

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF BLAINE AND WHATCOM COUNTY FIRE DISTRICT NO. 21 FOR
ODELL STREET FIRE STATION AND PROPERTY**

THIS INTERLOCAL AGREEMENT is entered into by and between WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 21, a Washington municipal corporation (the "District") and THE CITY OF BLAINE, a Washington city (the "City") on this _____ day of _____, 2007.

WHEREAS, the District and the City entered into an Interlocal Agreement pursuant to Chapter 39.34 of the Revised Code of Washington on April 30, 1999, as amended by Addendum on June 29, 1999, and as amended by Addendum on July 22, 2002 (the Interlocal Agreement as amended on June 29, 1999, and as amended on July 22, 2002 shall hereinafter be collectively referred to as the "Interlocal"); and

WHEREAS, subsequent to the adoption of the Interlocal, on _____ the citizens of Blaine and the residents of the Whatcom County Fire Protection District No. 21 voted to approve the annexation of Blaine to the District; and

WHEREAS, at the time of annexation, the City owned the fire station located at the property commonly known as 9408 Odell Road and continues to own said station (said station and all related improvements installed by the City are referred to herein as the "Odell Station"); and

WHEREAS, at the time of the annexation, the District owned the property commonly known as 9408 Odell Road, and continues to own said property (the "Property") legally described in Exhibit "A", attached hereto; and

WHEREAS, the Interlocal expired on April 30, 2004; and

WHEREAS, the City and the District mutually desire to enter into an agreement which sets forth the terms and conditions upon which the District will occupy and use the Odell Station to provide fire protection services to the City.

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

I. TERM OF AGREEMENT

1.1 Term. This Agreement shall terminate on December 1, 2021, ("Termination Date"). The Termination Date shall coincide with the expiration date of the City's general obligation bond used to build the Odell Station.

1.1.1 Upon the Termination Date, this Agreement shall remain in effect, renewable on an annual basis, so long as the District continues to provide fire protection services to the City.

II. STATION AND PROPERTY USE

2.1 **Property and Station Ownership.** The District and the City agree that, during the term of the Agreement, the City shall retain ownership of the Odell Station. Furthermore, the District and the City agree that, during the term of the Agreement, the District shall retain ownership of the Property, subject to the provisions of Section 2.

2.2 **Fire Station Lease.** The District hereby agrees to lease the Property upon which the City has located the Odell Station to the City for the sole purpose of and in consideration for the City's exclusive lease of the Odell Station to the District.

2.2.1 Pursuant to the lease of the Odell Station, the District has the exclusive right to use, maintain and man the Odell Station for the purpose of providing fire protection and other related services to the City and the entire Whatcom County Fire District No. 21 boundaries during the term of this Agreement. In addition, the District reserves the right to establish rules related to third party use of the Property and the Odell Station during the term on the Property and Station Lease herein.

2.3 **Disposition of the Property and the Odell Station Upon Termination of the Agreement.** Upon termination of this Agreement, the District and City agree that the Odell Station and the Property shall be disposed of as follows:

2.3.1 In the event that the Agreement runs its entire term and it expires on December 1, 2021, with neither the District nor the City terminating the Agreement prior to its expiration time, then the District shall retain ownership of the Property and the City shall convey to the District all rights in and ownership of the Odell Station and any other appurtenances and fixtures to the Property belonging to the City, provided that the District continues to use the Property as a fire station after the expiration of this Agreement. In the event that after the expiration of this Agreement, the District should cease to use the Property as a fire station serving the City, the District shall convey to the City the Odell Station at no cost, retaining ownership of the Property.

2.3.2 In the event that prior to the expiration of this Agreement, the City annexes from the District such that the District will no longer provide the City with services pursuant to the Agreement and properly terminates the Agreement, then the parties agree that the City shall have the right to purchase the Property from the District at that time. An independent third-party appraiser selected and paid for by the District shall value the Property, excluding the Odell Station and City installed improvements. The sale of the Property shall be on terms agreeable to both parties and determined at the time of the sale, and may be made either through a lump sum payment or through the development of a payment plan acceptable to both parties.

III. INSURANCE

3.1 **Property Insurance.** During the existence of this Agreement, the District shall maintain all risk comprehensive general liability insurance, including property insurance for the Property and the Odell Station in an amount not less than one million dollars (\$1,000,000.00) with a deductible of not more than five thousand dollars (\$5,000.00) naming the other party as "also insured," to the extent possible. This insurance shall cover the full assessed value of the Odell Station.

3.2 **District Insurance.** The District agrees to assume all insurance costs for equipment owned and utilized by the District. To the extent possible, the District shall name the City as "also insured" under these policies.

3.3 **Cross Release.** Except as specifically provided in this Agreement, the District and the City do hereby release each other from any claims, demands, damages or causes of action related to damage to equipment or property owned by the parties, to the extent of any insurance coverage. It is the intent of the parties to cover this risk with the insurance noted above.

IV. MUNICIPAL IMPROVEMENTS

4.1 **Municipal Improvements.** Should the Odell Station become subject to municipal street improvements, sewer or other assessment during the term hereof, the District shall pay the installments maturing during its occupancy, to the extent required under law.

V. USE OF PREMISES

5.1 **Permissible Uses.** The Odell Station shall be used primarily for fire protection and emergency medical related purposes. However, the facility may also be used for community meetings and events at the discretion of the District.

VI. MAINTENANCE

6.1 **Required Maintenance.** The City shall be responsible for major repairs to the structure of the Odell Station. The District shall perform all daily and routine maintenance including, but not limited to, keeping the Property free of refuse and litter and generally maintaining the Odell Station in good repair.

VII. ALTERATIONS AND ADDITIONS

7.1 **Improvements.** The District may make and install, at the District's expense, such improvements as are normal and customary in connection with the provision of fire protection and other related services. The District shall submit plans to and obtain written approval, which shall not be unreasonably withheld from the City before commencing any improvements.

7.1.1 Upon termination of this Agreement, or any extension thereof, the District may remove any real property improvements installed by the District on the Odell Station, in which case the District shall restore the Odell Station to its previous condition. Alternatively, the District may, with the approval of the City, leave any or all such real property improvements on the Odell Station, in which case the City shall not compensate the District for any such improvements and all such improvements shall become the property of the City.

VIII. UTILITIES

8.1 **Utility Payments.** The District shall be responsible for the payment of all utilities used at the site.

IX. DISTRICT TO OBTAIN PERMITS

9.1 **Permit Requirements.** The District shall obtain and comply with all required permits for any improvements constructed on the Property by the District. If the District fails to obtain and comply with such permits, then the District shall be responsible for any and all costs incurred by the City as a result of such failure, including actual attorney's fees. The District shall hold the City harmless from any liability and shall fully reimburse expenses of the City for the District's failure to fully comply with any necessary permit process and requirement.

X. LAWS AND REGULATIONS

10.1 **Follow All Laws.** The District shall conform to and abide by all lawful rules, codes, laws and regulations in connection with its use of the Odell Station and shall not permit the Odell Station to be used in violation of any lawful rule, code, law, regulation or other authority. The District shall indemnify and hold the City harmless against and from any and all claims, demands, judgments, orders, or damages resulting from hazardous substances in the Odell Station caused in whole or part by the activity of the District, its agents or subtenants. It is the intent of the parties that the District shall be responsible for and hold the City harmless from any liability for hazardous substances that have occurred or may occur at the Odell Station since the District first occupied the Odell Station through this Agreement. The term "hazardous substances," as used herein, shall mean any substance heretofore or hereafter designated as hazardous under the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 ~~et seq.~~; the Clean Air Act, 42 U.S.C. Liability Act of 1980, 42 U.S.C. Sec. 9601 ~~et seq.~~; or the Hazardous Waste Cleanup-Model Toxic Control Act, RCW 70.105D, all as amended and subject to all regulations promulgated thereunder.

XI. WASTE

11.1 **No Waste Permitted.** The District shall not permit conditions of waste to exist at the Odell Station and shall keep the Odell Station in a neat, clean and orderly condition and shall be responsible for any and all damages caused to the Odell Station by the District and/or its agents.

XII. ASSIGNMENT

12.1 **Assignment Restricted.** The District shall not assign, rent or sublease any portions of the Odell Station without the prior written consent of the City and no rights hereunder or in or to the Odell Station shall pass by operation of law or other judicial process or through insolvency proceedings. The City's consent to an assignment or sublease shall not be unreasonably withheld. Otherwise, the rights and obligations herein shall extend to and be binding upon the parties hereto and their respective successors, representatives and assigns as the case may be. The District shall furnish the City with copies of all such assignment, sublease, or rental documents.

XIII. SIGNS

13.1 **Permissible Signage.** The District may erect signs which comply with local sign ordinances.

XIV. NOTICE

14.1 **Notice.** All notices hereunder may be delivered or mailed to the parties hereto. If mailed, they shall be sent by Certified or Registered Mail to the following respective addresses:

TO CITY:	City Manager City of Blaine 344 H Street Blaine, WA 98230
TO DISTRICT:	Chief Tom Fields <i>District Fire Chief</i> Whatcom County Fire District No. 21 307 19 th Street Lynden, WA 98264

or such other addresses that either party may hereafter from time to time designate in writing. Notices sent by mail shall be deemed to have been given when properly mailed, postage prepaid, and the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

XV. ENTRY BY CITY

15.1 **Entry.** The duly authorized officers or agents of the City may enter to view the Odell Station at any time during normal business hours.

XVI. INTERPRETATION

16.1 **Time of Essence.** Time is of the essence of this Agreement and a waiver of any default of the District shall not be construed as a waiver of any subsequent default.

16.2 **Agreement as a Whole.** In any dispute between the parties, the language of this Agreement shall in all cases be construed as a whole according to its fair meaning and not for or against either the City or the District. Should any word, clause, sentence, or combination thereof for any reason be declared by a court of law or equity to be invalid or unenforceable against one party or the other, then such fact shall in no way affect the remaining provisions of this Agreement.

16.3 **Drafting.** Each party has fully participated in the drafting of this Agreement. Therefore, the Agreement shall be construed according to its fair meaning without regard to which party drafted a particular provision. The parties jointly retained the services of the law firm of Chmelik Sitkin & Davis P.S. to draft this Agreement for them without providing any legal advice or representation to either party, and with each party having waived any conflict of interests regard to said law firm drafting this Agreement on behalf of the parties.

Each party has been provided the opportunity to seek and obtain independent legal advice regarding this Agreement and the transaction prior to its execution.

XVII. ARBITRATION

17.1 **Arbitration**. Should a dispute arise under this Agreement, either party may request that the dispute be referred to arbitration. The party requesting the arbitration shall select an arbitrator and give written notice to the other party, who shall select an arbitrator within ten (10) business days after receipt of such notice. If the other party fails to name such second arbitrator within said ten (10) business days, the arbitrator named by the first party shall decide the matter. The two arbitrators chosen shall, within ten (10) business days after the appointment of the second, select a third. If the two cannot agree upon a third, he/she shall be appointed by any judge of the Superior Court of Whatcom County, Washington, upon application made therefore by either party upon ten (10) days written notice to the other. Upon their appointment, the three arbitrators shall enter immediately upon the discharge of their duties and shall settle the dispute and determine the amount of any compensation to be paid and shall file their award in writing with the City and the District within sixty (60) days after their appointment. The award shall be the decision of not less than two (2) of the arbitrators. Each party shall bear the expense of its own appointed arbitrator and the parties shall share all other expenses of the arbitration equally.

XVIII. ENTIRE AGREEMENT

18.1 **Entire Agreement**. This Agreement contains all of the understandings between the parties. Each party represents that no promises, representations or commitments have been made by the other as a basis for this Agreement that have not been reduced to writing herein. No oral promises or representations shall be binding upon either party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a modification to this Agreement executed with all necessary legal formalities.

IN WITNESS WHEREOF the parties have caused this Agreement to be signed by their duly authorized representatives as of the date first above mentioned.

CITY OF BLAINE

**WHATCOM COUNTY FIRE DISTRICT
NO. 21**

GARY TOMSIC
Blaine City Manager

TOM FIELDS
Whatcom County Fire District No. 21
Chief

COUNTY OF WHATCOM)

On this day personally appeared before me, GARY TOMSIC, to me known to be the CITY MANAGER of the CITY OF BLAINE, and acknowledged that he signed the within and foregoing instrument as his free and voluntary act and deed for the uses and purposes therein mentioned and on oath stated that he is authorized to execute the said instrument on behalf of, for and at the direction of said City.

GIVEN under my hand and official seal this ____ day of _____, 2007.

My Commission expires _____

COUNTY OF WHATCOM)

On this day personally appeared before me, TOM FIELDS, to me known to be the CHIEF of the WHATCOM COUNTY FIRE DISTRICT NO. 21, and acknowledged that he signed the within and foregoing instrument as his free and voluntary act and deed for the uses and purposes therein mentioned and on oath stated that he is authorized to execute the said instrument on behalf of, for and at the direction of said City.

GIVEN under my hand and official seal this ____ day of _____, 2007.

My Commission expires _____

EXHIBIT "A"

[LEGAL DESCRIPTION]