

City of Blaine
Request for Council Action
Meeting Date: July 13, 2020

Subject: Resolution 1822-20, authorizing the City Manager to enter into an Interlocal Agreement between the City of Blaine and the Whatcom County Fire District No. 21 for Fire Marshal Services

Department: Community Development Services Department **Prepared By:** _____
(Digital Signature)

Agenda Location: Consent Agenda Council Action Unfinished Business

Attachments:

1. Resolution 1822-20

Background/Summary:

The purpose of the proposed interlocal agreement is for the City of Blaine to contract with the Whatcom County Fire District No. 21 (“the District”) in order to appoint the District Fire Marshal as the City Fire Marshal. The proposed Agreement (**Attachment 1**) includes provisions for the Fire Marshal to provide a number of services to the City, including but not limited to the following¹:

- Review and recommendations on land use and building permit applications;
- Support for long range planning efforts as it relates to fire protection; response; and emergency responses;
- Fire prevention training; and
- On-site inspections to ensure compliance with the appropriate Fire Codes.

If the City Council makes a motion to approve the attached Resolution, the Blaine Police Department will develop an Ordinance for Council's consideration that will authorize the Blaine Police Chief to provide the Fire Marshal limited law enforcement commission and required associated training.

Budget Implications: Current Budget New Budget Request Non-Budgetary

Per Recital 3.4.1 of the proposed Agreement, the District will waive the annual payment of \$10,000 for services in 2020 due to COVID-19. Beginning in 2022, the annual payment shall increase with a minimum of 1% and a maximum of 3%.

Recommendation:

The Department recommends that the City Council consider approving Draft Resolution 1822-20, authorizing the City Manager to enter into an Interlocal Agreement between the City of Blaine and the Whatcom County Fire District No. 21 for Fire Marshal Services.

Reviewed By:

City Manager _____ Finance Director _____ City Clerk _____
(Digital Signature) (Digital Signature) (Digital Signature)

¹ See “Exhibit A” of attached Resolution, Services (A) through (P).

RESOLUTION NO. 1822-20

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLAINE, WASHINGTON,
AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERLOCAL AGREEMENT
BETWEEN THE CITY OF BLAINE AND THE WHATCOM COUNTY FIRE DISTRICT NO. 21 FOR
FIRE MARSHAL SERVICES**

WHEREAS, the City of Blaine (“the City”) desires to secure Fire Marshal services from the Whatcom County Fire District No. 21 (“the District”); and

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

WHEREAS, per Chapter 39.34 of the Revised Code of Washington (RCW), the City and the District are authorized 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; and

WHEREAS, the attached Agreement (**Attachment 1**) will not displace the City as the final authority on interpretation and implementation of City code in processing development permits or taking enforcement actions, and;

WHEREAS, the Community Development Services Department coordinated with the District to prepare the attached Agreement (Attachment 1).

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Blaine, Washington to authorize the City Manager to enter into an interlocal agreement between the City of Blaine and the Whatcom County Fire District No. 21 for Fire Marshal Services.

ADOPTED by the City Council for the City of Blaine at a regular meeting held this 13th day of July, 2020.

CITY OF BLAINE, WASHINGTON

Bonnie Onyon, Mayor

ATTEST/AUTHENTICATE:

Samuel Crawford, City Clerk

**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 _____, 2020, and is for provision of Fire Marshal services for the City of Blaine.

RECITALS

WHEREAS, the City desires to secure Fire Marshal Services (“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; and,

WHEREAS, the District and the City agree that nothing in this Agreement is intended to diminish or displace the City as the final authority on interpretation and implementation of City code in processing development permits or taking enforcement actions; and

WHEREAS, the foregoing recitals are a material part of this Agreement.

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

AGREEMENT

1. Definitions. The following definitions shall apply throughout this Agreement.

1.1. District Boundaries: The combined response areas of the District and the City.

1.2. Fire Marshal Services or Services: All services described in Exhibit "A," attached hereto.

2. District Obligations.

2.1. Services Provided to City. During the term of this Agreement, the District agrees to provide Services to the City as set forth in Exhibit "A," attached hereto “Services.”

2.2. 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 use Whatcom County Fire Marshal services or other District personnel to provide Services until the designated District Fire Marshal is available.

2.3. 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.

3. City Obligations.

3.1. Delegation of Authority. Subject to the limitations below, the City hereby delegates to the District the authority and power to provide the Services within the City.

3.1.1. Fire Investigations. 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 arrest or file criminal charges on behalf of the City of Blaine. At 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 from the City, which shall not be unreasonably withheld, the District Fire Marshal shall have authority to arrest and file charges in a manner consistent with the limited law enforcement commission granted by the City.

3.1.2. Code Enforcement. The District Fire Marshal, in cooperation with the City building official and the City Prosecuting Attorney may assist in the filing of 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.

3.2. Fire Marshal Support. 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.

3.3. The District Fire Marshal shall be the City Fire Marshal. The City hereby appoints for the term of this Agreement, and for so long as this Agreement remains in effect, the District Fire Marshal as the City Fire Marshal, subject to the terms, conditions and limitations herein.

3.4. Payment for Services. The City shall, in consideration of the services provided and benefits received under the terms and conditions of this Agreement, pay the District the following amounts:

3.4.1. Contract Payment. The City shall make an annual payment (Ten Thousand

dollars (\$10,000.00 for the Services. Due to the State and County Declarations of Emergency relating to Covid-19, the District will waive the payment for 2020. For subsequent years, said Contract Payment, shall be due and payable in two equal installments made in May and November of each 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. Beginning with the 2022 Contract Payment, ~~t~~The Contract Payment amount shall increase every year by 100% CPI-U June (Seattle, Tacoma, Bellevue) with a minimum of 1% and a maximum of 3%.

- 3.4.2. Fire Permit Fees.** The City shall distribute to the District at the time of Contract Payments fire permit fees imposed and collected by the City pursuant to City Code including fire system permit fees for single family residential construction permits. Single family residential permits that do not include fire system permits shall be retained by the City. The City shall consult with the District from time to time to establish the applicable fee amounts.
- 3.5. No Unfunded Mandates.** The parties agree that the City shall not create any unfunded mandates for increased service by the District.
- 3.6. 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.
- 3.7. No Office Space Provided.** No office space will be provided by the City under this Agreement.
- 3.8. Evidence Storage and documentation.** The City shall store and document evidence collected by the District related to the services provided under this Agreement.
- 4. 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.
- 5. 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. 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.

7. Employment Status.

7.1. District Personnel. District personnel who provide services under this Agreement shall remain personnel of District and shall not be considered personnel of City. District shall, at all times, be solely responsible for the conduct of its personnel in performing the services called for in this Agreement and shall be solely responsible for all compensation, benefits and insurance for its personnel. District personnel shall not be entitled to any benefit provided to personnel of City.

7.2. City Personnel. City personnel who provide services under this Agreement shall remain personnel of City and shall not be considered personnel of District. City shall, at all times, be solely responsible for the conduct of its personnel in performing the services called for in this Agreement and shall be solely responsible for all compensation, benefits and insurance for its personnel. City personnel shall not be entitled to any benefit provided to personnel of District.

8. 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.

9. Insurance. During the existence of this Agreement, the District and the City shall each maintain Broad Form Comprehensive General Liability insurance in an amount not less than two million dollars (\$2,000,000.00) 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 and “additional insured” under these policies.

10. District to Maintain Equipment Insurance. The District agrees to maintain adequate insurance for any City equipment used by the District. To the extent possible, the District shall name the City as an “additional insured” under these policies.

11. 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.

12. Indemnification and Hold Harmless.

12.1. 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 retains 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.

12.2. 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 retains 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.

12.3. 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 attorney's fees.

12.4. 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.

13. Term and Termination.

13.1. **Effective Date.** The effective date of this Agreement is January 1, 2020.

13.2. **Duration.** This Agreement shall take effect on the effective date, as defined in Section 13.1, and shall expire on December 31, 2022, unless terminated as provided herein. Notwithstanding the foregoing, this Agreement shall automatically renew thereafter for successive one (1) year terms, unless terminated as provided for herein.

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

14. Dispute Resolution. 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 three (3) arbitrators. Each party shall bear the expense of its own appointed arbitrator and the parties shall share all other expenses of the arbitration equally.

- 15. 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 of Blaine
 City Manager
 435 Martin St, Suite 3000
 Blaine, WA 98230

TO DISTRICT: Whatcom County Fire District No. 21
 Fire Chief
 4142 Britton Loop Rd
 Bellingham, WA 98226

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.

- 16. 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.

- 17. 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.

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

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**

MICHAEL JONES
Blaine City Manager

Jason Van Der Veen
Whatcom County Fire District No. 21
Acting Fire Chief

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this day personally appeared before me, JASON VAN DER VEEN, 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 _____, 2020.

NOTARY PUBLIC
Residing in _____
My Commission expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this day personally appeared before me MICHAEL JONES, 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 _____, 2020.

NOTARY PUBLIC
Residing in _____
My Commission expires _____

EXHIBIT "A"

[DISTRICT FIRE MARSHAL 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 including 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 recommendation on approval of City permit applications when requested by the City, for 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. Planning, direction and supervision of all Fire Prevention activities including construction fire inspections, plan reviewing, code compliance, and fire investigation, all in accordance with established local, state, and federal standards.
- D. Fire prevention training, Pre-incident planning, operational permit inspection and issuance, public education, and other related activities as deemed appropriate by the District, all consistent with professional standards.
- E. The District Fire Marshal will provide staff support for short-term and long-range planning, fire protection, fire response, and emergency response for the City of Blaine.
- F. Coordinate Fire Prevention activities with other local, state and federal agencies.
- G. Assist in the administration of the City relative to planning District operations with respect to fire prevention activities, including fire inspections, operational permits, fire prevention training, pre-fire planning, public relations, fire investigation, and other related matters as deemed appropriate by the District, and consistent with professional standards.
- H. Conduct and supervise fire prevention inspections as deemed appropriate by the District, consistent with professional standards.
- I. Provide onsite construction inspections and recommendations for compliance with appropriate Fire Code(s); prepare reports on compliance as required.
- J. Consult with developers, engineers, architects, the City and its

technical advisory committees, and involved municipal agencies, to ensure compliance with applicable Codes and Ordinances.

- K. Review land development plans for compliance issues related to water supply for adequate fire flow, location of fire hydrants, access roads and street naming, including the preparation of a written report to the City Planning Department regarding compliance with city codes, fire prevention and suppression, emergency services, and related requirements.
- L. Review building plans for compliance with Codes, complete necessary reports, and send letters of correction concerning compliance/violations and provide advice and support in City enforcement actions as necessary.
- M. Testify in City initiated enforcement proceedings and related proceedings to which the City is a party, before administrative tribunals and in court of law.
- N. Provide recommendations related to Fire and Life Safety for modification of International Codes through local ordinance adoption.
- O. Provide interpretations and Administrative Rulings of the International Fire Code as necessary subject to the City's final authority set forth in Appendix A, Section P. Publish design standards and installation guidelines as necessary.
- P. All Services identified herein shall be provided subject to the City being the final authority on the meaning and applicability of City code. In the event of a conflict between the City's interpretation of its code requirements, and requirements of the District or Fire Marshal, the City's interpretation of its code requirements shall prevail.