If DSHS notifies the City

that DSHS disapproves the change within the notice period, the City shall have no authority to make the change.

- D. Each Party, in the event of a claim by the construction contractor, shall be responsible for its share of the claim filed by the contractor arising out of that Party's proportionate responsibility for the claim.
- E. If the City's contractor submits a claim that impacts the amount to be paid by DSHS, the City will provide a copy of the claim to DSHS along with information and data relevant to it. DSHS shall consider the claim and provide a response to the City. If DSHS rejects the claim in whole or in part, and the contractor does not accept DSHS's position, then the claim will be resolved pursuant to the dispute resolution process of the City-contractor contract. At DSHS's option, DSHS may appear in that process in the City's name, and shall be fully responsible for preparation and presentation of the defense to the claim, and shall bear all expenses and attorney's fees incurred in doing so. If the dispute resolution process results in a determination that the contractor's claim is valid, then DSHS shall pay the City for the amount of the claim.

SECTION 7. TERM OF THE AGREEMENT

This Agreement, unless terminated sooner as provided for in Section 20, shall be in full force and effect commencing on the date of execution of this Agreement and terminating when the Project has been accepted by the City and DSHS has paid the City in full, unless terminated sooner as provided in this Agreement. Termination of this Agreement shall have no effect on the obligations of either Party to maintain the improvements.

SECTION 8. INDEMNIFICATION AND DEFENSE

- A. Each party to this Agreement shall be responsible for its own acts or omissions and those of its officers, elected officials, employees, and agents. No party to this Agreement shall be responsible for the acts and/or omissions of entities or individuals not a party to this Agreement.
- B. In the event of the concurrent negligence of the City and DSHS, each shall be liable for its own percentage of fault. The entities' responsibility to indemnify each other includes the obligation to defend the other and to pay any judgment or award and all chargeable costs and reasonable attorney's fees.
- C. Each party shall individually assume all risk and liability for the specifications, materials requirements, identified work methods and engineering requirements related to this project for which each party is solely responsible for providing.

SECTION 9. NO THIRD-PARTY BENEFICIARY

The City, by this Agreement, does not assume any contractual obligations to anyone other than DSHS. DSHS, by this Agreement, does not assume any contractual obligations to anyone other than the City. There is no third-party beneficiary to this Agreement.

SECTION 10. INSURANCE COVERAGE

- A. The City and DSHS shall each maintain at all times during the course of this Agreement a general liability insurance policy with a policy limit of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.
- B. The City shall require the contractor(s) performing services on the Project to procure and maintain for the duration of the Project's construction contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work associated with this Agreement, with the City named as an additional insured. Coverage shall be at least as broad as the following:
- C. The City shall require each contractor to provide a certificate of insurance, with the additional insured endorsement outlining the required coverage.

The Contractor shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, the City shall not be deemed or construed to have assessed the risks that may be applicable to the contractor under this Agreement. The contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, the contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the work which is the subject of this Agreement.

Insurance coverage shall be at least as broad as stated below and with limits no less than:

- A. *General Liability. Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 Ed. 11-88 covering COMMERCIAL GENERAL LIABILITY. \$1 million combined single limit per occurrence, and for those policies with aggregate limits, a \$2 million aggregate limit.*
- B. *Automobile Liability. Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 Ed. 12/90 covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. \$1 million combined single limit per accident.*
- C. *Workers' Compensation; Statutory requirements of the State of residency. Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.*
- D. *Employer's Liability or "Stop Gap". Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.*

E. *Builder's Risk/Installation Floater: The contractor shall procure and maintain during the life of the Contract, or until acceptance of the project by the City and the Water District, whichever is longer, "All Risk" Builders Risk or Installation Floater Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss – Special Form) including coverage for collapse, theft and property in transit. The coverage shall insure for direct physical loss to property of the entire construction project, for 100% of the replacement value thereof. The policy shall be endorsed to cover the interests, as they may appear, of the City and the Water District, Contractor and subcontractors of all tiers with the City and the Water District listed as loss payees.*

In the event of a loss to any or all of the work and/or materials therein and/or to be provided at any time prior to the final close-out of the Agreement and acceptance of the Project by the City, the contractor shall promptly reconstruct, repair, replace or restore all work and/or materials so destroyed. Nothing herein provided for shall in any way excuse the contractor or its surety from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the Agreement.

Explosion & Collapse, Underground Damage (XCU) Endorsement. \$1,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. Evidence of Insurance must specifically state coverage is included.

Any deductibles or self-insured retention's must be declared to, and approved by, the City. The deductible and/or self-insured retention of the policies shall not limit or apply to the contractor's liability to the City and shall be the sole responsibility of the contractor.

The insurance policies required in this Agreement are to contain and be endorsed to contain the following provisions:

With respect to all Liability Policies except Workers Compensation:

- a. The City, its officers, officials, employees, agents and consultants are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the contractor in connection with this Agreement.*
- b. The contractor's insurance coverage shall be primary insurance as respects the City, their officers, officials, employees, agents, and consultants. Any insurance and/or self-insurance maintained by the City, their officers, officials, employees, agents and consultants shall not contribute with the contractor's insurance or benefit the contractor in any way.*
- c. The contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.*
- d. A Per Project Aggregate shall apply to the General Liability policy.*

Unless otherwise approved by the City:

- 1. Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.*
- 2. Professional Liability, Errors and Omissions insurance may be placed with insurers with a Bests' rating of B+; VII.*

If at any time the foregoing required policies shall fail to meet the above minimum requirements, the contractor shall, upon notice to that effect from the City, promptly obtain a new policy, and shall submit the same to the City, with the appropriate certificates and endorsements, for approval.

The contractor shall include all subcontractors as insured under its policies, or shall furnish separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages provided by subcontractors, as evidence of compliance with the insurance requirements of this contractor shall be subject to all of the requirements stated herein.

SECTION 11. DISPUTE RESOLUTION

- A. In the event that a dispute arises which the Parties do not cooperatively resolve, the parties agree to engage in mediation in order to resolve the dispute. Mediation may be requested by either Party, and shall be conducted prior to the institution of any lawsuit arising under this Agreement. The Parties agree to share the cost of mediation equally.
- B. This Agreement has been made pursuant to, and shall be construed according to, the laws of the State of Washington. In the event that mediation is unsuccessful and either Party finds it necessary to institute proceedings to enforce any provision of this Agreement, such proceedings shall be submitted to arbitration before a mutually-acceptable arbitrator from Judicial Arbitration and Mediation Services, Inc. (JAMS) or Judicial Dispute Resolution LLC (JDR). If the Parties are unable to mutually agree on an arbitrator, one shall be appointed by the Presiding Judge of Pierce County Superior Court.

SECTION 12. NON-DISCRIMINATION

The City and DSHS certify that they are Equal Opportunity Employers.

SECTION 13. ASSIGNMENT

Neither the City nor DSHS shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

SECTION 14. NOTICE

Except where otherwise indicated in this Agreement, any formal notice or communication to be given by the City to DSHS under this Agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

DSHS
9601 Steilacoom Boulevard SW
Lakewood, WA 98498
Attn: Amel Alsalman

Except where otherwise indicated in this Agreement, any formal notice or communication to be given by DSHS to the City under this Agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

CITY OF LAKEWOOD
6000 Main Street SW
Lakewood, WA 98499-5027

Attn: Paul A. Bucich, Public Works Engineering Director

The name and address to which notices and communications shall be directed may be changed at any time, and from time to time, by either the City or DSHS giving written notice thereof to the other as herein provided.

SECTION 15. PROJECT RECORDS

During the progress of the Project and for a period not less than six (6) years from DSHS's final payment to the City, all records and accounting pertaining to the Project shall be kept available for inspection and audit by the State and copies of all records, accounts, documents or other data pertaining to the Project shall be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim or audit finding has been resolved even though such litigation, claim, or audit may continue past the six-year retention period.

SECTION 16. CITY AND DSHS AS INDEPENDENT CONTRACTORS

The City is, and shall at all times be deemed to be, an independent contractor. DSHS is, and shall at all times be deemed to be, an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the City and DSHS or their agents or employees. The City and DSHS shall each independently retain all authority for the rendition of services, standards of performance, control of personnel, and other matters incidental to the performance of services by the City and DSHS pursuant to this Agreement.

Nothing in this Agreement shall make any employee of the City a DSHS employee or any employee of DSHS a City employee for any purpose, including, but not limited to, the withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded the City or DSHS employees by virtue of their employment.

SECTION 17. WAIVER

No waiver by either Party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Agreement.

SECTION 18. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement of the Parties and may not be modified or amended except as provided herein. Any prior understandings, whether written or oral, are expressly excluded. No executed agreements previously executed by one or both of the Parties are effected by this Agreement.

SECTION 19. AMENDMENT

Provisions within this Agreement may be amended with the mutual consent of the Parties hereto. No additions to, or alteration of, the terms of this Agreement shall be valid unless made in writing, formally approved, and executed by duly authorized agents of both Parties.

SECTION 20. TERMINATION

- A. The City has the right to terminate this Agreement by providing written notice to DSHS if the City determines not to undertake the Project or to discontinue the Project, in which case the City shall be responsible for costs incurred by DSHS associated with the temporary traffic signal prior to the City's notice of termination, and DSHS shall only be responsible for costs reasonably incurred by the City that are directly attributable to the temporary traffic signal prior to the City's notice of termination.
- B. DSHS has the right to terminate this Agreement by providing written notice to the City prior to the award of the construction contract, in which case DSHS shall be responsible for all costs reasonably incurred by the City in executing work for a temporary traffic signal.
- C. After award of the construction contract by the City, DSHS may terminate this Agreement only upon 30 days' prior written notice to the City. In that event, DSHS shall be responsible for all costs reasonably incurred by the City through the date 30 days from the date of DSHS's notice to the City, and all bona fide costs reasonably claimed by the contractor in cancelling the Project.

SECTION 21. FILING

Both Parties shall file copies of this Agreement, together with any actions by DSHS approving and ratifying this Agreement with the Lakewood City Clerk and DSHS after execution of the Agreement. This Agreement shall be listed by subject on each party's website or other electronically retrievable public source pursuant to RCW 39.34.040.

SECTION 22. PROPERTY

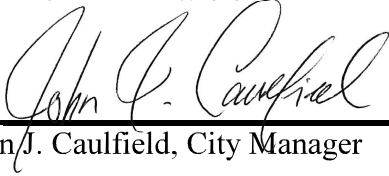
Unless otherwise specifically agreed by the parties in writing, all property, personal and real, utilized by the parties hereto in the execution of this Agreement shall remain the property of that party initially owning it.

SECTION 23. SEVERABILITY

If any provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.


IN WITNESS WHERE OF, the Parties have caused this Agreement to be executed on this 19th day of April, 2023.

CITY OF LAKEWOOD



John J. Caulfield, City Manager


Department of Social and Health Services
(DSHS)



Amel Alsaman, Procurement Contracts
Manager

Attest:  4/19/2023

Briana Schumacher, City Clerk

Approved as to Form:


Heidi Wachter, City Attorney

Name of Attorney