

# TOWN OF EATONVILLE

## Agenda Staff Report

Agenda Item No.:	_____	Meeting Date:	_____
Subject:	<u>Adoption of Resolution No. 2014 - GG</u>	Prepared by:	<u>Greg Jacoby</u>
	<u>Approving an Interlocal Agreement</u>		<u>Town Attorney</u>
	<u>Between the Town and Pierce County</u>	Atty Routing No:	<u>025-14</u>
	<u>Fire Protection District No. 17 for the</u>		
	<u>Calendar Year 2015</u>	Atty Review Date:	<u>November 13, 2014</u>

**Summary:** In October 2014, the Town and Fire Protection District No. 17 executed an interlocal agreement pursuant to which District No. 17 has provided the Town with fire and rescue administrative services through the position of a part time Fire Chief at a cost of \$2,000 per month. The current agreement expires on December 31, 2014. District No. 17 is willing to continue to provide these services for the calendar year 2015 at a cost of \$2,400 per month. No other changes to the current agreement are proposed.

**Recommendation:** Staff recommends approval of the Interlocal Agreement between the Town and Pierce County Fire Protection District No. 17 for the calendar year 2015.

**Motion for consideration:** I move to adopt Resolution No. 2014 -GG approving the Interlocal Agreement between the Town and Pierce County Fire Protection District No. 17 for the calendar year 2015.

**Fiscal Impact:** The Town's cost is included in the 2015 budget.

**Attachments:** Resolution No. 2014 - GG.

**RESOLUTION NO. 2014 - GG**

**A RESOLUTION OF THE TOWN OF EATONVILLE,  
WASHINGTON, APPROVING AN INTERLOCAL AGREEMENT  
WITH PIERCE COUNTY FIRE PROTECTION DISTRICT NO. 17  
FOR THE CALENDAR YEAR 2015**

**WHEREAS**, the Town possesses the legal authority and responsibility to provide fire prevention services, fire suppression services, emergency medical services, and to protect the life and property of its citizens; and

**WHEREAS**, Pierce County Fire Protection District No. 17 ("District 17"), provides fire prevention services, fire suppression services, and emergency medical services to citizens in south Pierce County, and has provided similar services to the Town since October 2014; and

**WHEREAS**, the Town desires to enter into a new agreement with District 17 whereby District 17 will provide fire and rescue administrative services to the Town and its inhabitants for the calendar year 2015 by continuing with the assignment of a Contract Chief to serve as the Town's part time Fire Chief; and

**WHEREAS**, the Town agrees to contract for, and District 17 agrees to render, such fire and rescue administrative services pursuant to the terms of the Interlocal Agreement attached hereto as Exhibit A; and

**WHEREAS**, RCW 39.34.080 and other Washington law authorizes any public agency to contract with another public agency to perform services and activities that each such public agency is authorized by law to perform; now, therefore;

**THE TOWN COUNCIL OF THE TOWN OF EATONVILLE,  
WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

**THAT:** The interlocal agreement with Pierce County Fire Protection District No. 17 relating to fire and rescue administrative services, in the form attached hereto as Exhibit A, is approved.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 24th day of November 2014.

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Mike Schaub, Mayor

ATTEST:

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Kathy Linnemeyer, Town Clerk

**INTERLOCAL AGREEMENT BETWEEN  
PIERCE COUNTY AND THE TOWN OF EATONVILLE  
RELATING TO FIRE AND RESCUE SERVICES**

THIS AGREEMENT, is made and entered into between PIERCE COUNTY FIRE PROTECTION DISTRICT NO. 17 (hereinafter referred to as "District No. 17") and the TOWN OF EATONVILLE, a municipal corporation of the State of Washington, (hereinafter referred to as "the Town").

WHEREAS, the Town's geographical boundaries lie within Pierce County; and

WHEREAS, the Town possesses the power, legal authority and responsibility to provide fire and rescue services to the citizens within its boundaries; and

WHEREAS, District No. 17 provides fire and rescue services to the citizens of South Pierce County, and has provided similar services to the Town since October 2014; and

WHEREAS, RCW 39.34.080 and other Washington law authorizes any public agency to contract with another public agency to perform services and activities that each such public agency is authorized by law to perform; and

WHEREAS, the Town desires to enter into an agreement with District No. 17 whereby District No. 17, will provide fire, rescue and related administrative services to the Town and its inhabitants by assigning a Contract Chief to serve as the Town's Fire Chief for the calendar year 2015; and

WHEREAS, the Town agrees to contract for, and District No. 17 agrees to render such fire and rescue services pursuant to the terms of this Agreement;

Now, therefore, it is hereby agreed as follows:

**AGREEMENT**

For and in consideration of the covenants, conditions, performances, and promises hereinafter contained, the parties agree as follows:

**1. BASE LEVEL SERVICES**

District No. 17 will provide the following fire and rescue services within Town's geographical limits, rendering such services at the same level, degree and type as is customarily provided by District No. 17, unless otherwise set forth herein:

- 1.1 Administrative Services. Fire and rescue administrative services shall be provided through the position of a part time Fire Chief. These services shall include responsibility for the day-to-day operation of the Town's Fire Department, attendance as required at Town Council and other meetings, preparation and administration of a budget,

supervision of fire and rescue personnel, responding to media requests for information, and any other services normally required by the Town of its Fire Chief.

## **2. ORGANIZATION**

District No. 17 will provide the services identified in Section 1 through the following organization:

- 2.1 Service. Service will be provided through a specifically identified Fire Contract Chief. The Contract Chief will handle the day-to-day operational concerns identified by the Mayor and/or the Town Administrator related to fire and rescue. In addition, the Contract Chief will be available to the Town during mutually agreed upon days or hours, for fire and rescue related activities such as meetings of the Town Council and other appropriate Town meetings.
- 2.2 Office Space. The Town will provide office space and related supplies/equipment for the Contract Chief assigned to the Town under this Agreement.
- 2.3 Fire Chief. The Contract Chief will serve as the Town's Fire Chief, coordinating service delivery, attending Town Council and other meetings, preparing budget requests through coordination with the Town's budget staff, scheduling and supervising employees, maintaining records and potential evidence, and generally managing fire and rescue activities on behalf of the Town. The Contract Chief will be responsible for day-to-day supervision of Town fire and rescue employees both directly and vicariously through other Town supervisors, according to the Town's rules, policies, procedures, and practices.

## **3. REPORTING**

- 3.1 Fire and Rescue Notices. The Contract Chief will promptly notify the Town Mayor and/or the Town Administrator in the event of a significant fire or rescue occurrence within the Town or having a material impact on the Town.
- 3.2 Media Releases. The Town will prepare Media releases concerning fire and rescue activities within and/or affecting the Town. Any release of information to the media that is deemed to be sensitive or likely to cause concern or alarm shall be provided to the Mayor and/or the Town Administrator prior to its release. All other routine media releases concerning fire and rescue activities within and/or affecting the Town will be forwarded to the Mayor and/or the Town Administrator for review, concurrent with, or sooner than, the release to media. Information concerning performance under this Agreement shall not be released to the media by either party without first discussing the issues involved with the other party.
- 3.3 Public Records Requests. Responses to requests for public records shall be handled by the Town, pursuant to the Town's usual and customary procedures consistent with Chapter 42.56 RCW. The Town shall be responsible for any and all related claims or litigation. The Town and District No. 17 agree to cooperate

and assist each other in timely providing records concerning the subject matter of this agreement, but such cooperation is not intended to expand agency obligations beyond the requirements of Chapter 42.56 RCW.

#### **4. PERSONNEL AND EQUIPMENT**

4.1 Independent Contractor. District No. 17 is acting hereunder as an independent contractor such that:

4.1.1 Except for operational assignments as set forth herein, standards of performance, supervision, discipline and all other aspects of performance of the Contract Chief serving under this Agreement shall be governed entirely by District No. 17; and

4.1.2 The Contract Chief rendering services hereunder shall be considered an employee of District No. 17 for all purposes including maintaining in-service training requirements.

4.2. Leave From Duty. If the Contract Chief assigned to the Town is absent from duty for a period of fourteen (14) consecutive days, District No. 17 will provide a replacement Contract Chief beginning on the 15<sup>th</sup> day, until such time as the Contract Chief assigned to the Town is able to return to his duties as Contract Chief.

4.2.1. District No. 17 shall provide the Town a credit for any hours the Contract Chief may be away on specialized service duties.

4.2.2. Any such extended absence shall not affect the ability of the Contract Chief to return to that assignment unless the Town invokes the replacement process set forth below in Section 6.

4.3. Equipment. All equipment required for the Contract Chief shall be agreed upon between the Town and District No. 17.

#### **5. PERFORMANCE REVIEW SCHEDULE**

District No. 17 or the District's designee shall meet with the Town Mayor at least quarterly to discuss performance under this Agreement. The Town shall have an opportunity to comment on its satisfaction with the service delivered, as well as request adjustments or modifications. Performance evaluations of the Contract Chief performing under this Agreement shall be based on such input provided by the Town.

#### **6. REPLACEMENT OF CONTRACT CHIEF**

If the Town desires, District No. 17 will provide a replacement Contract Chief to serve as the Town's Fire Chief upon receiving written request from the Town outlining reasons for said request. Such replacement shall be made within thirty (30) days of receipt of the written request from the Town, unless a longer period is agreed to by the parties. Any written request

by the Town for replacement of the Contract Chief shall be delivered to District No. 17.

## 7. COST FOR SERVICES

7.1 Total Costs. For the period January 1, 2015 through December 31, 2015, the cost for services shall be \$2,400 per month. In the event this Agreement is extended, the cost for services shall be subject to renegotiation.

7.2 Billing Procedure. The costs of services will be billed monthly on the first (1<sup>st</sup>) working day of the month by District No. 17. Payments by the Town will be due by the end of the current month. Monthly payments that are not paid within the above time period shall be considered delinquent. Delinquent charges shall accrue interest on the unpaid balance, from the date of delinquency until paid, at an interest rate of one half of one percent (0.5%) per month. If an amount is in dispute, the Town will send payment for the undisputed amount according to the above schedule. Amounts in dispute will not be charged a delinquent penalty until one month after the dispute has been resolved.

7.3 Payments. Payments shall be made to:

Pierce County Fire District No. 17  
Station 170 Headquarters  
5403 - 340th Street East  
Eatonville, WA 98328

## 8. TOWN RESPONSIBILITIES

In support of District No. 17 providing the services described in Sections 1 and 2 above, the Town agrees to do the following:

8.1 Municipal Authority. The Town will hereby confer municipal fire and rescue authority on the Contract Chief, who will be vested with the authority to provide general fire and rescue services for purposes of carrying out this Agreement.

8.2 Special Supplies. The Town will supply, at its own cost and expense, any special supplies, stationery, notices, forms, and the like where such must be issued in the name of the Town.

## 9. CONTRACT ADMINISTRATION

9.1 Town Council. The Eatonville Town Council will review issues of policy and confidential matters relating to fire and rescue services within the Town.

9.2 Daily Operations. The Mayor, or his designee, shall be responsible for communicating with the Contract Chief as to the general direction and daily fire and rescue operations within the Town.

9.3 Dispute Resolution. In the event of a dispute in the administration of this

Agreement, the Mayor or the Town Administrator shall discuss the dispute with District No. 17, who will negotiate with the Mayor or the Town Administrator. If the Mayor or the Town Administrator and District No. 17 are unable to reach an agreed upon resolution, the dispute will be referred to the County Executive who will negotiate with the Mayor to resolve the dispute.

- 9.4 Arbitration of Disputes. If, after following the dispute resolution procedure described herein, the Mayor and the County Executive are unable to resolve a claim arising out of or relating to this Agreement or the alleged breach thereof, the dispute shall be submitted to arbitration in accordance with rules and procedures set forth in Chapter 7.04 RCW. District No. 17 and the Town will each appoint one arbitrator, who shall then jointly appoint the third. Judgment upon award rendered by the arbitrators may be entered into any court having jurisdiction thereof. The cost of arbitrating the dispute, including attorneys fees, will be borne equally by both parties.

## **10. TERM OF CONTRACT AND TERMINATION**

This contract shall commence at 12:01 a.m. on January 1, 2015, and shall terminate at midnight on December 31, 2015. Either party may initiate a process to terminate this Agreement as follows:

- 10.1 Written notice. The party desiring to terminate this Agreement shall provide written notice to the other party. Any party deciding to terminate shall provide not less than 60 days prior notice for reasons other than those identified in paragraph 13.
- 10.2 Transition Plan. Upon receipt of such notice, the parties agree to commence work on and to complete within thirty (30) days a transition plan providing for an orderly transition of responsibilities from District No. 17 to the Town over a minimum time frame of sixty (60) days. The transition plan shall identify and address personnel, capital equipment, workload and other issues related to the transition. Each party shall bear its respective costs in developing a transition plan.
- 10.3 Final notice. Upon completion of a mutually agreed upon transition plan, either party may provide official written notice of its intent to terminate this Agreement, consistent with the contents of the plan.
- 10.4 Return of Equipment. Upon termination of this Agreement, District No. 17 shall deliver to the Town any equipment that has been paid for with Town funds.

## **11. INDEMNIFICATION AND DEFENSE**

District No. 17 shall defend, indemnify and hold harmless the Town, its officers, appointed or elected officials, employees and agents from any and all liability, loss, costs, claims, judgments, or awards of damages and expense including attorney's fees, resulting from the acts or omissions of District No. 17, its officers, appointed or elected officials, employees, or agents

associated with this Agreement. In executing this Agreement, District No. 17 does not assume liability or responsibility for the release of the Town from any liability or responsibility to the extent that such liability or responsibility arises from the existence or effect of Town ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such Town ordinance, rule, regulation, resolution, custom, policy or practice is at issue, the Town shall defend the same at its sole expense and if judgment is entered or damages are awarded against the Town, District No. 17, or both, the Town shall satisfy the same, including all chargeable costs and attorney's fees.

The Town shall defend, indemnify and hold harmless District No. 17, its officers, appointed or elected officials, employees and agents from any and all liability, loss, costs, claims, judgments or awards of damages and expense including attorney's fees, resulting from the acts or omissions of the Town, its officers, appointed or elected officials, employees or agents associated with this Agreement. In executing this Agreement, the Town does not assume liability or responsibility for or release District No. 17 from any liability or responsibility to the extent that such liability or responsibility arises from the existence or effect of District No. 17 rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such District No. 17 rule, regulation, resolution, custom, policy or practice is at issue, District No. 17 shall defend the same at its sole expense and if judgment is entered or damages are award against District No. 17, the Town or both, District No. 17 shall satisfy the same, including all chargeable costs and attorney's fees.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of District No. 17 and the Town, its officers, officials, employees, and volunteers, District No. 17's liability hereunder shall be only to the extent of District No. 17's negligence.

The terms of this Section 11 Indemnification and Defense, shall survive the termination or expiration of this Agreement.

## **12. NO THIRD PARTY BENEFICIARY**

District No. 17 does not intend by this Agreement to assume any contractual obligations to anyone other than the Town, and the Town does not intend by this Agreement to assume any contractual obligations to anyone other than District No. 17. District No. 17 and the Town do not intend that there be any third-party beneficiary to this Agreement and nothing in this Agreement shall be construed to create a liability or a right of indemnification by any third party.

The terms of this Section 12 No Third Party Beneficiary, shall survive the termination or expiration of this Agreement.

## **13. INSURANCE COVERAGE**

The Town shall maintain at all times during the course of this Agreement a general liability insurance policy or other comparable coverage with a policy limit of not less than

\$2,000,000.00 per occurrence and not less than \$2,000,000.00 aggregate limits.

District No. 17 shall maintain at all times during the course of this Agreement a fire and rescue professional liability and auto liability insurance policy with a self-insured retention of no more than \$2,000,000.00 and a policy limit of not less than \$5,000,000.00 per occurrence and not less than \$5,000,000.00 aggregate limits.

Both parties agree to provide proof of insurance to the other party upon request. Failure to maintain the agreed upon coverage and or provide proof of the same within two business days after the date of request for proof shall be grounds for immediate termination of the agreement notwithstanding paragraph 10.1.

#### **14. NON-DISCRIMINATION POLICY**

District No. 17 and the Town agree not to discriminate in the performance of this Agreement on the basis of race, color, national origin, sex, sexual orientation, age, religion, creed, marital status, disabled or veteran status, or the presence of any physical, mental, or sensory handicap. District No. 17 and the Town certify that they are Equal Employment Employers.

#### **15. ASSIGNMENT**

Neither District No. 17 nor the Town shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other party.

#### **16. NOTICE**

Any formal notice or communication to be given by District No. 17 to the Town under this Agreement shall be deemed properly given if delivered, or if mailed postage prepaid and addressed to:

Town of Eatonville  
Mayor's Office  
201 Center Street  
P.O. Box 309  
Eatonville, WA 98328

Telephone: (360) 832-3361 x0  
Facsimile: (360) 832-3977

Any formal notification or communication to be given by the Town to District No. 17 under this Agreement shall be deemed properly given if delivered, or if mailed postage prepaid and addressed to:

Pierce County Fire District No. 17  
5403 - 340<sup>th</sup> Street East  
Eatonville, Washington 98328

Telephone: (253) 847-4333  
Facsimile: (253)

Either the Town or District No. 17 giving notice thereof to the other as herein provided may change the name and address to which notices and communications shall be directed at any time by giving written notice to the other party.

**17. DISTRICT NO. 17 AS INDEPENDENT CONTRACTOR**

District No. 17 is and shall at all times be deemed to be an independent contractor. No portion of this Agreement shall be construed as creating a relationship of employer and employee, or principal and agent, between the Town and District No. 17, or any of District No. 17's agents or employees. District No. 17 shall retain all authority for rendition of services, standards of performance, control of contracted employee, and other matters incident to the performance of services by District No. 17 pursuant to this Agreement.

Industrial Insurance Coverage: District No. 17 shall provide or purchase industrial insurance coverage for its contracted employees prior to performing work under this contract. The Town will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this Contractor or any subcontractor or employee of District No. 17 which might arise under the industrial insurance laws during the performance of duties and services under this contract. If the Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed under this contract, those payments shall be made by District No. 17; District No. 17 shall indemnify the Town and guarantee payment of such amounts.

Nothing in this Agreement shall make any employee of the Town an employee of District No. 17, or any employee of District No. 17 an employee of the Town for any purpose, including, but not limited to, withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded to employees of District No. 17 or of the Town by virtue of their employment.

**18. WAIVER**

No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of the Agreement. No waiver of any right under this Agreement shall be effective unless made in writing by an authorized representative of the party to be bound thereby.

**19. ENTIRE AGREEMENT**

This Agreement contains all of the agreements of the parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

**20. AMENDMENT**

Provisions within this Agreement may be amended with the mutual consent of the parties hereto. No additions to, or alteration of, the terms of this Agreement shall be valid unless made in writing, formally approved and executed by duly authorized agents of both parties.

**21. NO REAL PROPERTY ACQUISITION OR JOINT FINANCING**

This Agreement does not provide for the joint acquisition, holding or disposal of any real or personal property. Nor does this Agreement contemplate the financing of any joint or cooperative undertaking. There shall be no budget maintained for joint or cooperative undertakings pursuant to this Agreement.

**22. FILING**

Copies of this Agreement may be filed with the Eatonville Town Clerk, and the Pierce County Auditor.

**23. SEVERABILITY**

If any provision of this Agreement shall be held illegal, invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.

**24. GOVERNING LAW AND VENUE**

The parties hereto agree that the laws and administrative rules and regulations of the State of Washington shall govern in any matter relating to this Agreement. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington and in the event of dispute the venue for any action brought hereunder shall be in the Pierce County Superior Court.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2014.

TOWN OF EATONVILLE

PIERCE COUNTY FIRE DISTRICT NO. 17

\_\_\_\_\_  
Mayor Mike Schaub                      Date

\_\_\_\_\_  
Chairman Olivia Werner

Attested to by:

\_\_\_\_\_  
Commissioner John Sebastian

\_\_\_\_\_  
Town Clerk                                      Date

\_\_\_\_\_  
Commissioner John Christian

\_\_\_\_\_  
Commissioner Dan Morris

\_\_\_\_\_  
Commissioner Mark Guenthner

Attested to by:

\_\_\_\_\_  
Brenda Murphy, District Secretary