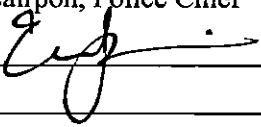


CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 9/13/2021

AGENDA ITEM:	
Contract with North Whidbey Sportsmen's Association for use of their Gun Ranges	
PREPARED BY:	DIRECTOR APPROVAL: Erik Scairpon, Police Chief 
Adam Vermeulen	
DEPARTMENT:	
Police	
ATTACHMENTS:	
Contract with North Whidbey Sportsmen's Association	
BUDGET CODE:	AMOUNT:
00103222.544400	\$125.00 per full day of use
SUMMARY:	

This a new License Agreement between North Whidbey Sportsmen's Association and the City of Marysville, which provides the Marysville Police Department with use of the North Whidbey Sportsmen's Association Gun Ranges.

Over past several years, the Marysville Police Department has used Plantation Range in Whatcom County. Plantation Range has gone through several changes in leadership and due to issues with the rifle range, does not provide a location for officers to shoot and qualify with the patrol rifle. Due these issues, the Marysville Police Department has sought the use of the North Whidbey Sportsmen's Association Gun Range.

The North Whidbey Sportsmen's Association Gun Ranges offer us an outdoor range that allows the use both pistol and rifles for department in-service training. This allows us to qualify and shoot on the same day with our patrol rifles and handguns. The North Whidbey Sportsmen's Association Gun Ranges allows us the flexibility and use of the range to create and execute specific firearms training drills in an outdoor environment.

RECOMMENDED ACTION:

Staff respectfully recommends that Council authorize the Mayor or sign and execute the attached Contract with North Whidbey Sportsmen's Association and the City of Marysville for use of the North Whidbey Sportsmen's Association Gun Ranges.

RECOMMENDED MOTION:

I move to authorize the Mayor to sign and execute attached Contract between the North Whidbey Sportsmen's Association and the City of Marysville for use of the North Whidbey Sportsmen's Association Gun Ranges.

CONTRACT
Between
THE CITY OF MARYSVILLE
AND
NORTH WHIDBEY SPORTSMEN'S ASSOCIATION

USE OF PISTOL AND RIFLE RANGES

THIS AGREEMENT is made and entered into by and between North Whidbey Sportsmen's Association, a Washington non-profit corporation, hereinafter referred to as "NWSA" and City of Marysville (the "City"), collectively referred hereinafter as the "Parties."

1. PURPOSE:

For the use by the City of the NWSA's Pistol Range Bay and/or the Rifle Range Bay (Ranges) located at 886 Gun Club Road, Oak Harbor, Washington 98277. These facilities are to be used by the City in accordance with the use terms as set forth in this Agreement for Law Enforcement training purposes.

The City is contracting with the NWSA for use of the Range for the purpose of the City to provide firearms qualifications, practice or training for commissioned and non-commissioned personnel of the City.

It is understood and agreed by the Parties that the NWSA shall provide no training or supervision at the Facility during the City's exclusive or individual use periods of the agreed upon portion of the facility designated for the city's use. The NWSA shall provide, upon request by the City's Supervisor or Coordinator, assistance to the individual Supervisor or Coordinator, in familiarizing them with the operations of facilities, equipment, and other infrastructure necessary to facilitate the City's use under the terms of this Agreement.

It is understood and agreed by the Parties that the City is a qualified law enforcement agency, or equivalent entity, such that their supervisor and/or participants are experienced with and trained in the use of firearms and firearm safety. The NWSA shall have no duty to train or assist the City with firearm safety or rifle range safety.

2. RESPONSIBILITIES

NWSA RESPONSIBILITIES:

- A. NWSA shall make available to the City the Ranges at such time and under such conditions as are hereinafter set forth.
- B. Maintain the facilities in a way that provides a safe environment for their intended use.
- C. Designate and report to the City's Representative a primary, and an alternate, point of contact, hereinafter referred to as "NWSA POC", for all communication/coordination/approval of City activities at the NWSA facility.

CITY RESPONSIBILITIES:

- A. The City shall provide all targets, target standards, ammunition and other materials necessary for the use of the Range.

While storage of said City materials, less ammunition, may be on NWSA property with NWSA approval, the lock(s) shall be provided and maintained by the City with a key and/or combination provided to the NWSA POC. If storage area is provided by NWSA, it is with the understanding that all Law Enforcement Agencies under contract with NWSA shall have access to said storage area. All Law Enforcement Agencies shall keep said storage area clean.

- B. Schedule, in advance, with NWSA POC exclusive use days for the use of a range.
- C. Assume full responsibility for safety of the entire Range during any period of exclusive use by the City.

- D. Be responsible for the conduct of members of the City while on the Range during exclusive use periods.
- E. Designate, and report to the NWSA POC the name of an individual who shall act as a qualified supervisor and coordinator of all City's activities at the Range. This individual shall be the person with whom the NWSA POC will work in connection with day-to-day matters of Range use, and who will be in direct charge during actual Range use.
- F. There shall be a City supervisor or coordinator and a City Range Safety Officer present at the Range at all times during exclusive use. The supervisor or coordinator shall terminate use of the range if any danger or safety risk is present at the facility and provide immediate electronic or verbal notice to the NWSA, followed by a written notice to the NWSA within 24 hours detailing the danger or safety risk. The Range Safety Officer shall be responsible for supervising safe shooting activities, monitor and enforce safety and range rules, and range operations during times of exclusive use. (The Range Safety Officer may also function as the supervisor or coordinator.)
- G. A written report of all accidents, damage or injury that occurs shall be provided immediately or no later than 24 hours to the NWSA. The written report shall provide sufficient details of the incident, including the date, time, circumstances and nature of injury or damage, and the name of the injured party, witnesses and City's Supervisor present at the time of the incident. The written report shall be submitted to NWSA Office or to the Range NWSA personnel.
- H. The City and its participants must comply with all Federal, State and local laws.
- I. The City shall pay all costs associated with damage, destruction, or loss to the NWSA at the Facilities as a result of the City's use and/or presence at the Range.

3. USE OF THE RANGE

- A. During the term of this Agreement, the City shall be entitled to schedule and utilize the Range designated herein in undivided blocks of time, up to 8 hours per day, (hereinafter 'Block' or 'Blocks') during the normal operating hours of NWSA, excluding holidays.
 - 1. Requests for range use shall be submitted to the Board via the NWSA POC for review and approval. Written requests must be received by the Board no later than the close of business on the third Wednesday of the month that immediately precedes the month of requested use (i.e., the third Wednesday of April for use in May).
 - 2. NWSA shall review, approve and confirm in writing the City's requested 8-hour or less blocks within two (2) business days following a regular NWSA Board meeting held on the third Wednesday of each month. No requests shall be unreasonably withheld.
- B. City shall remove all City generated trash from NWSA property. Only expended brass shell casings may remain. Shotgun shells, steel, aluminum and/or other alloy shell casings must be removed by City after each scheduled use of the range.
- C. City shall limit Range usage to official use only. This use shall be limited to: gun maintenance repairs; forensic testing; and individualized training. No personal usage is authorized unless said City personnel are also recognized members of NWSA.
- D. City shall ensure City personnel wear their badges, in lieu of an official NWSA membership card, in a plainly visible manner at all times while on NWSA property. The City POC may request deviation from this requirement under special circumstances and on a case by case basis.
- E. NWSA shall provide, and City shall display, a 'RANGE CLOSED' sign to be used during their approved training/qualification Blocks.

4. TERM OF AGREEMENT:

The term of this Agreement shall be from October 1, 2021 through September 30, 2022.

5. FEES:

- A. CITY shall pay a fee of \$125.00 per day to use the range and clubhouse facilities
- B. Payment shall be within 30 days of receipt of an invoice from NWSA.
- C. Invoices shall be sent by email to mvanderwalker@marysvillwa.gov, or by US mail to City of Marysville Police Department, ATTN: Margaret Vanderwalker, 1635 Grove Street, Marysville WA 98270, thirty (30) days or more prior to the due date.

6. RELATIONSHIP OF THE PARTIES: No agent, employee, servant, or representative of the City shall be deemed to be an agent, employee, servant, or representative of NWSA for any purpose. The City will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, or subcontractors, or otherwise, in performance of this agreement.

7. NON-WAIVER OF BREACH: The failure of either party to insist upon strict performance of any of the covenants and agreements of the Agreement or to exercise any option herein conferred in any one or more instance shall not be construed to be a waiver of relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

8. INDEMNIFICATION:

To the fullest extent permitted by law, the City agrees to indemnify, defend and hold the NWSA and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused in whole or in part by any act or omission, negligent or otherwise, of the City, its employees, agents, participants or volunteers or City's subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with City's activity and use under this Agreement; or 3) are based upon the City or their participants, employees, agents, or volunteers, or its subcontractors' use of, presence upon, or proximity to the property of the NWSA. PROVIDED, that in the event of the concurrent negligence of the Parties, the City's obligations hereunder shall apply only to the percentage of fault attributable to the City.

This indemnification obligation of the City shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Provider hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the City are a material inducement to NWSA to enter into this Agreement, are reflected in the Provider's compensation, and have been mutually negotiated by the parties.

The NWSA reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of City's indemnity obligations under this Agreement.

The City agrees all City's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

In the event the City enters into subcontracts to the extent allowed under this Agreement, the City's subcontractors shall indemnify the NWSA on a basis equal to or exceeding City's indemnity obligations to the NWSA. All insurance shall be per occurrence.

9. INSURANCE:

Each Party shall maintain its own insurance and/or self-insurance for its liabilities from damage to property and/or injuries to persons arising out of its activities associated with this Agreement as it deems reasonably appropriate and prudent. The maintenance of, or lack thereof of insurance and/or self-insurance shall not limit the liability of the indemnifying party to the indemnified party.

10. TERMINATION:

Any party hereto may terminate this Agreement upon thirty (30) days' notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

11. CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS:

The Agreement may be changed, modified, amended or waived only by written agreement executed by the Parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

12. NOTICES: Receipt of any notice shall be deemed effective three days after deposit of written notice in the U.S. mails, with proper postage and properly addressed. Notices shall be sent to the following address:

CITY:

City of Marysville Police Department
Margaret Vanderwalker
1635 Grove Street
Marysville WA 98270

CONSULTANT:

North Whidbey Sportsman's Association
James Till
PO Box 267
Oak Harbor WA 98277

13. SEVERABILITY:

In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.

14. ENTIRE AGREEMENT:

This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to each bind itself, its partners, successors, assigns, and legal representatives to the other party hereto, in respect of all covenants, agreements, and obligations contained in the Contract Documents. Each of the persons signing below on behalf of any party hereby represents and warrants that s/he or it is signing with full and complete authority to bind the party on whose behalf of whom s/he or it is signing, to each and every term of this Agreement.

CITY OF MARYSVILLE

NORTH WHIDBEY SPORTSMEN'S ASSOCIATION

By _____
Jon Nehring, Mayor

By _____
James Till

Date _____

_____ Date