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GCA 6489

**OLYMPIC REGION TRAFFIC MANAGEMENT CENTER
COMMUNICATIONS SERVICES INTERLOCAL AGREEMENT**

This Agreement is made and entered into between the STATE OF WASHINGTON, Department of Transportation, hereinafter the "STATE," and the CITY OF LAKEWOOD, Department of Public Works, 6000 Main Street SW, Lakewood, WA 98499, hereinafter the "CITY."

WHEREAS, the CITY has responsibility over its Street Operations and/or Traffic Operations with responsibility for maintaining its signals, street lights, and streets within the city corporate limits, and

WHEREAS, the CITY is in need of communication services (After-Hours Call-Out Services), outside of normal business hours, on weekends, and on CITY-observed holidays that will convey public or private notification of traffic disruptions and/or traffic emergencies, regarding the CITY's signals, street lights, or other street related matters to the CITY as defined herein, and

WHEREAS, the CITY has requested the STATE's Olympic Region Traffic Management Center (TMC) to provide said communication services to the CITY outside of the CITY's normal business hours, on weekends and on CITY-observed holidays, at CITY expense,

NOW, THEREFORE, pursuant to RCW 47.28.140 and chapter 39.34 RCW, the above recitals that are incorporated herein as if set forth below, and in consideration of the terms, conditions, and performances contained herein,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. SCOPE OF WORK

1.1 The STATE agrees to furnish the CITY with Emergency After-Hours Call-Out Services for Street Operations and Traffic Operations, hereinafter "Services."

1.2 The CITY agrees to reimburse the STATE for a portion of the cost of a STATE Traffic Safety Systems Operator (TSSO) position to provide Services. The CITY's portion of the cost for the STATE TSSO to provide Services will currently be no more than One Thousand Four Hundred Dollars (\$1,400.00) per month. In the event the STATE TSSO position receives wage rate adjustments, the CITY shall reimburse the STATE at the new current rate for a STATE TSSO position to provide the Services.

1.3 The STATE's TSSO position and STATE TMC staff shall be under the sole direction, management, and control of the STATE and shall perform the terms of this Agreement in a manner consistent with STATE policy.

1.4 Although the STATE has agreed to answer and relay Services for the CITY, the Parties agree and acknowledge that the STATE shall not, and has no responsibility for, nor shall the STATE be obligated to, physically go out and correct traffic or street conditions for any of the Street Operations or Traffic Operations calls that it receives and relays on behalf of the CITY.

2. STREET AND TRAFFIC OPERATIONS CALL-OUT PROCEDURE

2.1 A STATE TMC Operator will receive calls made to the CITY Public Works Operations and Maintenance Division, hereinafter "PWOMD," (253-267-1628) outside normal PWOMD business hours. PWOMD normal business hours are from 0700 to 1600, Monday through Friday; therefore, the STATE agrees to receive calls between the hours of 1600 hours to 0700, Monday through Friday, and twenty four (24) hours a day on weekends and on all holidays observed by the CITY. CITY-observed holidays are per Lakewood Municipal Code Section 1.12.010, designates CITY holidays identical to state holidays listed in RCW 1.16.050.

2.2 The CITY will provide the STATE TMC with the PWOMD Call-Out Schedule which identifies Call-Out assignments for its identified city personnel every week, including the following information:

- A. Street Section contact information (cell/home phone),
- B. Signal Section contact information (cell/home phone), and
- C. Operations Manager (cell/home phone).

2.3 An updated PWOMD Call-Out Schedule shall be provided by the CITY to the STATE TMC not later than 1600 hours on Monday of every week and will be effective until the following Monday at 1600 hours.

2.4 The PWOMD Call-Out Schedule will be checked daily by the STATE TMC Operator for any corrections and/or adjustments the CITY has made. All corrections and/or adjustments made by the CITY will be made by a phone call to the STATE TMC Operator and followed up by email.

2.5 Incident Location Checks – The STATE TMC Operator will check to determine whether incidents fall within the CITY's corporate limits.

2.6 Incident Classifications and Procedures:

An incident call will be classified by the TMC Operator as either "Immediate Call-Out Notification", "Non-Priority Notification", or "Non-Essential" calls.

2.6.1 An incident call is classified as "Immediate Call-Out Notification" if the reported situation warrants an immediate Call-Out such as:

Street Section

- Debris blocking the traveled portion of the street
- Trees down and blocking the street (note size and diameter and whether it is in the utility lines)
- Potholes in the traveled portion of the street
- Dead animals blocking the street
- Catch basin grates or manhole covers missing
- Oil, gravel, or chemical spills
- Plow/sanding requests or ice (slippery conditions)
- Leaning trees on the right-of-way that threaten buildings or structures
- Water over the street
- Anything deemed a "Hazard" reported by a law enforcement officer
- Requests for assistance from Department of Emergency Management or Fire Departments

Signal Section

- Flashing, Dark, Damaged, or Malfunctioning Signals
- Downed or Damaged Street Lighting

2.6.2 An incident is classified as "Non-Priority Notification" if the reported situation does not immediately impact the traveling public such as:

Street Section

- Non-emergency utility locates
- Mowing, ditch cleaning, or other routine maintenance requests
- Dead animal not blocking a lane
- Messages for employees that relate to CITY street operations

Signal Section

- Any single color light burned out for signals
- Burned out bulb for street lighting

2.6.3 An incident call is classified as a "Non-Essential" call when the call does not relate to PWOMD business. The caller will be informed that the STATE TMC is an "Emergency Dispatch Center," and the STATE TMC Operator will instruct the caller to call the PWOMD office number during regular business hours (0700 to 1600 hours, Monday through Friday). The CITY agrees that the STATE TMC Operator will not take message or relay messages to or for the CITY's personnel that do not relate to the CITY's street or traffic operations.

2.7 The STATE TMC Operator will record each incident call placed to the CITY phone number and STATE TMC actions taken, including each Call-Out made from the PWOMD Call-Out Schedule to the PWOMD personnel, noting times called and what time contact was made. The STATE TMC Operator will e-mail a copy of the log entries for each day to the PWOMD office. The following information will be recorded for "Immediate Call-Out Notification" or "Non-Priority Notification" calls:

- A. Name of the Caller (and badge number if law enforcement),
- B. Phone number (call back number) of the reporting Caller,
- C. Detailed location of the incident, and
- D. Nature of the incident.

2.8 For "Immediate Call-Out Notification," the STATE TMC Operator will use the current PWOMD Call-Out Schedule to notify the PWOMD personnel to pass on the information regarding the incident. The CITY Operations Manager will be called last if no other identified PWOMD personnel are available.

2.9 Emergency Utility Locate Call-Out Procedure: The STATE TMC Operator receiving a call for an Emergency Utility Locate will give the caller the phone number listed on the Signal Section of the PWOMD Call-Out Schedule to address Emergency Utility Locates.

2.10 Public Works Operations and Maintenance Hand Back Procedure: When events occur within the STATE's Olympic Region TMC Service area that preclude it from handling calls for both the STATE and the CITY because of resource demands, the STATE TMC Supervisor will "Hand Back" the Services to the CITY using the following procedure:

- A. The STATE TMC Supervisor will call the CITY Public Works Operations Manager and inform him or her of the need to Hand Back the Services.
- B. In the event the scheduled PWOMD personnel cannot be reached, the STATE TMC Supervisor will use the contact notification sequence in Section 2.2.
- C. In the event of a Hand Back, the STATE TMC will provide the CITY as much advance notice as possible and in no case will the notification be less than two (2) hours in advance of the Hand Back.

2.11 When events pass as described in Section 2.10 and the STATE can resume Services, the STATE will notify the CITY per Section 2.10 (A) and (B).

2.12 The CITY agrees to reimburse the STATE for the cost of the Traffic Safety Systems Operator (TSSO), as identified in Section 1.2, during periods of Hand Back, even though Services will be temporarily suspended.

2.13 A current Master Signal List of the CITY-owned traffic signal and flashers will be updated as needed.

2.14 Calls related to the CITY's street signs will be processed through the existing STATE and Pierce County Agreement GCA 5413, dated March 25, 2008.

3. PERIOD OF PERFORMANCE

3.1 This Agreement shall commence upon the date this Agreement is entered into and extend until June 30th of the following year unless terminated pursuant to Section 8, Termination. This Agreement shall automatically renew for successive one (1) year terms, unless terminated as provided herein.

4. PAYMENT

4.1 The CITY, in consideration of the faithful performance by the STATE, agrees to reimburse the STATE for the CITY's portion of a STATE Traffic Safety Systems Officer pursuant to Section 1.2 to provide the Services, as described in this Agreement. The CITY further agrees to reimburse the STATE for such costs when the Services are temporarily suspended pursuant to the Hand Back provisions of Section 2.10. No administrative overhead will be charged per the Parties' Overhead Agreement OH-00199.

4.2 The CITY agrees to make payments within thirty (30) calendar days from receipt of a STATE invoice to cover costs incurred. Payments are not to be more frequent than one (1) per month.

5. RECORDS MAINTENANCE

5.1 For a period of not less than three (3) years from the date of each payment for STATE TMC Olympic Region Services, the Parties shall each maintain books, records, documents, and other evidence which sufficiently and properly reflect the labor, equipment or material expended for inspection, review, or audit by personnel of both Parties, other personnel duly authorized by either Party, the office of the Washington State Auditor, and federal officials so authorized by law. 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 continues past the 3-year retention period.

5.2 Records and other documents, in any medium, furnished by one Party to this Agreement to the other Party, will remain the property of the furnishing Party, unless otherwise agreed. The Parties acknowledge and agree that the records are subject to disclosure pursuant to the Public Records Act, chapter 42.56 RCW.

6. SUPERVISION AND INDEPENDENT CAPACITY

6.1 The employees of each Party who are engaged in the performance of this Agreement shall continue to be employees of that Party and shall not be considered for any purpose to be employees of the other Party. Each Party shall be solely responsible for the supervision of its own employees.

7. MODIFICATIONS

7.1 This Agreement may only be amended by mutual agreement of both Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

8. TERMINATION

8.1 Either Party may terminate this Agreement effective June 30th of each year upon written notification to the other Party before February 15th of that year. If this Agreement is so terminated, the Parties shall be liable only for performance rendered or costs incurred prior to the effective date of termination.

9. DISPUTES

9.1 In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each Party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint a third member to the Dispute Board. The Dispute Board shall review the facts relevant to the Agreement terms and applicable laws, statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the Parties hereto. All costs for the additional appointed member shall be shared equally between the Parties; however, each Party shall be responsible for its own costs and fees.

10. LEGAL RELATIONS

10.1 Each Party to this Agreement shall protect, defend, indemnify, and save harmless the other Party, its employees and authorized agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each Party's negligent acts or omissions with respect to the provisions of this Agreement. The Parties shall not be required to indemnify, defend, or hold harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the negligence of the other Party; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) the STATE, its employees and/or authorized agents and (b) the CITY, its employees and/or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity

provisions provided herein shall be valid and enforceable only to the extent of the negligent acts or omissions of each Party, its employees and/or authorized agents.

10.2 This indemnification shall survive the termination of this Agreement.

11. VENUE

11.1 In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in Thurston County Superior Court. Further, the Parties agree that each will be solely responsible for payment of its own attorneys fees, witness fees, and costs.

12. SEVERABILITY

12.1 Should any section, term, or provision of this Agreement be determined to be invalid, the remainder of this Agreement shall not be affected and the same shall continue in full force and effect.

13. AGREEMENT MANAGEMENT

13.1 The Agreement manager for each of the Parties shall be responsible for and shall be the contact person for all communications and invoices under this Agreement.

CITY:

City of Lakewood Public Works Department
Don Wickstrom
Public Works Director
6000 Main St. SW
Lakewood, WA. 98499-5027
(253) 983-7737
dwickstrom@cityoflakewood.us

City of Lakewood Operations and Maintenance Division
Paul Powers
Operations Manager
6000 Main St. SW
Lakewood, WA. 98499-5027
(253) 212-3937
ppowers@cityoflakewood.us

STATE:

Tony Leingang

Freeway Operations Engineer
Traffic Management Center (TMC)
2502 112th St. E.
Tacoma, WA 98445
(253) 536-6020
(360) 239-0843 cell
LeingaA@wsdot.wa.gov


14. NO THIRD PARTY BENEFICIARY

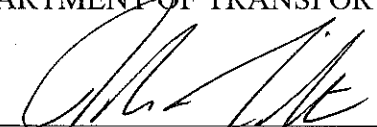
14.1 Nothing contained in this Agreement is intended nor shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a Party to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Party's date signed last below.

CITY OF LAKEWOOD:

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION:

By: 
Andrew Neiditz, City Manager

By: 
John Nisbet, Assistant Region Administrator
for Maintenance and Operations

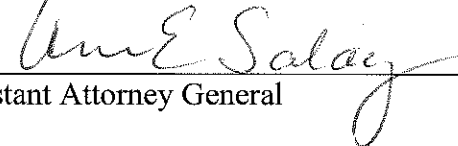
Date: 6-11-10

Date: 6/21/10

Attest:

APPROVED AS TO FORM:

By: 
Alice Bush, MMC, City Clerk

By: 
Assistant Attorney General

Date: 5-5-10

APPROVED AS TO FORM:

By: 
Heidi Ann Wachter, City Attorney