

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 11/14/16

AGENDA ITEM:	
First Amendment to Agreement for Joint Operation of Fire and Medical Protection Facilities Dated April 18, 2016	
PREPARED BY:	DIRECTOR APPROVAL:
Sandy Langdon, Finance Director	
DEPARTMENT:	
Executive/Legal/Finance	
ATTACHMENTS:	
Draft First Amendment Agreement for Joint Operation of Fire and Medical Protection Facilities Dated April 18, 2016	
BUDGET CODE:	AMOUNT:
SUMMARY:	

The April 18, 2016 agreement indicated a deadline of September 1, 2016 for developing a service delivery model for fire and EMS services. Service delivery model discussions are continuing and it is expected that a final decision will not be made by the end of the year which is the term of the agreement. Therefore, we propose a one-year extension to December 31, 2017 and also amend to clarify renegotiation of terms, the financial contribution, disposition of assets, and dispute resolution.

The Renegotiation of Terms identifies the commitment to meet regularly to develop a service delivery model and also identify the necessary steps needed in the event an agreement is not reached.

The amendment also identifies the financial contribution by the city for 2017 at a rate equal to the levy rate of District 12.

To meet the expectations of the Washington State Auditor a new section is added for the City and District 12 to agree on the disposition of assets by February 1, 2017. In the event an agreement cannot be reach there is a proposal to amend the Dispute Resolution section to first use mediation to resolve the disposition of assets.

All other provisions of the agreement will remain.

RECOMMENDED ACTION:

City staff recommends that Council approve the Mayor to sign the proposed First Amendment to Agreement for Joint Operation of Fire and Emergency Medical Protection Facilities Dated April 18, 2016

**FIRST AMENDMENT TO AGREEMENT FOR JOINT OPERATION OF
FIRE AND EMERGENCY MEDICAL PROTECTION FACILITIES DATED APRIL 18,
2016**

This Amendment to the Agreement for Joint Operation of Fire and Emergency Medical Protection Facilities dated April 18, 2016, is entered into between SNOHOMISH COUNTY FIRE PROTECTION DISTRICT NO. 12, a municipal corporation, hereafter referred to as “District 12,” and the CITY OF MARYSVILLE, a municipal corporation, hereafter referred to as “City.”

WHEREAS, the parties have been unable to meet the September 1, 2016, deadline in the Agreement for developing a service delivery model for provision of fire and EMS services; and

WHEREAS, the parties are continuing discussions of the service delivery model; and

WHEREAS, the parties agree that extending the current agreement for one year is necessary to continue to deliver fire and EMS services to citizens.

NOW, THEREFORE,

The Agreement between the City and District 12 dated April 18, 2016, is hereby amended as follows:

1. Section 2 entitled, “Term,” is amended to read as follows:

“This agreement shall be effective August 1, 2003 and shall terminate December 31, 2017, unless extended by mutual written agreement of the parties.”

2. Section 2 entitled, “Renegotiation of Terms,” is amended to read as follows:

“During calendar year 2017 the parties, either through designated staff and/or through committees appointed by the City and Fire District 12 agree within 14 days of full execution of this Agreement to establish a regular schedule to meet and negotiate in good faith for the purpose of developing a service delivery model for provision of fire and EMS services to their respective jurisdictions after the expiration of this Agreement. Service delivery models to be negotiated may include, but not be limited to the following:

- A. Renewal or extension of this Agreement with appropriate revisions;
- B. Establishment of a Regional Fire Authority;
- C. Establishment of separate City and Fire District departments

In the event the parties are unable to reach written agreement to either extend this agreement with revisions or to develop a mutually agreed upon alternative service delivery model by September 1, 2017, the parties will begin the process of winding down the Marysville Fire District and taking the necessary steps consistent with this agreement and applicable law to independently provide services to their respective jurisdictions. Each party pledges to cooperate and exercise good faith to accomplish a smooth transition.”

3. Section 13.8 entitled, "Financial Contribution By City," is amended to read as follows:

"The annual financial contribution by the City will be based on the levy rate for regular real property taxes assessed by the District multiplied by the total assessed value of taxable properties located within the City limits, including new construction and utilities calculated on the same basis as the District to the City's assessed value. The contribution shall be paid to the Board of Directors in equal monthly installments. The 2017 contribution is estimated to be \$10,076,327 with estimated District combined levy rate of \$1.565695/\$1,000 AV (regular levy - \$1.17855/\$1,000 and EMS levy - \$0.387144/\$1,000AV)."

4. A new subsection, 17.1, is added to section 17 to read as follows:

"Disposition of Assets. In accordance with the expectations of the Washington State Auditor, the City and District 12 will agree on a disposition of assets by February 1, 2017. If the parties cannot reach agreement, the processes in section 30 will be utilized."

5. Section 30 entitled, "Dispute Resolution," is amended to read as follows:

"In the event of a disagreement between the parties relating to the interpretation of the terms of this agreement or the disposition of assets, the parties agree that they shall first attempt to resolve the issue using mediation. If mediation is unsuccessful, such dispute shall be resolved by binding arbitration. The arbitration shall be conducted by a panel of three (3) arbitrators. Each party shall appoint an arbitrator, and the two arbitrators shall appoint a third arbitrator. Unless different rules are adopted by the Board of Arbitrators, the rules of the American Arbitration Association shall apply with respect to the arbitration proceedings.

6. Except as provided herein, all other provisions of the agreement between the parties dated April 18, 2016, shall remain in full force and effect, unchanged.

DATED THIS _____ DAY OF _____, 2016.

CITY OF MARYSVILLE

**SNOHOMISH COUNTY FIRE
PROTECTION DISTRICT NO. 12**

Mayor

Chairperson

Commissioner

City Clerk

Commissioner

Approved as to Form:

City Attorney

Fire District Secretary

Approved as to Form:

Fire Protection District 12 Attorney

**AGREEMENT FOR JOINT OPERATION OF
FIRE AND EMERGENCY MEDICAL PROTECTION FACILITIES**

THIS AGREEMENT is entered into between SNOHOMISH COUNTY FIRE PROTECTION DISTRICT NO. 12, a municipal corporation, hereafter referred to as "District 12," and the CITY OF MARYSVILLE, a municipal corporation, hereafter referred to as "City."

This agreement is entered into by the City under the authority of RCW 35A.11.040 and District 12 under the authority of RCW 52.12.031 and in conformity with Chapter 39.34 RCW, the Interlocal Cooperation Act.

The City and District 12 previously each maintained and operated their own fire department to provide fire protection, fire suppression and emergency medical services in its respective area.

The City and District 12 determined that it is in the best interest of each of the municipal corporations to establish a Consolidated Fire Department to be operated under the control and direction of a Board of Directors as defined by this agreement.

The City and District 12 initially entered into an Agreement for Joint Operations of Fire and Emergency Medical Protection Facilities on October 16, 1991 with updates on September 15, 1993 and have now determined that further updates and revisions to the agreement are appropriate and necessary. Accordingly, the parties wish to enter into this agreement and any amendments thereto.

To carry out the purposes of this agreement and in consideration of the benefits to be received by each party, it is agreed as follows:

1. **DEFINITIONS.** The following terms, when used in this agreement, shall be defined as follows:
 - 1.1. "City" shall mean the City of Marysville.
 - 1.2. "District 12" shall mean Snohomish County Fire Protection District No. 12.
 - 1.3. "Department", "Fire Department" "District" or "Consolidated Fire Department" shall mean the combined operating fire departments of the City and District 12, hereinafter referred to as the "Marysville Fire District."
 - 1.4. "Fire Chief" shall mean the chief of the Fire Department appointed by the Board of Directors.
 - 1.5. "Board of Directors" or "Board" shall mean the joint board composed of three appointees of the City and up to six appointees of the District as further described in paragraph 4 below.
2. **TERM.** This agreement shall be effective August 1, 2003 and shall terminate December 31, 2016 unless extended by mutual written agreement of the parties.

3. **RENEGOTIATION OF TERMS.** During calendar year 2016 the parties, either through designated staff and/or through committees appointed by the City and Fire District 12 agree within 14 days of full execution of this Agreement to establish a regular schedule to meet and negotiate in good faith for the purpose of developing a service delivery model for provision of fire and EMS services to their respective jurisdictions after the expiration of this Agreement. Service delivery models to be negotiated may include, but not be limited to the following:
 - A. Renewal or extension of this Agreement with appropriate revisions;
 - B. Establishment of a Regional Fire Authority;
 - C. Establishment of separate City and Fire District departments

In the event the parties are unable to reach written agreement to either extend this agreement with revisions or to develop a mutually agreed upon alternative service delivery model by September 1, 2016, the parties will begin the process of winding down the Marysville Fire District and taking the necessary steps consistent with this agreement and applicable law to independently provide services to their respective jurisdictions. Each party pledges to cooperate and exercise good faith to accomplish a smooth transition.

4. **BOARD OF DIRECTORS.** The operations of the Department necessary to carry out the purposes of this agreement shall be administered by a Board of Directors consisting of a minimum of six members, and a maximum of nine members, as defined in this agreement. The City shall appoint three members to the Board of Directors, provided that the appointees shall consist of three City Council members or two city council members and the Mayor. District 12 shall appoint no less than three and no more than six members to the Board of Directors. Provided, that the appointees shall consist of Commissioners of District 12. Pursuant to the merger of Fire District No. 20 into Fire District No. 12, District 12 will, initially, appoint 6 members to the Board of Directors and reduce its Board membership down to three in accordance with RCW 52.06.085. The Board shall have the authority to administer and manage the operations of the Marysville Fire District, all jointly owned properties and equipment and all properties and equipment of each party used by the Marysville Fire District. The Board shall have the authority and powers granted by this instrument and such additional authority and powers as may from time to time be conferred on it by the legislative bodies of both parties. A quorum of the Board shall consist of a simple majority of the appointed members. Actions of the Board shall require the affirmative vote of the majority of the members of the Board present. The Fire Chief shall report to and operate under the supervision and control of the Board of Directors.
5. **MEETINGS OF BOARD OF DIRECTORS.** All meetings of the Board of Directors shall be held in compliance with the Open Public Meetings Act, chapter 42.30 RCW. The date and time of the regular monthly meeting of the Board of Directors shall be established by resolution of the Board.

6. **LIMITATION OF THE BOARD OF DIRECTORS.** The Board of Directors shall have no authority to modify or revise the terms of this agreement. In the event the Board of Directors shall be unable to reach an agreement on any matter before it, such matter shall be referred to the City Council and the Board of Commissioners of District 12 for resolution.

7. **CITY SERVICES.** The Board of Directors shall provide the following services within the City limits:
 - 7.1. Fire prevention services.
 - 7.2. Fire suppression services.
 - 7.3. Emergency medical services.
 - 7.4. Hazardous materials incident response services.
 - 7.5. Uniform Fire Code inspection services.
 - 7.6. Uniform Fire Code preconstruction building plan review services.
 - 7.7. Uniform Fire Code investigation services.
 - 7.8. Technical Rescue Services.

8. **DISTRICT 12 SERVICES.** The Board of Directors shall provide the following services within the boundaries of District 12.
 - 8.1. Fire prevention services.
 - 8.2. Fire suppression services.
 - 8.3. Emergency medical services.
 - 8.4. Hazardous materials incident response services.
 - 8.5. Technical Rescue Services.

9. **LEVEL OF SERVICES.** Fire prevention, fire suppression, emergency medical, technical rescue and hazardous materials incident response services shall be provided at the same level to each of the parties under the terms of this agreement. In the event of simultaneous emergencies within the City and District 12 whereby the resources of the Department are taxed beyond its ability to render equal protection, the officers and agents of the Department shall determine how to allocate the resources of the Department.

The parties recognize that Snohomish County has the statutory jurisdiction to enforce the provisions of the Uniform Fire Code within the boundaries of District 12 rather than District 12 itself.

10. **OPERATIONS COMMITTEE.** An Operations Committee is formed consisting of the Fire Chief, the Mayor, and the Chief Administrative Officer of the City. The Operations Committee which shall act in an advisory capacity only to the Chief and Board of Directors shall:

10.1. Provide input on the development of operational priorities, policies, and procedures and recommend their adoption by the Board.

10.2. Provide input on the preparation of a budget and present the budget to the Board for approval.

10.3. Monitor revenues and expenditures and provide input as to whether budgetary targets are being met.

10.4. Provide input for the establishment of objectives for collective bargaining and direct negotiation strategy.

10.5. Provide input regarding Department operations and Department policies and procedures.

10.6. Obtain assistance of key staff from the District and the City and require attendance of such staff at meetings of the Operations Committee.

10.7. Meet at least monthly.

11. **BUDGET.** The Operations Committee shall provide input on the preparation of a proposed operating budget to the Board of Directors for the Marysville Fire District in accordance with the Budgeting, Accounting and Reporting System (BARS) established by the Washington State Auditor's Office, establishing the annual income and expense requirements of the Department and the capital expenditures required for the operation of the Department. The Board of Directors shall review the proposed budget and submit an estimate of the City's cash contribution amount to the City and the District not later than October 1 of each year. Approval of the budget shall require a majority vote of the Board of Directors. After a budget is adopted by the Board of Directors, a copy shall be submitted to the Marysville City Council and District 12 Commissioners. In the event the Board of Directors cannot agree on a Budget, the Board shall notify each of the parties to this agreement. The parties to this agreement shall negotiate a compromise on the budget or budget item(s), and shall have authority to approve such on behalf of the Marysville Fire District. In the event the parties to this agreement cannot reach a compromise, the parties agree to utilize arbitration as outlined in section 29-Dispute Resolution of this agreement.

In the event it shall be necessary, during any calendar year, for the budget to be amended, the Operations Committee shall provide input on a budget amendment for submittal to the Board for review. Upon approval by the Board of Directors, the amendment shall be

submitted to the governing body of each party for approval in the event the amendment shall require an additional contribution of funds by either party.

12. **SPECIAL FUND.** The Board of Directors shall create a special operating fund with the County Treasurer's office to be used for the payment of the operating costs of the Fire Department. The Board of Directors shall be responsible for the proper management and accounting of all funds coming into the possession of the Board of Directors. The financial affairs of the Board of Directors shall be conducted in accordance with applicable federal and state laws and regulations.
13. **FUNDING OF SPECIAL FUND.** Each of the parties agrees to fund the operations of the Department under the following provisions:
 - 13.1. **Financial Contribution by District 12.** District 12 agrees to levy regular real property taxes, as determined by its Board of Commissioners, on taxable property located within the District. The Board of Directors shall provide sufficient funds for the following District 12 operations:
 - 13.2. Commissioners' fees pursuant to RCW 52.14.010.
 - 13.3 Membership fees for state and local municipal corporation associates and commissioners' associations.
 - 13.4 Board of Directors' travel expenses and expenses incurred in attending meetings, legislative and administrative hearings and all other such functions.
 - 13.5 Attorneys', accountants', auditors' and investment officers' fees and costs.
 - 13.6 Election expenses.
 - 13.7 Such other reasonable and necessary expenses as may be incurred from time to time by District 12 and its Board of Commissioners that are not attributable to the operation of the Department.
 - 13.8 **Financial Contribution By City.** Each year an agreement as to the financial contribution by the City for the ensuing year will be finalized by September 30th. In the event the parties agree to extend the term of this Agreement beyond December 31, 2016 any extension of this Agreement shall include a formula for each party's financial contribution that can be applied automatically so as to eliminate the need to develop a formula annually. The contribution shall be paid to the Board of Directors in equal monthly installments.
 - 13.9 **District Regular Tax Limitations.** District 12 agrees that it will not seek voter approval of the lifting of the LID limitation on its regular or emergency medical services regular real property tax levy without the consent of the City. District 12 agrees that it will not voluntarily lower its regular or emergency medical services regular real property tax levy without the consent of the City.

- 14 **EMPLOYMENT OF PERSONNEL.** District 12 shall be the employer of all personnel required to perform the services provided for in this agreement. The Board of Directors shall provide funds to the District to pay all wages, salaries, employment benefits, payroll taxes and any other expenses associated with the paid personnel. It is further agreed that future medical benefits required by statute to be provided to LEOFF I personnel whose employment is transferred from the City to District 12 shall be funded by the Board of Directors. District 12 assigns its authority to manage, supervise, employ, terminate and contract with employees to the Board of Directors.
- 15 **ASSIGNMENT OF PERSONNEL AND EQUIPMENT.** Under the provisions of the Board of Directors, the chief shall be responsible for the supervision, employment, termination, assignment and stationing of all personnel and equipment of the Department. In exercising such authority, the Fire Chief shall consult with the Board of Directors to insure that an adequate level of protection is provided within the geographical boundaries of each of the parties.
- 16 **FIRE CHIEF AND FIRE MARSHAL.** The City agrees that it will recognize the Fire Chief and Fire Marshal of the District as the Fire Chief and Fire Marshal of the City. The Fire Chief and Fire Marshal shall cooperate with the City building officials and the City's Director of Community Development to enforce the provisions of the Uniform Fire Code. The City agrees that all court costs and other legal costs incurred in the enforcement of the Uniform Fire Code within the City limits shall be paid by the City and shall not be considered an operating expense of the Department. In the event the City shall be awarded its costs, attorneys' fees, penalties or fines in such enforcement action, the recovery shall remain the property of the City.
- 17 **PROPERTY OWNERSHIP.** Except as provided in paragraph 24, all property owned by District 12 to enable it to perform the services required under this agreement shall remain the property of District 12 in the event of the termination of this agreement. All property owned by the City to enable it to perform the services required under this agreement shall remain the property of the City in the event of the termination of this agreement. All jointly owned and jointly purchased property acquired under the terms of this agreement shall be disposed of on an equitable basis and in such manner as may be agreed upon between the City and District 12 in the event of the termination of the joint operation.
- 18 **MAJOR CAPITAL IMPROVEMENTS.** In the event the Board of Directors shall determine that a major capital improvement, not included in the annual budget, is necessary for the proper operation of the Department, the Board of Directors shall prepare a report and recommendation to be submitted to the legislative body of each of the parties for review. The parties agree to review any recommendation of the Board of Directors, and, if necessary, to consider the issuance and sale of general obligation bonds to fund needed capital improvements. In the event it shall be necessary to obtain voter approval to incur indebtedness or levy excess taxes, the parties agree to cooperate to jointly submit such requests to the voters of the City and District 12. In the event any such ballot measure shall be approved in one jurisdiction but not in the other, the jurisdiction in which it failed shall submit the measure at another election during the same calendar year if an election date is available. If the measure shall fail the second time, the jurisdiction submitting the measure

may consider funding the improvements through any other source of funding that may be available. All funds received as a result of special levies, sale of bonds, or the like for the benefit of the Marysville Fire District shall be tendered to the accounts of the Department as soon as practical.

- 19 **MAINTENANCE OF STATIONS.** The Board of Directors shall be responsible to provide for the normal maintenance and repair of all station facilities exclusively operated by the District. The Board of Directors shall enter into a use agreement with the City to provide for normal maintenance, repair and operating expenses of any jointly operated, City owned station facilities.
- 20 **HOLD HARMLESS.** Each of the parties shall, at all times, be solely responsible for the acts or the failure to act of its personnel that occur or arise in any way out of the performance of this agreement by its personnel only and to save and hold the other party and its personnel and officials harmless from all costs, expenses, losses and damages, including cost of defense, incurred as a result of any acts or omissions of the party's personnel relating to any activities of such party that may have occurred prior to the effective date of this agreement.
- 21 **INSURANCE.** The Board of Directors shall provide insurance coverage for all operations, facilities, equipment and personnel of the Department. The insurance shall include all risk property insurance, insuring District 12 and City equipment and District 12 buildings at replacement cost; comprehensive general liability insurance with a minimum policy limit of \$2,000,000.00 per occurrence; errors and omissions insurance including civil rights coverage covering the actions of the Board of Directors and the legislative bodies of District 12 and the City; auto insurance, including comprehensive and collision coverage at agreed replacement cost and liability coverage with a minimum policy limit of \$2,000,000.00 per occurrence; boiler and machinery insurance and a fidelity bond covering the actions of Department personnel. The City shall provide insurance coverage for all jointly operated city owned facilities. The Board of Directors shall furnish to District 12 and the City appropriate documentation showing that such coverage is in effect and that District 12 and the City are named insureds on the policies on or before the effective date of the joint operation. The Board of Directors is authorized, consistent with the above provisions, to contract with the Washington Cities Insurance Authority or such other insurance provider as it deems appropriate.
- 22 **OPERATIONAL RULES AND REGULATIONS.** The Board of Directors shall, from time to time, adopt and implement rules and regulations to govern the operations of the Department.
- 23 **EMPLOYMENT ON TERMINATION.** In the event, as a result of the notice of termination or expiration of this agreement, District 12 must terminate any of its employees, the City agrees that it will, if positions are available, hire the qualified employees terminated by District 12 before it employs additional personnel. Subject to the provisions of any collective bargaining agreement to which District 12 or the Board of Directors may be a party, the determination of which District 12 employees will be terminated and employed by the City shall be negotiated by the parties. The negotiations

shall take into consideration a fair and equal apportionment of the employees based on the length of service, experience, qualifications and rank of the employees.

- 24 **ANNUAL RETREAT.** The Board of Directors shall hold an annual retreat to review the operation of the Fire Department during the preceding year, to discuss planning, the operating budget and capital improvement budget for the following year and to review any provisions of this agreement that either party may wish to modify. This meeting shall be scheduled at an agreeable time on or before October 1 of each year. The results of the retreat may be reviewed by the Marysville City Council if desired.
- 25 **ANNEXATIONS.** In the event that the City, during the term of this agreement, shall, in single annexations, annex areas of District 12 that contain more than five percent (5%) of the area of District 12, the City agrees that it will not invoke the provisions of RCW 35A.14.380 and .400, as presently exists or as may be hereafter amended, relating to ownership of assets for each such annexation. District 12 agrees, during the term of this agreement, that the percentage of the assessed value of District 12 contained in each such annexation shall be cumulated and that the City shall be entitled to invoke the statutory provisions for all such prior annexations which occurred during the term of this agreement at the time of the termination of this agreement and prior agreements.
- 26 **NOTICES.** All notices, requests, demands and other communications required by this agreement shall be in writing and, except as expressly provided elsewhere in this agreement, shall be deemed to have been given at the time of delivery if personally delivered or at the time of mailing if mailed by first class, postage prepaid and addressed to the party at its address as stated in this agreement or at such address as any party may designate at any time in writing.
- 27 **SEVERABILITY.** If any provision of this agreement or its application is held invalid, the remainder of the agreement or the application of the remainder of the agreement shall not be affected.
- 28 **MODIFICATION.** This agreement represents the entire agreement between the parties. No change, termination or attempted waiver of any of the provisions of this agreement shall be binding on either of the parties unless executed in writing by authorized representatives of each of the parties. The agreement shall not be modified, supplemented or otherwise affected by the course of dealing between the parties.
- 29 **BENEFITS.** This agreement is entered into for the benefit of the parties to this agreement only and shall confer no benefits, direct or implied, on any third persons.
- 30 **DISPUTE RESOLUTION.** In the event of a disagreement between the parties relating to the interpretation of the terms of this agreement, the parties agree that such dispute shall be resolved by binding arbitration. The arbitration shall be conducted by a panel of three (3) arbitrators. Each party shall appoint an arbitrator, and the two arbitrators shall appoint a third arbitrator. Unless different rules are adopted by the Board of Arbitrators, the rules of the American Arbitration Association shall apply with respect to the arbitration proceedings.

31 **PRIOR AGREEMENTS.** This Agreement is solely intended to update and replace the Agreement for Joint Operation of Fire and Emergency Medical Protection Facilities dated September 15, 1993 and prior amendments thereto.

DATED THIS 18th DAY OF April, 2016.

CITY OF MARYSVILLE


SNOHOMISH COUNTY FIRE PROTECTION DISTRICT NO. 12



Mayor



Chairperson



Commissioner




City Clerk
Reputy




Commissioner

Approved as to Form:

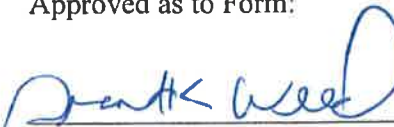


Fire District Secretary



City Attorney

Approved as to Form:



District's Attorney