

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Adoption of Interlocal Agreement with the Washington State Department of Labor & Industries (L&I)
DEPARTMENT: Planning and Development Services
PRESENTED BY: Ray Allshouse, Building Official
Joe Tovar, Director of Planning and Development Services

PROBLEM/ISSUE STATEMENT:

The purpose of this report is to request Council to authorize the City Manager to execute an Interlocal Agreement between the City and Washington State Department of Labor & Industries (L&I) to allow the City to provide electrical inspection services and sell electrical permits for all electrical work performed within the City of Shoreline. Approval of Ordinance 426 will implement an electrical program in Shoreline that affords local adoption of the electrical code and authority to collect fees for electrical permits and inspections.

FINANCIAL IMPACT:

The 2006 budget for Planning and Development Services includes provisions to implement electrical permitting services. It specifically identifies an additional 0.50 FTE Technical Assistant position to help process electrical permits. The annualized cost to provide this service was projected at \$29,635. The implementation plan expects that the revenue generated by the 20% handling fee, included in the attached agreement and as proposed by Ordinance 426, will offset this additional cost.

RECOMMENDATION

Staff recommends that Council approve the Professional Services Interlocal Agreement with L&I for electrical permitting as presented in Attachment A.

Approved By:

City Manager  City Attorney 

PROFESSIONAL SERVICES AGREEMENT
BETWEEN
STATE OF WASHINGTON
DEPARTMENT OF LABOR & INDUSTRIES
AND
CITY OF SHORELINE

This Agreement is made and entered into by and between the Washington State Department of Labor & Industries (hereinafter called "L&I"), and

City of Shoreline
Dept of Planning & Development Services
17544 Midvale Avenue North
Shoreline, WA 98133-4921

Telephone: 206-546-1811
Facsimile: 206-546-8761
E-mail: pds@shoreline.wa.us

(hereinafter called "Shoreline" or "City").

1. PURPOSE

It is the purpose of this Agreement to provide electrical inspection services and to sell electrical permits for electrical work performed in the City of Shoreline. In consideration of the terms and conditions contained herein, the parties agree as follows:

TERMS & CONDITIONS

2. STATEMENT OF WORK

Shoreline and L&I shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to the performance of work set forth in the Statement of Work, Attachment A, attached hereto and incorporated herein. All rights and obligations of the parties to this Agreement shall be subject to and governed by the following: *Special Terms & Conditions* contained in the text of this Agreement and the *Statement of Work*, Attachment A, attached hereto and incorporated herein.

3. PERIOD OF PERFORMANCE

Regardless of the date of signature and subject to its other provisions, this Contract shall begin on August 1, 2006, and shall continue indefinitely unless terminated as provided in this Agreement.

4. COMPENSATION

Shoreline shall pay L&I the electrical permit fee described in WAC 296-46B-900 for the performance of all things necessary for or incidental to the performance of electrical inspections requested within the city limits of Shoreline as set forth in the *Statement of Work*. Shoreline shall charge a 20% handling fee to contractors when selling electrical permits for work performed within the city limits of Shoreline and shall retain the fee. L&I shall charge a the handling fee to contractors when selling electrical permits for work performed within the city limits of Shoreline and shall forward the handling fees to Shoreline.

5. CONFIDENTIALITY

The use or disclosure by either party of any information concerning the other party for any purpose not directly connected with the administration of responsibilities with respect to services provided under this Agreement is prohibited except by prior written consent of the other party. Each party shall maintain as confidential all information concerning study findings and recommendations, as well as the business of the other party, its financial affairs, relations with its clientele and its employees, and any other information which may be specifically classified as confidential. To the extent consistent with Washington State law, each party shall maintain all information which other party specifies in writing as confidential

6. RECORDS, DOCUMENTS, AND REPORTS

A. Each party shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by either party, or the Office of the State Auditor so authorized by law, rule, regulation, or contract. Each party will retain all books, records, documents, and other materials relevant to this Agreement for six years after settlement, and make them available for inspection by persons authorized under this provision. Each party shall be responsible for any audit exceptions or disallowed costs.

B. Data which originates from this Agreement shall be and remain the property of the originating party. Data shall include, but not be limited to reports, documents, drawings, specifications, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to use, copyright, patent, register and the ability to transfer these rights.

C. All services performed under this Agreement will be conducted solely for the benefit of each party and will not be used for any other purpose without written consent of the other party. Except as required by law, any information relating to the services will not be released without the written permission of the other party.

D. Except as required by law, each party shall preserve the confidentiality of all the other party's documents and data accessed for use in the work product.

E. Each party shall maintain books, records, documents and other evidence, which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject at all reasonable times for inspection, review, or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law, , in order to monitor and evaluate performance, compliance, and/or quality assurance of internal policies and procedures, and/or records relating to the safeguarding, use, and disclosure of Personal Information obtained or used as a result of this Agreement. Each party shall make available information necessary for the other party to comply with a client's right to access, amend, and receive an accounting of disclosures of their Personal Information. The parties will retain all books, records, documents, and other material relevant to this Agreement for six years after the expiration date. The Office of the State Auditor, federal auditors, and any persons duly authorized by the agencies shall have full access to and the right to examine any of these materials during this period.

F. Each party shall not use or disclose Personal Information in any manner that would constitute a violation of federal law and applicable provisions of Washington State law. Each party agrees to comply with all federal and state laws and regulations, as currently enacted or revised, regarding data security and electronic data interchange of all Personal Information.

G. Each party shall protect Personal Information collected, used, or acquired in connection with this Agreement, against unauthorized use, disclosure, modification or loss. Each party shall ensure their directors, officers, employees, subcontractors or agents use it solely for the purposes of accomplishing the services set forth in this Agreement. Each party and their Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make it known to unauthorized persons without the express written consent of the other party or as otherwise required by law. Each party agrees to implement physical, electronic, and managerial policies, procedures, and safeguards to prevent unauthorized access, use, or disclosure. Each party shall make the Personal Information available to amend as directed by the other party and incorporate any amendments into all the copies maintained by each party or their Subcontractors. Each party shall certify in writing its return or destruction upon expiration or termination of this Agreement, and shall retain no copies. If the parties mutually determine that return or destruction is not feasible, neither

party shall use the Personal Information in a manner other than those permitted or required by state and federal laws.

H. Each party reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the other party through this Agreement.

I. Each party shall notify the other party in writing within 5 working days of becoming aware of any unauthorized access, use or disclosure. Each party agrees to indemnify and hold harmless the other party for any damages related to their own unauthorized use or disclosure. Any breach of this clause may result in termination of the Agreement and the demand for return of all Personal Information.

7. INDEPENDENT CONTRACTOR RELATIONSHIP.

A. Each party is retained by the other party only for the purposes and to the extent set forth in this Agreement. The nature of the relationship between the parties during the period of the services shall be that of an independent contractor, not employee. Neither party shall have the power to control and direct the details, manner or means of services of the other party. Specifically, but not by means of limitation, the parties shall have no obligation to work any particular hours or particular schedule and shall retain the right to designate the means of performing the services covered by this Agreement. The parties shall be entitled to employ other workers at such compensation and on such other conditions as it may deem proper, provided, however, that any contract so made is to be paid solely by the contracting party, and that by employing such workers, the party is acting individually and not as an agent for the other party.

B. Each party shall not be responsible for withholding or otherwise deducting federal income tax or Social Security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the other party or any employee of the other party.

8. NONDISCRIMINATION

In hiring or employment made possible or resulting from this Agreement, there shall be no unlawful discrimination against any employee or applicant for employment because of sex, age, race, color, creed, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. This requirement shall apply to but not be limited to the following: employment, public accommodations, state and local government services, and telecommunications, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt or the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or in the presence of any sensory, mental or physical handicap.

In the event of noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy this Agreement may be rescinded, canceled, or terminated in whole or in part. Each party shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the **Disputes** clause set forth herein.

9. AGREEMENT ALTERATIONS AND AMENDMENTS

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

10. TERMINATION FOR CONVENIENCE

Each party has the right to terminate the Agreement by giving written notice to the other party at least ten (10) days before the effective date of termination. If this Agreement is so terminated,

each party is liable only for payments required under the terms of this Agreement for services rendered prior to termination.

11. TERMINATION PROCEDURE

Upon termination of this Agreement, in addition to any other rights provided in this Agreement, either party may require the other party to deliver any records of current and ongoing electrical permits or inspections.

Each party shall pay to the other party an agreed upon price, if separately stated, for completed work and services accepted by the other party, and the amount agreed upon by the parties for the sale of an electrical permit under this Agreement.

Failure to agree with a determination shall be a dispute within the meaning of the *Disputes* clause of this Agreement.

The rights and remedies of each party provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

After receipt of a notice of termination, and except as otherwise directed by either Contract Manager terminating the Agreement, the other party shall stop work under the Agreement on the date, and to the extent specified in the notice.

12. DISPUTES

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 a member to the dispute board. The members so appointed shall jointly appoint an additional member to the dispute board. The dispute board shall evaluate the facts, Agreement terms and applicable 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.

13. INDEMNIFICATION

Each party to this Agreement will be responsible for the negligent acts or omissions of its own employees, officers, and/or agents in connection with or incidental to the performance of this Agreement. Neither party will be considered the agent of the other and neither party assumes any responsibility to the other party for the consequences of any act or omission of any person, firm, or corporation not a party to this Agreement.

L&I is covered by the State of Washington Self-Insurance Program and the Tort Claims Act, RCW 4.92.070, and Claims against L&I, its employees, officers, and/or agents in connection with or incidental to the performance of this agreement, will be paid from the Revolving Trust as provided in RCW 4.92.130.

The City maintains a professional liability coverage program under the authority of RCW Chapter 48.62 RCW and Chapter 39.34 RCW. Through that authority, the City provides liability coverage for its employees officers, agents and students in connection with or incidental to the performance of this agreement, and further provides the means for defense and payment of claims that may arise against such individuals.

Each party shall compensate any loss (burglary and robbery, as well as, disappearance) from time of receipt of currency until transfer to the other party.

14. ASSURANCES

Each party agrees that all activity pursuant to this Agreement will be in accordance with all the applicable current or future federal, state and local laws, rules, and regulations.

15. VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

16. ORDER OF PRECEDENCE

The items listed below are incorporated by reference herein. In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable Federal and Washington State Statutes and Regulations;
2. *Terms & Conditions* as contained in the basic Agreement;
3. *Statement of Work, Attachment A*;
4. Any other provisions of the Agreement incorporated by reference or otherwise.

17. ASSIGNABILITY

The work to be provided under this Agreement, and any claim arising thereunder, shall not be assigned or delegated by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

18. SUBCONTRACTS

With prior written consent, either party may enter into subcontracts for any of the work or services contemplated under this Agreement. Consent shall not be unreasonably withheld. This clause does not include contracts of employment between either party and personnel assigned to work under the Agreement. Each party is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Agreement are carried forward to any subcontracts.

19. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, or part thereof if such remainder conforms to the terms and requirements of applicable law and the intent of this Agreement and to this end the provisions of this Agreement are declared to be severable.

20. WAIVER

Unless the Agreement is amended in writing by an authorized representative of either party, waiver of a default under this Agreement, or failure by either party to exercise its rights shall not:

- be considered a modification or amendment to the Agreement; or
- constitute a waiver of any subsequent default.

21. CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Contract Manager for the City of Shoreline:	The Contract Manager for L&I:
C. Ray Allshouse Planning & Development Services City of Shoreline 17544 Midvale Ave N Shoreline, WA 98133-4921 Phone: (206) 546-3386 FAX: (206) 546-8761 E-Mail: rallshouse@ci.shoreline.wa.us	Ronald Fuller Department of Labor & Industries PO Box 44460 Olympia WA 98504-4400 Phone: (360) 902-5249 FAX: (360) 902-5229 E-Mail: fulr235@lni.wa.gov

22. DEFINITIONS

As used throughout this Contract, the following terms shall have the meanings set forth below:

1. "Contract Manager" means the representative identified in the text of the Contract who is delegated the authority to administer the Contract.
2. "Confidential Information" shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, Personal Information, agency source code or object code, and agency security data.
3. "Individually Identifiable Health Information" is a subset of health information, including demographic information collected from an individual and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, as set forth in 45 CFR § 164.501 as currently enacted and subsequently amended or revised.
4. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers or Protected Health Information, any financial identifiers, and other information that may be exempt from disclosure to the public or other unauthorized persons under either RCW 42.17.310 or other state and federal statutes.
5. "Protected Health Information" means Individually Identifiable Health Information that is transmitted by electronic media, or transmitted or maintained in any other form or medium, as set forth in 45 CFR § 164.501, as currently enacted and subsequently amended or revised.
6. "Subcontractor" means one not in the employment of either party, who is performing all or part of those services under this Contract under a separate contract with either party. The terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) in any tier.

23. ENTIRE AGREEMENT

This Agreement consists of eight (8) pages including Attachment A, *Statement of Work*.

This Agreement sets forth in full all the terms and conditions agreed upon by the parties. Any other agreement, representation, or understandings, verbal or otherwise, regarding the subject matter of this Agreement shall be deemed to be null and void and of no force and effect whatsoever.

IN WITNESS WHEREOF, the parties have executed this Agreement.

City of Shoreline
Planning and Development Services

State of Washington
Department of Labor & Industries

Robert L. Olander (Date)
City Manager

Patrick Woods (Date)
Assistant Director

APPROVED AS TO FORM ONLY

APPROVED AS TO FORM ONLY

Ian Sievers (Date)
City Attorney

Penny Allen (Date)
Assistant Attorney General

**ATTACHMENT A
STATEMENT OF WORK**

L&I and Shoreline shall each furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to the performance of work as set forth below:

L&I Responsibilities:

1. L&I shall sell electrical permits for electrical work to be performed within the city limits of Shoreline.
2. L&I shall charge the rate described in WAC 296-46B-900 for each electrical permit sold plus an additional 20% handling fee.
3. At the end of each month L&I shall transfer funds equal to the 20% handling fees collected for each Shoreline electrical permit sold by L&I that month. The funds shall be transferred within 30 days of the last day of the month, or more frequently as required by the State Treasurer's office and agreed to by both parties.
4. L&I shall take requests for electrical inspections for electrical work done within the city limits of Shoreline and perform inspections for those requests.
5. L&I shall provide Shoreline with a monthly report of all permit activity within the City of Shoreline. This report will include information on quantity and type of permits, dollar amounts of permits and handling fees received, inspection activity, complaints, appeals and exceptions, as necessary to create a good working relationship between L&I and Shoreline;
6. L&I shall process all appeals of department action regarding permits within Shoreline using appeal methods and procedures described in Chapter 19.28 RCW and Chapter 296-46B WAC;
7. L&I shall enforce compliance with all licensing and permitting requirements within Shoreline as described in Chapter 19.28 and Chapter 296-46B RCW.
8. L&I shall provide Shoreline access to an online, web based system, Electronic Permits & Inspection ("EPI"), that will allow any electrical permit purchaser to:
 - a. Allow Shoreline to buy electrical permits for customers at Shoreline offices.
 - b. Buy an electrical permit using either a credit (i.e. Master or Visa card) or debit card; and
 - c. Make an online request for inspection of that permit;The "EPI" system will track electrical permits, requests, and inspections within Shoreline separately from other permits and inspections. L&I shall provide training for Shoreline staff on the use of the EPI system.
9. L&I shall provide next day inspection services for all "critical path" work, unless all inspectors are unavailable due to training, in which case, inspection requests shall be completed on the next available work day. "Critical path" means that the lack of inspection will delay other trades in their progress on the jobsite. It is agreed that inspections for minor work such as thermostat installations do not need to occur on the day following a request.
10. To facilitate the ability of the general public and electrical contractors to obtain permits at the City of Shoreline for any L&I jurisdiction, L&I shall supply all paper forms, handouts and posters for electrical permitting, inspection, and licensing and a display rack or other method necessary to complete a display that is professional in appearance.

Shoreline Responsibilities:

1. Shoreline shall sell electrical permits for electrical work to be performed within the city limits of Shoreline;
2. Shoreline shall charge the rate described in WAC 296-46B-900 for each electrical permit sold, plus an additional 20% handling fee.

3. For all electrical permits sold by cash, check, credit or debit card, Shoreline shall:
 - a. Utilize the "EPI" system to record all electrical permits sold, and shall record all payments for electrical permits into their own cash receipts system.
 - b. Utilize the "EPI" system to record all electrical permits sold, and shall record all payments for electrical permits into their own cash receipts system, or in case of emergency, use paper application forms provided by L&I;
 - c. Provide the customer with a copy of the electrical work permit to post on the job from the "EPI" system and a receipt from their cash receipts system.
 - d. Transmit a facsimile copy of each paper application form to L&I on a daily basis;
 - e. Maintain daily records of electrical permit sales and provide L&I with a monthly report of sales including number of receipts, voids and exceptions;
 - f. Provide secure storage of cash and checks until deposited in bank.
 - g. At the end of each month transfer funds to L&I equal to the amount collected for Shoreline electrical permits sold that month, less the 20 % handling fee. The funds shall be transferred within 30 days of the last day of the month, or more frequently as required by the State Treasurer's office and agreed to by both parties.
4. Shoreline shall accept requests, as necessary, for inspection of electrical work done within the city limits of Shoreline and transmit such requests to L&I by facsimile copy on the day of the request.
5. Shoreline shall not be responsible for collecting any "fees due" that may be owed to L&I by the customer.

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