

**SEMAIHMUO RESORT
ASSOCIATION AND CITY OF BLAINE AGREEMENT
FOR CITY AUTHORITY TO ENFORCE SPEEDING VIOLATIONS**

This **AGREEMENT FOR POLICE SPEED CONTROL SERVICES** (the "Agreement") is made and entered into this 18th day of December 2006, by and between the CITY OF BLAINE, (the "City"), and the SEMIAHMUO RESORT ASSOCIATION (the "Association"), a Washington Non-Profit Corporation.

WHEREAS, the Association is a homeowner's association organized under Chapter 64.38 of the Revised Code of Washington;

WHEREAS, the Association desires to benefit from and the City is willing to provide through the City's Police Department (the "Department"), speed control services on the Association's private roads;

WHEREAS, the parties are authorized to enter into this Agreement pursuant to RCW 46.61.419; and

WHEREAS, the City and the Association desire to set forth the Associations request for such services, and the terms and conditions of such relationship.

NOW, THEREFORE, FOR the City in response to the request of the Association, does hereby agree to provide speed control law enforcement services for the private roads owned and maintained by the Association as follows:

1. **Term of Agreement.** This Agreement shall commence on the 15 day of January 2007 (the "Commencement Date") and shall terminate upon one (1) days notice by either party. Either party may terminate this Agreement for any reason or no reason. Notice of such termination shall be provided according to the terms of Section 2 below.

2. **Grant of Authority/Services Provided.** The Association hereby grants to the City the exclusive authority to enforce Association speeding violations under RCW 46.61.400 on private roads within the Association. Notwithstanding the forgoing, nothing herein limits or prevents the Association from enforcing any provision of the Association's Covenants, Conditions, and Restrictions, provided that such enforcement does not limit the City's authority to enforce a speeding infraction issued pursuant to this Agreement in Blaine Municipal Court.

The City shall solely determine the manner and level of personnel and equipment necessary to enforce speeding violations on the Association's private roads, including whether to issue a citation, and the amount and manner of the imposition of fines, penalties, assessments and charges as may be allowed by State Law, City code and/or this Agreement. Nothing herein shall require the City to maintain any level of service, nor acquire any equipment or facilities, nor hire any personnel.

The City may in its discretion decide whether to issue a citation for a speeding violation as it deems appropriate. Failure to enforce or prosecute any such speeding violations shall not be a violation of this Agreement.

If during the enforcement of any speeding violation pursuant to this Agreement, any other law violation is observed by the City police or reported to the City police, nothing herein shall limit or prevent the City police to responding to such incident. Nothing herein limits or waives the City's authority to enforce any City or State law.

3. **City's right to all fines, penalties, assessments and charges.** The City shall be entitled to receive any and all fines assessed for the violation of the Association rules and regulations related to speed control, traffic infractions and similar violations whether assessed by the Association or by the City. The Association hereby forever assigns to the City all rights and interests in any fines, charges, penalties or assessments imposed upon any individual pursuant to this Agreement, as well as any fines imposed for violation of the Association speed control rules and related traffic rules and regulations.

4. **Association Representations, Warranties and Obligations:** The Association represents and warrants that the Association has complied with all prerequisites for Agreement set forth in RCW 46.61.419 as follows:

- A. A majority of the Association's board of directors has voted to authorize the issuance of speeding infractions on the Association's private roads.
- B. The Association has declared a speed limit not lower than twenty miles per hour for all private roads within the Association.
- C. The Association has posted signs declaring the speed limit at all vehicle entrances to the community.

The Association shall maintain all speed limit signage for all private roads within the Association and as required by RCW 46.61.419.

The Association shall not declare a speed limit lower than twenty miles per hour for any private road within the Association.

The Association shall deliver by regular mail a written notice to all of the homeowners within the Association describing the City's authority to issue speeding infractions for speeding violations. Said notice shall include, at a minimum, that (1) the City has the authority to enforce speeding violations under RCW 46.61.400 on private roads within the Association, (2) that such infractions shall be cited as civil infractions into Blaine Municipal Court, (3) all fees, penalties, assessment and charges imposed by Blaine Municipal Court shall be payable to the City of Blaine, (4) that such infractions may appear on the driver's traffic record, and (5) that such infractions would be considered by the State of Washington as any other speeding infraction issued under Washington law. The Association shall advise the City in writing that such notice has been provided, together with a copy of such notice. The Association shall maintain a copy of the notice, including the affidavit of mailing of the notice to all owners. The affidavit shall include the manner in which the notice was delivered, who performed the mailing, and when the notice was mailed.

In the event that the City's authority to enforce speeding violations on private roads within the Association is contested in any court of law, upon the request of the City, the Association's through it's custodian of records shall provide the affidavit of mailing of the notice, the notice, and the certification that the affidavit of mailing and the notice are true and correct copies of the originals that are on file with the Association.

5. **Equipment.** All equipment owned by the City shall remain the property of the City.

6. **Indemnification.** The Association shall protect, defend, save, indemnify and hold harmless the City, its employees, commissioners, officers and agents from and against any and all claims, damage, injury, suits and actions arising from any and all claims in relation to the Associations' obligations and the Association's performance of those obligations under this Agreement, the authority of the City to enforce speeding violations under RCW 46.61.400 on private roads, the enforcement of any Association rule or regulation, the design and maintenance of the private roads within the Association, and/or the acts or omissions of the City in providing speed control law enforcement services on the private roads owned and maintained by the Association, except to the extent of the City's, its employees, commissioners, officers and agent's negligence, willful or intentional acts or knowing violations of the law..

7. **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.

8. **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:

The City of Blaine
Attn: GARY TOWSE
344 H Street CITY MANAGER
Blaine, WA 98230

Semiahmoo Resort Association
Attn: Administrative Director
9550 Semiahmoo Parkway
Blaine, WA 98230

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.

9. **Survivability.** All covenants, promises, and performance which are not fully performed as of the date of termination shall survive termination as binding obligations.

10. **Non-waiver.** No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

11. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

12. **Neutral Authorship.** Each of the provisions of this Agreement has been reviewed and negotiated and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

13. **Time of Performance.** Time is specifically declared to be of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

14. **Litigation.** In the event either party herein finds it necessary to bring an action against the other party to enforce any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement by reason of any breach or default hereunder or thereunder, the party prevailing in any such action or proceeding shall be paid all costs and attorneys' fees incurred by the other party, and in the event any judgment is secured by such prevailing party, all such costs and attorneys' fees of collection shall be included in any such judgment. Jurisdiction and venue for this Agreement lie exclusively in Whatcom County, Washington.

15. **Entire Agreement.** The entire agreement between the parties hereto is contained in this Agreement; 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, duly authorized and executed by the parties subsequent to the date hereof.

IN WITNESS WHEREOF, this Agreement has been executed on the date and year set forth above.

CITY OF BLAINE

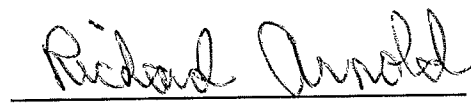

MAYOR CITY MANAGER


CHIEF OF POLICE

Attest:

CITY CLERK

SEMAIHMUO RESORT
ASSOCIATION


PRESIDENT

Approved as to form:

CITY ATTORNEY

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