

**CITY OF BLAINE**  
**REQUEST FOR COUNCIL ACTION**  
**MEETING DATE: December 10, 2007**

**SUBJECT:** Interlocal agreement with Whatcom Fire District 21 for Fire Marshal Services

**SUBMITTING DEPT:** Public Safety

**PREPARED BY:** Mike Haslip, Public Safety Director

**AGENDA LOCATION:** Comments / Communications ☐, Consent ☐,  
Public Meeting (Hearing) ☐, Unfinished Business ☐, Council Action Item ☒,  
Committee Reports ☐

---

**ATTACHMENTS:** Interlocal Agreement with Whatcom Fire District 21 for Fire Marshal Services.

---

**ANALYSIS / SUMMARY:** The safety and inspectional services provided by a fire marshal's office are one of the basic public safety functions of an incorporated community. Fire districts in Washington are not given the authority to commission fire marshals. As Blaine has annexed in to North Whatcom Fire District 21, it is most effective and efficient for the City to partner with the District to provision these services for our residents. Staff has met with the Fire District and with the help of our legal representatives. We have drafted an interlocal agreement which is renewable annually upon consensus. The agreement contains provision for periodic meetings between city and district managers to discuss issues which may arise with service delivery.

---

**RECOMMENDATION:** ☒ Waive 2<sup>nd</sup> Reading: (Including conditions of approval if applicable) Staff recommends that Council authorize the City Manager to execute the interlocal agreement with Whatcom County Fire District 21 for Fire Marshal services.

---

**FISCAL ANALYSIS:** The cost for these services will be evaluated annually and is currently set at \$55,448.12. In 2007 the City will be paying one half that amount for services rendered to date by the District.

---

**REVIEWED BY:**

City Manager \_\_\_\_\_ Finance Director \_\_\_\_\_ City Clerk \_\_\_\_\_

---

**COUNCIL ACTION:** Approved ☐, Denied ☐, Tabled / Deferred ☐,  
Assigned to: \_\_\_\_\_

**DATE OF NEXT COUNCIL ACTION:** \_\_\_\_\_

**INTERLOCAL AGREEMENT BETWEEN  
THE CITY OF BLAINE AND WHATCOM COUNTY FIRE DISTRICT NO. 21 FOR FIRE  
MARSHAL SERVICES**

**THIS INTERLOCAL AGREEMENT** (the "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, and is for provision of Fire Marshal services for the City of Blaine.

**WHEREAS**, the City desires to secure Fire Marshal Services (the "Services") from the District; and,

**WHEREAS**, the District desires to provide such Services to the City; and,

**WHEREAS**, the District and the City are authorized, pursuant to Chapter 39.34 of the Revised Code of Washington, to enter into interlocal cooperation agreements to provide high quality services to the public which are coordinated in philosophy and enforcement in the most efficient manner possible.

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

**I. DEFINITIONS AND TERMS**

1.1 **Definitions**. The following definitions shall apply throughout this Agreement.

1. District Boundaries: The combined response areas of the District and the City.
2. Fire Marshal Services or Services: All services described in Exhibit "A," attached hereto.

1.2 **Term**. The term of this Agreement shall expire on December 31, 2008, and shall automatically renew on an annual basis unless terminated by either party in writing by June 30<sup>th</sup> of the last year of the Agreement.

**II. DISTRICT OBLIGATIONS**

2.1 **Services Provided to City**. During the term of this Agreement, the District agrees to provide the Services to the City as set forth in Exhibit "A," attached hereto (the "Services").. The District agrees to provide, subject to the terms and conditions of this Agreement, apparatus, facilities, equipment and personnel necessary to provide effective Fire Marshal services to the City.

### **III. STAFFING**

3.1 **Staffing.** The District shall designate one employee as the District Fire Marshal. The City acknowledges that in instances or occurrences, such as vacation, sick leave, or training, where the designated Fire Marshal is not available, the District may utilize Whatcom County Fire Marshal services or other District personnel to provide temporary Services until the designated District Fire Marshal is available.

3.2 **Fire Marshal is a District Employee.** The District Fire Marshal shall be a District Employee. The position of District Fire Marshal is a Division Chief position, and, as such, he/she shall report directly to the District Fire Chief. The City shall not be an employer or supervisor of the District Fire Marshal.

### **IV. CITY OBLIGATIONS**

4.1 **Delegation of Authority.** The City hereby delegates to the District the authority and power to provide fire investigative services on behalf of the City as set forth in this Agreement. When performing fire investigative services within the City, the District Fire Marshal shall coordinate with the City of Blaine Police Department. Neither the District Fire Marshal nor any employee of the District shall have the authority to file code enforcement actions, including the filing of any civil infractions or criminal charges on behalf of the City of Blaine, until such time as the District Fire Marshal has completed appropriate law enforcement training approved by the City and has received a limited law enforcement officer's commission which shall not be unreasonably withheld. Upon the District Fire Marshal's completion of appropriate law enforcement training as determined by the City, the District Fire Marshal shall become a limited commission law enforcement officer for the City of Blaine for building and fire code enforcement purposes only with the authority to file code enforcement actions, including civil infractions and criminal charges on behalf of the City of Blaine for violations of the City of Blaine Municipal Code-building permit, land use code, fire code and related codes. The City shall provide police support as requested by the District Fire Marshal with regard to cases and/or incidents occurring in the City. Fire Marshal enforcement actions which involve infractions and criminal charges for offenses occurring within the city limits will be submitted to the Blaine Police Department for processing prior to submission to the appropriate court of law.

4.2 **The District Fire Marshal shall be the City Fire Marshal.** The City hereby appoints for the term of this Agreement the District Fire Marshal as the City Fire Marshal, subject to the terms, conditions and limitations herein.

4.3 **Contract Payment Paid by the City.** The City shall, in consideration of the benefits received under the terms and conditions of this Agreement, pay the District the sum of Fifty-Five Thousand Four Hundred Forty-Eight dollars and Twelve Cents (\$55,448.12) for services provided in 2007 and the sum of Fifty-Six Thousand Eight Hundred Sixty-One Dollars and Forty-Three Cents (\$56,861.43) for services provided in 2008.

4.4 **Contract Payment Due Date.** The Contract Payment from the City to the District for 2007 shall be due and payable on \_\_\_\_, \_\_\_\_\_ 2007. The Contract Payment from the City to the District for 2008 shall be due and payable in two equal installments made in May and November of 2008. The Contract Payment from the City to the District for any additional years of this

Agreement shall be due and payable in two equal installments made in May and November of each additional year of this Agreement. Payments are due by the 15th of each respective month. Late payments shall bear interest at the rate of ten percent (10%) per annum.

4.5 **District Charges Under RCW 52.30.020.** The District may exercise such power as may be granted by RCW 52.30.020, or other provisions of state or federal law related to fire protection and emergency medical services, by contracting directly with state agencies, state institutions or municipal corporations located within the City for fire protection and prevention services.

4.6 **No Unfunded Mandates.** The parties agree that the City shall not create any unfunded mandates for increased service by the District.

## **V. USE OF CITY EQUIPMENT**

5.1 **Use of City Equipment.** The City shall provide the District access to development permit files and other City records reasonably deemed necessary by the District to provide the Services. Nothing herein shall require the City to provide any equipment for the provision of Services, other than copying, file maintenance of permits, and similar administrative activities.

## **VI. CITY AND DISTRICT ARE INDEPENDENT MUNICIPAL GOVERNMENTS**

6.1 **City and District are Independent Municipal Governments.** The parties recognize and agree that the parties hereto are independent governments. Except for the specific terms of this Agreement, nothing herein shall be construed to limit the independent governmental powers, authority, or discretion of the governing bodies of each party. Specifically, and without limiting the foregoing, the District shall have the sole discretion and obligation to determine the exact method by which the Services are provided within the District and within the City.

6.2 **No Preferential Service to City.** In the event of a large-scale event or natural disaster, the District shall assign the resources available to the event or disaster based solely upon the operational judgment of the District without regard to political boundaries. Nothing in this Agreement shall be construed to require the District to provide preferential service to the City.

6.3 **Administration.** This Agreement shall be administered on behalf of the City by the City Manager or his/her designee and on behalf of the District by the District Fire Chief or his/her designee.

6.4 **Performance Governed by District.** All aspects of performance of the Services shall be governed solely by the District including, but not limited to, personnel, standards of performance, and discipline.

6.5 **District Employees.** All persons rendering Services under this Agreement shall be, for all purposes, employees of the District.

6.6 **Services Contact Person.** All citizen complaints, Service requests, and requests for general information relating to Services shall be made or directed to the designated District Fire Marshal.

## **VII. INSURANCE**

7.1 **Insurance.** During the existence of this Agreement, the District and the City shall each maintain all risk comprehensive general liability insurance in an amount not less than one million dollars (\$1,000,000.00) with a deductible of not more than \$5,000 naming the other party as “also insured.” To the extent possible, the City shall name the District as “also insured” under these policies.

7.2 **District to Maintain Equipment and Personnel Insurance.** The District agrees to maintain insurance for any City equipment utilized by the District. To the extent possible, the District shall name the City as “also insured” under these policies.

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

## **VIII. INDEMNIFY AND HOLD HARMLESS**

8.1 The District shall indemnify, hold harmless and defend the City and its officers, agents and employees or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of negligent acts or omissions of the District, its officers, agents, and employees, or any of them, in performing services pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the City, the District shall defend the same at its sole cost and expense: provided that the City retain the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the City and its officers, agents, employees or any of them, or jointly against the City and the District and their respective officers, agents, and employees, or any of them, for negligent acts or omissions of the District, the District shall satisfy the same.

8.2 The City shall indemnify, hold harmless and defend the District and its officers, agents and employees or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of negligent acts or omissions of the City, its officers, agents, and employees, or any of them, in performing services pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the District, the City shall defend the same at its sole cost and expense: provided that the District retain the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the District and its officers, agents, employees or any of them, or jointly against the District and the City and their respective officers, agents, and employees, or any of them, for negligent acts or omissions of the City, the City shall satisfy the same.

8.3 In executing this Agreement, neither party assumes any liability or responsibility for, or in any way releases the other party from, any liability or responsibility which arises in whole or in part from the existence or effect of city ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, rule or regulation is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the District, or both, the City shall satisfy the same, including all chargeable costs and attorneys fees.

8.4 The foregoing indemnity is specifically intended to constitute a waiver of each party's immunity under Washington Industrial Insurance Act, (RCW 51), as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

## **IX. EFFECTIVE DATE, TERM AND TERMINATION**

9.1 **Effective Date.** This Agreement effective date is reflective of when the parties began coordinating the Services in January 2007, and the District began providing Services in July 2007, and although executed after the fact, is effective from January 2007 upon its execution by both parties.

9.2 **Duration.** This Agreement shall take effect on the effective date, as defined in Section 9.1, for a period of two (2) years and shall automatically renew thereafter for successive one (1) year terms, unless terminated as provided for herein.

9.3 **Termination.** Either party may terminate this Agreement for any reason, or no reason at all, by providing the other party with one (1) year written notice of intent to terminate the Agreement.

## **X. MISCELLANEOUS**

10.1 **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.

10.2 **Notices.** All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

TO CITY:                      City Manager  
                                     City of Blaine  
                                     344 H Street  
                                     Blaine, WA 98230

TO DISTRICT:                Fire Chief  
                                     Whatcom County Fire District No. 21  
                                     307 19<sup>th</sup> Street  
                                     Lynden, WA 98264

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original document.

10.3 **No Benefit to Third Parties.** This Agreement shall not be construed to provide any benefits to any third parties. Specifically and without limiting the foregoing, this Agreement shall not create or be construed as creating an exception to the Public Duty Doctrine.

10.4 **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.

10.5 **Entire Agreement.** The entire agreement between the parties hereto is contained in this Agreement and the exhibit hereto, and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument executed by the parties subsequent to the date hereof.

10.6 **Existing Agreements Effective.** All terms and conditions of existing Agreements remain unchanged and in full force and effect.



- 7 -

## **EXHIBIT "A"**

### **[DISTRICT FIRE MARSHAL SERVICES]**

The District Fire Marshal Services (aka "Services") provided by the District to the City shall include the following:

- A. Provide personnel, resources and materials deemed appropriate by the District to supply the level of Services specified under this Agreement.
- B. Review and approval of all City Development Permits in terms of a compliance with the applicable Fire Code, as adopted by the City, the City Code with regard to fire protection and emergency response requirements, and applicable International Fire Protection Standards.
- C. Provide for the planning, direction and supervision of Fire Prevention activities including fire inspections, plan reviewing, code compliance with established local, state, and federal standards, fire prevention training, public education, arson investigation, and other related activities.
- D. The District Fire Marshal will provide staff support for short-term and long-range planning in terms of fire protection, fire response, and emergency response for the City of Blaine.
- E. Coordinate Fire Prevention activities with other local, state and federal agencies.
- F. Assist in the administration of the District relative to planning District operations with respect to fire prevention activities, including fire inspections, fire prevention training, pre-fire planning, public relations, arson investigation, and other related matters.
- G. Conduct and supervise fire prevention inspections.
- H. Provide onsite inspections and recommendations for compliance with appropriate Fire Code(s); prepare reports on compliance as required.
- I. Consult with developers, engineers, architects, and involved municipal agencies to ensure compliance with applicable Codes and Ordinances.
- J. Review land development plans for compliance issues related to water supply, location of fire hydrants, access roads and street naming, including the preparation of a written report to the City Planning Department regarding compliance with fire prevention and suppression, emergency services, and related requirements.
- K. Review building plans for compliance with Codes, complete necessary reports, and send letters of correction concerning compliance/violations.

- L. Determine compliance with appropriate fire and life safety codes and standards for projects submitted for plan review.
- M. Answer questions from citizens regarding development issues and adherence to applicable fire and safety codes.
- N. Work with other city and county districts and staff to ensure fire response, fire suppression, levels of service, emergency medical response concerns and related matters are identified in the plan review process and incorporated into any statements of correction.
- O. Respond to inquiries regarding proposed development projects related to fire response, fire prevention, fire suppression, levels of service, emergency medical response, and related matters.
- P. Assess and verify site conditions by field inspection as required.
- Q. Provide information to applicants and the general public regarding various permit processes and the specific requirements for fire protection systems and fire code regulations.
- R. Inspect all commercial occupancies periodically and advise as to fire preventative measures needed.
- S. Direct the implementation of new Fire Code regulations; conduct public presentations to community groups and neighborhood organizations to explain code changes and to solicit input regarding the change process; participate, if necessary, in meetings with the Fire Board of Appeals and affected City and County Planning Commissions and Councils.
- T. Assist the City of Blaine Police Department in their investigation of all fires to determine cause(s) and conduct the appropriate investigation in coordination with the City of Blaine Police Department, and involving various agencies, including the County Prosecutor for possible violations of the law.