

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT, dated as of _____, by and between the City of Bremerton, a Washington municipal corporation, hereinafter referred to as “City”, and West Sound Fire and Rescue, a Washington municipal corporation, hereinafter referred to as “WSFR”;

W I T N E S S E T H:

WHEREAS, the City and South Kitsap Fire and Rescue (“SKFR”) have convened a regional fire protection service authority planning committee (“Planning Committee”) to evaluate and plan for the creation of a Regional Fire Protection Service Authority (“RFA”) known as WSFR pursuant to RCW 52.26; and

WHEREAS, the task of the RFA Planning Committee is to adopt a regional fire protection service authority plan (“work-plan”) providing for the design, financing, and development of fire protection and emergency services for a proposed RFA; and

WHEREAS, the Planning Committee intends to submit the work-plan to voters for approval of the creation of WSFR at the November, 2011 general election; and

WHEREAS, the Planning Committee has done an extensive analysis of the finances of SKFR and the City and found that due to current conditions, including the City’s lower assessed value, the tax revenue collected by the new WSFR would result in a decrease in overall service by the WSFR; and

WHEREAS, the Planning Committee has determined that in order for the City to maintain its current level of service and not impact the service of SKFR residents after the formation of WSFR, it will be necessary for the City to agree to make an annual payment (gap payment) to WSFR; and

WHEREAS, both the City and WSFR acknowledge that the goal of the WSFR is to operate in such a manner as to allow the gap payment obligation of the City established pursuant to this Agreement to terminate within an established period of time; and

WHEREAS, the City and WSFR are authorized by RCW 39.34.030 and RCW 39.34.080 to enter into interlocal cooperation agreements for the cooperative undertaking, financing and administration of projects within their respective powers; and

WHEREAS, the governing bodies of the City and WSFR find that it is in the best interests of the public to enter into this Agreement;

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

ARTICLE I

TERM

The effective date of this Agreement shall be upon its execution by the City and WSFR. The Commencement Date of this Agreement shall be January 1, 2012. This Agreement shall continue in effect for a period of five (5) years from the Commencement Date, until December 31, 2017, unless terminated earlier as provided herein.

However, the parties acknowledge that during the last year of this Agreement the parties may determine that this Agreement should to be extended to meet changing economic conditions. In the event that both parties mutually agree that this Agreement should be extended, the parties will also agree upon terms and conditions of any extension. However, any extension of this Agreement shall be subject to legislative approval of both parties.

ARTICLE II

SCOPE OF SERVICES

WSFR shall provide on an ongoing basis all services necessary for fire suppression, emergency medical service, hazardous materials response, technical rescue, and disaster response to the service area of the corporate limits of the City at the current levels of service as provided by the City of Bremerton Fire Department and all other services as established in the WSFR work-plan (attached hereto as Exhibit A).

ARTICLE III

GAP PAYMENT

In consideration of WSFR agreeing to maintain the City's current levels of service on an ongoing basis as established in the WSFR work-plan, the City agrees to pay to WSFR an annual payment of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) during the term of this Agreement. Any adjustment to this amount shall require mutual agreement by the parties.

The City agrees to this obligation understanding that WSFR is relying on the gap payment to continue to provide the citizens of the City of Bremerton the same level of service that they currently enjoy as provided by the City of Bremerton Fire Department. Should the City of Bremerton not make the gap payment, and there is a monetary default as described in Article VI below, WSFR shall have the option to adjust its provision of services to the City in accordance with the provisions of Article VI and applicable provisions of federal, state and local law.

ARTICLE IV

ANNUAL REVIEW

The WSFR Fire Chief and the City Mayor and/or their designees shall act as administrators of this Agreement for purposes of RCW 39.34.030. During the term of this Agreement the WSFR Fire Chief shall provide the Mayor with annual reports concerning the provision of services pursuant to this agreement and the WSFR work-plan. In addition to the annual reports provided, the WSFR Fire Chief and the Mayor shall hold an annual meeting to discuss items of mutual interest related to this Agreement.

At the annual meeting, the WSFR Fire Chief shall provide the following information to the City, to include, but not be limited to:

- (a) The uses by WSFR of the gap payment paid by the City.
- (b) Labor Costs for WSFR.
- (c) Annual operating costs of WSFR.
- (d) Information relating to any significant change(s) relating to the costs of providing services by WSFR and the reasons for such changes.
- (e) Revenues and revenue projections for WSFR.
- (f) Any information relating to work done by WSFR to achieve alternative funding for fire services to enhance overall funding for the WSFR.
- (g) What efficiencies have been met by regionalization, changing business models or any other means.
- (h) Information regarding service improvements by WSFR.
- (i) WSFR Performance standards.
- (j) A report indentifying whether there has been any adjustment to the level of service for the citizens of the City of Bremerton.

ARTICLE V

INSURANCE/INDEMNIFICATION

At all times during the term of this Agreement, WSFR shall procure and maintain insurance appropriate for the provision of services by WSFR and as identified in the WSFR work-plan.

W S F R shall indemnify, hold harmless and defend the City, and its officers, officials, agents and employees and each of them from and against:

- (i) any and all claims by or on behalf of any person arising from any cause whatsoever in connection with the making of the gap payment, other than claims established to be occasioned by the negligence or willful misconduct of the City or its respective officers or employees;
- (ii) any and all claims arising from any act or omission of the WSFR or any of its officers, members, agents, employees, in connection with the gap payment; and

- (iii) all reasonable costs, reasonable counsel fees, or liabilities incurred in connection with any such claim or proceeding brought thereon.

In the event that any action or proceeding is brought against the City or any of its respective officers, officials or employees, with respect to which indemnity may be sought hereunder, WSFR, upon written notice from the City, shall assume the investigation and defense thereof, including the employment of counsel, and the payment of all expenses related thereto, provided that no settlement of a claim or proceeding against the City shall occur without the consent of the City.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

Section 6.1. Events of Default. Each of the following shall be a "Default":

- (a) Monetary Defaults. Any failure by the City to make any required monetary payments to WSFR pursuant to the City obligation of Article III of this Agreement when due. If an event which would constitute a Monetary Default shall occur, WSFR shall provide prompt telephone notice confirmed in writing (which may be by facsimile or electronic transmission) to the City and demand a cure thereof (provided, that failure by WSFR to send such written notice shall not constitute a waiver of or prevent the occurrence of a Monetary Default), and if such event is not cured within thirty (30) days of the scheduled payment date, then such event shall constitute a Monetary Default and WSFR may, in its sole discretion, proceed with its remedies under Article III or Section 6.2 of this Article.
- (b) Nonmonetary Defaults. Any failure on the part of either party to perform or observe the duties, provisions or obligations required of it pursuant to this Agreement, other than as set forth in (a) above, if such failure shall have continued for a period of 60 days after written notice thereof has been delivered to the City.

Section 6.2. Remedies. Upon the occurrence of any Monetary Default under this Agreement, any one or more of the following steps may be taken:

- (a) If the conditions set forth therein are applicable, take any action authorized by Article III of this Agreement.
- (b) WSFR may proceed to protect and enforce its rights in equity or at law, either in mandamus or for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, as WSFR, being advised by counsel, may deem most effectual to protect and enforce any of its rights.

Section 6.3. Attorneys' Fees and Costs. If a Default occurs and if WSFR or the City

should employ attorneys or incur expenses for the enforcement of any obligation or agreement of the City or WSFR contained herein, the non-prevailing party on demand will pay to the prevailing party the reasonable fees of such attorneys of the prevailing party and the reasonable costs so incurred, including, without limitation, reasonable fees and costs of court appeals.

Section 6.4. **No Right or Remedy Exclusive.** No right or remedy herein conferred upon or reserved to either party is intended to be exclusive of any other available right, remedy or remedies, but each and every such right or remedy shall be cumulative and shall be in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle either party to exercise any remedy reserved to it, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 6.5. **No Additional Waiver Implied by One Waiver.** In the event any agreement or covenant contained in this Agreement should be breached by either party and thereafter waived by a party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE VII

MISCELLANEOUS

Section 7.1. **Entire Agreement.** This Agreement constitutes the entire and final agreement and supersedes all prior agreements and understandings, both written and oral, among WSFR and the City with respect to the subject matter hereof. This Agreement shall be administered and enforced independently from any requirements of the WSFR work-plan.

Section 7.2. **Notices.** All notices, certificates or other communications shall be in writing and shall be sufficiently given and shall be deemed given on the date on which the same has been mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to WSFR:

If to the City:

WSFR or the City may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, documents or other communications shall be sent.

Section 7.3. Assignments. This Agreement may not be assigned by any party without the prior written consent of all parties hereto which consent shall not be unreasonably withheld.

Section 7.4. Severability. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

Section 7.5. Execution of Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.6. Amendments, Changes and Modifications. Except as otherwise provided in this Agreement, this Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of all the parties hereto.

Section 7.7. Governing Law. This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Washington. Any action at law, suit in equity, or other judicial proceeding arising in connection with this Agreement may be instituted and maintained only in a court of competent jurisdiction in Kitsap County, Washington.

Section 7.8. Survival of Agreement. All agreements, representations and warranties made herein shall survive the termination or expiration of this Agreement.

Section 7.9. Non-Business Days. Any payment or act required to be done or made on a day that is not a business day shall be done or made on the next succeeding day that is a business day with the same force and effect as if it had been done on the date originally scheduled for such payment or act.

Section 7.10. Termination. The City and WSFR acknowledge that in entering this Agreement each party is relying significantly on the other's promises. Therefore, neither party may terminate this Agreement unless there has been a material breach of the Agreement by a party or the parties mutually

agree that the Agreement shall be terminated.

Section 7.11 Independent Governments. The City and WSFR recognize and agree that the City and WSFR are independent governments. Except for the specific terms herein, nothing shall be construed to limit the discretion of the governing bodies of each party. Specifically and without limiting the foregoing, WSFR shall have the sole discretion and the obligation to determine the exact method by which the services are provided within WSFR (which includes the corporate limits of the City).

Section 7.12 Execution and Filing. The parties agree that there shall be multiple original signature pages of this Agreement distributed for signature by the necessary officials of the parties. Upon execution, the executed original signature pages of this Agreement shall be returned to the Chair of WSFR's Board who shall file an executed original of this Agreement with the Kitsap County Auditor. The Chair WSFR Board shall distribute duplicate conformed copies of the Agreement to each of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, all as of the day and year first above mentioned.

WSFR

Board President

Approved as to form:

CITY OF BREMERTON, WASHINGTON

Mayor

Approved as to form:

City Attorney