

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No.  
**202007032**

|  |   |
|--|---|
| Originating Department:                                    | Sheriff's Office                            |
| Division/Program: <i>(i.e. Dept. Division and Program)</i> | 3510 Administration / 351000 Administration |
| Contract or Grant Administrator:                           | Bill Elfo, Sheriff                          |
| Contractor's / Agency Name:                                | Lummi Nation                                |

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes  No  Yes  No   
 If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: \_\_\_\_\_

Does contract require Council Approval? Yes  No  If No, include WCC: \_\_\_\_\_  
 Already approved? Council Approved Date: \_\_\_\_\_ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement? Yes  No  If yes, grantor agency contract number(s): \_\_\_\_\_ CFDA#: \_\_\_\_\_

Is this contract grant funded? Yes  No  If yes, Whatcom County grant contract number(s): \_\_\_\_\_

Is this contract the result of a RFP or Bid process? Contract \_\_\_\_\_ Cost Center: \_\_\_\_\_  
 Yes  No  If yes, RFP and Bid number(s): \_\_\_\_\_

Is this agreement excluded from E-Verify? No  Yes  If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

- Professional services agreement for certified/licensed professional.
- Contract work is for less than \$100,000.
- Contract work is for less than 120 days.
- Interlocal Agreement (between Governments).
- Contract for Commercial off the shelf items (COTS).
- Work related subcontract less than \$25,000.
- Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):  
 \$ No cost agreement  
 This Amendment Amount:  
 \$ \_\_\_\_\_  
 Total Amended Amount:  
 \$ No cost agreement

Council approval required for; all property leases, contracts or bid awards **exceeding \$40,000**, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, **except when:**

1. Exercising an option contained in a contract previously approved by the council.
2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.
3. Bid or award is for supplies.
4. Equipment is included in Exhibit "B" of the Budget Ordinance.
5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.

Summary of Scope:

Interlocal Cooperative Act Agreement between the Lummi Nation and Whatcom County for the purpose of effectuating efficient law enforcement.

Term of Contract: Upon Execution      Expiration Date: Indefinite

|                   |   |                 |
|-------------------|---|-----------------|
| Contract Routing: | 1. Prepared by: Dawn Pierce   | Date: 07/01/20  |
|                   | 2. Attorney signoff: Approved via email BW/dp                           | Date: 07/01/20  |
|                   | 3. AS Finance reviewed: N/A per B. Bennett via email / dp               | Date: 07/01/20  |
|                   | 4. IT reviewed (if IT related):   | Date: _____     |
|                   | 5. Contractor signed:   | Date: _____     |
|                   | 6. Submitted to Exec.:  | Date: _____     |
|                   | 7. Council approved (if necessary): <input checked="" type="checkbox"/> | Date: 7-21-2020 |
|                   | 8. Executive signed: <input checked="" type="checkbox"/>                | Date: 7-31-2020 |
|                   | 9. Original to Council: <input checked="" type="checkbox"/>             | Date: 8-6-2020  |

**WHATCOM COUNTY  
SHERIFF'S OFFICE**

**BILL ELFO**  
SHERIFF



PUBLIC SAFETY BUILDING  
311 Grand Avenue  
Bellingham, WA 98225-4038  
(360) 778-6600


**MEMORANDUM**

**RECEIVED**

**JUL 30 2020**

**WHATCOM COUNTY  
EXECUTIVE'S OFFICE**

**TO:** Satpal Sidhu, County Executive

**FROM:** Bill Elfo, Sheriff 

**DATE:** July 1, 2020

**SUBJECT:** Interlocal Cooperative Act Agreement Between the Lummi Nation and Whatcom County

Enclosed for your review and signature are two (2) original agreements between the Lummi Nation and Whatcom County.

**Background and Purpose**

This agreement is executed for the Sheriff's Office and Lummi Nation Police Department to work cooperatively in regard to law enforcement activity and actions occurring within the exterior bounds of the Lummi Nation and/or affecting the Lummi nation.

Nothing in this agreement limits, impairs or otherwise affects the existing authority of federal, state and local law enforcement officers to enforce federal and state law within the exterior boundaries of the Reservation of the Lummi Nation or Lummi trust land or to enter in fresh pursuit, as defined in RCW 10.93.120.

**Funding Amount and Source**

No cost agreement.

Please contact Undersheriff Chadwick at extension 6618 if you have any questions or concerns regarding the term of this agreement.

Thank you.

Enclosures



# LUMMI INDIAN BUSINESS COUNCIL

2665 KWINA ROAD • BELLINGHAM, WASHINGTON 98226 • (360) 312-2000

## RESOLUTION #2020-069 OF THE LUMMI INDIAN BUSINESS COUNCIL

**TITLE: Interlocal Cooperative Act Agreement (General Peace Officer Authority for Tribal Police Officers) between the Lummi Nation and Whatcom County, Washington.**

**WHEREAS**, the Lummi Indian Business Council (LIBC) is the duly constituted governing body of the Lummi Nation by the authority of the Constitution and Bylaws, as amended, of the Lummi Tribe of the Lummi Reservation, Washington; and

**WHEREAS**, pursuant to Article VI, Section 1, subpart (e) of the Lummi Constitution, the LIBC has the duty and authority to enforce regulations contained in approved tribal resolutions and ordinances for the protection of tribal property, fish and wild life, and other natural resources of the Lummi Tribe; and

**WHEREAS**, pursuant to Article VI, Section 1, subpart (g) of the Lummi Constitution, the LIBC has the duty and authority to negotiate with the Federal, State, and local governments on behalf of the tribe; and

**WHEREAS**, pursuant to Article VI, Section 1, subpart (l) of the Lummi Constitution, the LIBC has the duty and authority to safeguard and promote the peace, safety, morals, and general welfare of the Lummi Reservation by regulating the conduct of trade and the use and disposition of property upon the reservation, provided that ordinances directly affecting nonmembers of the tribe shall be subject to approval of the Lummi Nation General Council; and

**WHEREAS**, it is the mission of the LIBC “*To Preserve, Promote and Protect our Sche Lang en*” (LIBC Resolution #2012-025); and

**WHEREAS**, the LIBC entrusts the Lummi Nation Police Department (LNPD) with safeguarding and promoting the peace, safety, morals, and general welfare of the Lummi Reservation and desires that LNPD officers be clothed in the authority to enforce all laws necessary to achieve this goal; and

**WHEREAS**, on December 20, 2019, by enactment of LIBC Resolution #2019-136, “General Peace Officer Interagency Agreement between Washington State Criminal Justice Training Commission (CJTC) and The Lummi Nation”, the Lummi Nation voluntarily consented to Washington state certification of LNPD officers at the Washington State Criminal Justice Training Center enacting”; and

**WHEREAS**, the LNPB currently employs and shall continue to employ sufficient numbers of trained and certified officers capable of enforcing state and federal law against non-tribal offenders located within the exterior boundaries of the Lummi Nation's reservation and upon the Nation's trust lands, wherever located; and

**WHEREAS**, in order that LNPB officers be clothed in the authority to enforce state and federal law against non-tribal offenders located within the exterior boundaries of the Lummi Nation's reservation and upon the Nation's trust lands, wherever located, the Whatcom County Sheriff's Office (WCSO) has requested the Lummi Nation's consent to an Interlocal Cooperative Agreement.

**NOW, THEREFORE BE IT RESOLVED**, the LIBC voluntarily consents to the Interlocal Cooperative Act agreement with Whatcom County, attached hereto; and

**BE IT FINALLY RESOLVED**, that the Chairman (or Vice Chair in his absence) is hereby authorized and directed to execute this resolution and any documents connected therewith, and the Secretary (or the Recording Secretary in his absence) is authorized and directed to execute the following certification.

**LUMMI NATION**



**Lawrence Solomon, Chairman  
Lummi Indian Business Council**

## CERTIFICATION

As Secretary of the Lummi Indian Business Council, I hereby certify that the above Resolution #2020-069 was adopted at a **Regular/Special** Meeting of the Council held on the **8th** day of **May**, 2020, at which time a quorum of **10** was present by a vote of **5** for, **1** against, and **2** abstention(s).



**Cheryl Sanders, Secretary**  
**Lummi Indian Business Council**



 ORIGINAL

WHATCOM COUNTY  
CONTRACT NO.  
202007032

**INTERLOCAL COOPERATIVE ACT AGREEMENT  
BETWEEN  
THE LUMMI NATION  
AND  
WHATCOM COUNTY**

This AGREEMENT is entered into under the Interlocal Cooperative Act (Chapter 39.34 RCW), the Tribal Police Officers Act, (Chapter 10.92 RCW) and under the Constitution of Lummi Nation, between the Lummi Nation of Washington (hereinafter “the Lummi Nation”) and Whatcom County (hereinafter “County”) for the purpose of effectuating efficient law enforcement.

WHEREAS, law enforcement agencies, such as Whatcom County Sheriff’s Office and the Lummi Nation Police Department have responsibilities to protect lives, property, and keep the peace; and

WHEREAS, effective law enforcement depends upon the ability of responding officers to take emergency action to protect lives and property and to preserve the peace, without regard to jurisdictional limits; and

WHEREAS, the Tribal Police Officers Act, 10.92 RCW, provides a means to grant tribal police officers authority to act as general authority Washington peace officers and to act beyond the exterior boundaries of the Lummi Reservation; and

NOW, THEREFORE, this Agreement is entered into under the Interlocal Cooperation Act (39.34 RCW et. seq), the Tribal Police Officers Act (10.92 RCW et. seq.), the Mutual Aid of Peace Officers Powers Act (10.93 RCW et. seq.), and the Constitution and Bylaws of the Lummi Nation, and the parties agree as follows:

1. Purpose. The Tribal Police Officers Act requires adequate vehicular and professional liability insurance, tribal police officer certification and an interlocal agreement before a tribal police officer may be recognized and authorized to act as general authority Washington police officer. This Agreement is intended to recognize the further cooperation between the Lummi Nation and the County.

2. Definitions. As used in this Agreement:

a. **"Authorized Tribal Officer"** means a law enforcement officer employed by the Lummi Nation Tribe who is authorized under chapter 10.92 RCW to exercise the powers of a general authority Washington peace officer.

b. **"Chief of Police"** means the Chief of Police of the Lummi Nation Police Department.

c. **"County"** means Whatcom County.

d. **"Deputy Sheriff"** means a law enforcement officer employed by the County.

e. **"Designated Offenses"** means all violations of the laws of the United States, State, County, or the Lummi Nation Tribe, whether civil or criminal, and of any Model Traffic Code adopted by the County or the Lummi Nation Tribe.

f. **"Indian"** means an enrolled member of the Lummi Nation Tribe or a Native American as defined by applicable law.

g. **"Prosecuting Attorney"** means the Prosecuting Attorney of the Lummi Nation or Whatcom County.

h. **"Reservation"** means the Lummi Indian Reservation and all territory within the exterior boundaries thereof, including, without limitation, all roads, rights of way, easements and waterways within such exterior boundaries, and all lands beyond the exterior boundaries of the Lummi Indian Reservation that are held in trust by the United States for individual Lummi Indians or for the Lummi Nation, otherwise known as "Indian Country" as that term is defined in 18 U.S.C. § 1151.

i. **"Sheriff"** means the Sheriff of Whatcom County.

3. Effective Date. Upon recording of this Agreement with the Whatcom County Auditor, this agreement shall become effective.

4. Term. This Agreement shall be effective for a period of five (5) years, and shall be deemed renewed successively for five (5) years at the end of each term or renewal, unless the party to be bound has earlier withdrawn or set forth its desire to have this Agreement terminate at its regular termination date.

5. Jurisdiction. Nothing in this Agreement shall be construed to cede any jurisdiction of any party to this Agreement, to modify the legal requirements for arrest or search and seizure, to otherwise modify the legal rights of any person not a party to this Agreement, to accomplish any act violative of state, tribal, or federal law, or to subject the parties to any liability to which they would not be subject by law.

6. Peace Officer Authority. Authorized Tribal Officers shall comply with all requirements under RCW 10.92, as adopted or amended hereafter, when exercising authority as a general authority Washington peace officer.



7. Tribal Authority. This Agreement shall not expand or diminish the authority or jurisdiction of any tribal court or other tribal authority.
8. County Authority. Nothing in this Agreement limits, impairs, or otherwise affects the existing authority under state or federal law of state or local law enforcement officers to enforce state law within the exterior boundaries of an Indian reservation or to enter Indian country in fresh pursuit, as defined in RCW 10.93.120, of a person suspected of violating state law, where the officer would otherwise not have jurisdiction.
9. Geographic Authority. The authority granted herein shall be coextensive with the exterior boundaries of the Lummi Reservation and the lands outside the boundaries of the Lummi Reservation held in trust by the United States for individual Lummi Indians or for the Lummi Tribe, except that a Lummi Nation Police Officer who is commissioned or granted authority under RCW 10.92.020 and this Agreement may be authorized to act as provided by RCW 10.93.070.
10. No Agency or Employee Status. The authority granted herein does not create an agency or employee status between any Lummi Nation Police Officer and any state or local government or between a County officer and the Lummi Nation.
11. Sovereignty Retained. Except as otherwise provided in this Agreement, this Agreement will not affect the existing status and sovereignty of the Lummi Nation, all immunities from liability and exemptions under state, federal or tribal laws, ordinances and regulation which law enforcement officers have, in their own jurisdiction and in the jurisdiction for whom they are acting as law enforcement officers shall be effective in the jurisdiction in which they are giving assistance, unless otherwise prohibited by law.

12. Scope of Powers. The Chief of Police may request the mutual aid of Deputy Sheriffs to exercise criminal enforcement on the Reservation. The Deputy Sheriffs shall act in accordance with the Operational Protocols. Each Authorized Tribal Officer may exercise the powers of a general authority peace officer, as provided for by applicable law, within the exterior boundaries of the Reservation and outside the boundaries of the Reservation where authorized by law.

13. Field Operations. All Deputy Sheriffs shall at all times remain under the control of the Sheriff, and shall abide by the rules and regulations of the Sheriff, all state and local laws and regulations, the state and federal constitutions, and shall be subject to the direction of the Sheriff's Office. All Lummi Nation Police Officers shall at all times remain under the control of the Chief of Police and shall abide by the rules and regulations of the Chief of Police and shall be subject to the direction of the Lummi Nation Police Department.

In order to facilitate a better understanding of the law enforcement duties and expectations of federal, state, and tribal law enforcement personnel, the Sheriff and Lummi Nation Police Department have agreed to more detailed operational protocols. A copy of said protocols is attached as Exhibit A to this Agreement, and is incorporated by reference.

14. Certification. In the event that any Lummi Nation Police Officer who has been certified by the Washington State Criminal Justice Training Commission should become decertified, the Lummi Nation agrees to notify the County Sheriff and the County Prosecuting Attorney immediately. In the event that any Lummi Nation Police Officer becomes the subject of any sustained finding of misconduct involving truthfulness or of

any other instance that might be considered as “Brady” material (Brady v. Maryland), the Lummi Nation Police Department will immediately report the relevant information to the County Prosecuting Attorney. The Lummi Nation further agrees to abide by the terms of the Whatcom County Prosecuting Attorney’s Office’s Brady Policy.

Lummi Nation agrees to provide the Sheriff and the County Prosecuting Attorney a list of Lummi Nation Police Officers who have been certified by the Washington State Criminal Justice Training Commission. In order to facilitate prosecution of cases referred to the County Prosecuting Attorney, Lummi Nation further agrees to provide, upon request, copies of the insurance information filed with the state Office of Financial Management pursuant to 10.92 RCW.

15. Jail. This Agreement does not alter the existing arrangement for tribal officers booking tribal members into the Whatcom County Jail. If a Lummi Nation Police Officer is booking a non-Indian suspect pursuant to this Agreement, then the County will be responsible for the associated costs of booking.

16. Prosecution. If the Lummi Nation refers any matter to the County Prosecuting Attorney, then the Lummi Nation agrees to provide all necessary reports, and/or necessary complete all necessary paperwork, and/or complete all requested follow up investigation as required by the County Prosecuting Attorney. The Lummi Nation further agrees that its personnel shall be available to the County Prosecuting Attorney at a reasonable time and upon reasonable notice for any necessary pretrial interviews, depositions, or motions.

Any Lummi Nation Police Officer issuing any Notice of Infraction, issuing any criminal citation, making any arrest, or completing any incident report while acting in the

capacity of a general authority Washington peace officer pursuant to this Agreement is responsible for filing any required notice and citations with the appropriate Washington State court or as directed by the County Prosecuting Attorney. Any citation or infraction issued by the Lummi Nation Police Officer within the exterior boundaries of the Lummi Reservation pursuant to the Lummi Nation Police authority under federal and/or tribal law will be cited to Federal and/or Lummi Tribal Court. Each agency is responsible to maintain its own records.

17. Investigations, Warrants, and Arrests. Any investigation, warrant, or arrest undertaken under state law authority pursuant to this Agreement must be undertaken in accordance with applicable state or federal law.

18. Notice of Consent. This Agreement suffices as the Sheriff's limited Notice of Consent under authority of RCW 10.93.070 subject to the Protocols as established in a separate document entitled "Protocols."

19. Funding. No transfer of funds is intended by this Agreement. Except as otherwise provided in this Agreement, each party is responsible for its own costs.

20 Representatives. The following individuals are designated as representatives of the respective parties. The representatives are responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the even such representatives are changed, the party making the change shall notify the other party.

For the Lummi Nation:

Chairman  
Lummi Nation  
2665 Kwina Road  
Bellingham, Washington 98226  
360-312-2000

Chief of Police  
2665 Kwina Road  
Bellingham, Washington 98226  
360-312-2274

For the Sheriff:

Whatcom County Sheriff  
311 Grand Ave  
Bellingham, WA 98225  
360-778-6600

21. No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.

22. Indemnification. Each party agrees to defend and indemnify the other party and its elected and appointed officials, officers, employees, and agents against all claims, losses, the claims arising out of, or result from, the performance of this agreement by the indemnitor or its elected and appointed officials, officers, employees or agents. Each indemnitor's duty to defend and indemnify extends to claims by the elected or appointed officials, officers, employees or agents of the indemnitor or of any contractor or subcontractor of indemnitor. This provision shall survive the expiration or termination of this Agreement.

23. Insurance. The Lummi Nation will maintain insurance and provide proof of such coverage as is required by RCW 10.92.020(2)(a).

24. Termination. Any party to this Agreement may terminate this Agreement upon thirty (30) days' written notice either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the other party's last known address for the purposes of giving notice under this paragraph. If this Agreement is 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. Termination of this Agreement by any party shall not affect or diminish authority exercised prior to delivery of the notice of termination. Termination of this Agreement does not relieve any party of its agreement to insure without interruption and to indemnify the other party as required herein for any liability or expense arising out of action prior to the time termination becomes effective.

25. Amendments. No changes, modifications or amendments to this Agreement will be valid or binding upon the parties unless such changes, modifications or amendments are in writing and executed by the parties. Waiver of breach of any term or condition of this Agreement must be contained in a writing executed by the parties and shall not be considered a waiver of any prior or subsequent breach.

26. Severability. In the event any term or condition of this Agreement or application of it to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity will 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.

27. Governing Law. This Agreement shall be governed by the laws of the State of Washington as to interpretation, validity and performance.

28. Limited Waiver of Sovereign Immunity. The Lummi Nation expressly reserves all of its inherent sovereign rights as a sovereign Tribe, including its rights as a federally recognized Tribe to sovereign immunity from suit in any state, federal or tribal court without the Tribe's explicit consent. By entering into this Agreement, the Lummi Nation

hereby grants a limited waiver of sovereign immunity to the County only, subject to and conditioned on the following:

- a. This limited waiver of sovereign immunity may not and will not extend to or be used for or to the benefit of any other person or entity of any kind or description whatsoever, including any successor or assign of the County.
- b. Nothing contained in this Agreement will be deemed a consent to levy of any judgment, lien or attachment upon any assets, property, or interest of the Lummi Nation except as specifically described herein.
- c. Nothing in this Agreement nor any activity of the Lummi Nation will implicate or in any way involve the trust assets or credit of the Lummi Nation or any of its members.
- d. The Lummi Nation hereby expressly waives sovereign immunity to suit under the dispute resolution procedures of this Agreement only with respect to claims made relating to, or arising under, this Agreement by any party, to interpret or enforce the terms of this Agreement, or upon a claim of indemnification by the County to this Agreement under Section 22. The limit for any claim of indemnification will be the insurance limit required by this Agreement. The parties agree that in discharging this indemnification obligation, where the required insurance is procured, the County shall look only to the proceeds of the insurance procured by the Lummi Nation herein.

The Lummi Nation agrees to assign over to the County, at its request, any and all rights against the insurer to effectuate a payment due under its indemnification provision. Should the Lummi Nation fail to procure and maintain the insurance required by this

Agreement, the Lummi Nation hereby waives any claim of immunity or exemption for any assets it holds that are not subject to a restriction against alienation up to the amount necessary to discharge the indemnity obligation and the costs of collection.

All immunities enjoyed by County law enforcement officers under state or federal law shall inure to the benefit of Authorized Tribal Officer when exercising Washington peace officer authority pursuant to chapter 10.92 RCW and the terms of this Agreement.

Whereas the County has not waived its immunity under Title 51 (Industrial Insurance) of the Revised Code of Washington, so neither has the Lummi Nation waived any such immunity, nor shall the Lummi Nation, its appointed officials, officers, employees, or agents be held liable under Title 51. Nothing in this Agreement shall preclude the Parties, or their employees, agents, or representatives from seeking the applicable benefits and protections of the Federal Tort Claims Act. It is expressly agreed and understood that the indemnification provided for this Agreement is for the benefit of the Lummi Nation and the County and their respective Authorized Tribal Officers and Deputy Sheriffs individually only, and there is no intention by the parties to confer any other rights.

29. Arbitration. The County or the Lummi Nation may initiate arbitration by providing written notice of intent to arbitrate to the other parties, together with a statement of the matter in controversy. If the parties are unable to agree upon a single arbitrator within thirty (30) days of such notice of intent, the County and the Lummi Nation each may appoint an arbitrator by providing written notice of the name of an arbitrator to the other. If either the County or the Lummi Nation does not so appoint an arbitrator within ten (10) business days after the other party appoints an arbitrator, the



single appointed arbitrator shall act as the sole arbitrator of the specified controversy. If each party appoints an arbitrator, the two arbitrators shall meet promptly and attempt to select a third arbitrator. If the two appointed arbitrators are unable to agree on a third arbitrator within ten (10) business days after the second arbitrator is appointed, either the County or the Lummi Nation may apply to the Superior Court of Whatcom County for the selection of a third arbitrator. Once appointed, the three-arbitrator panel shall determine the specified controversy. Each party shall bear the cost of any arbitrator it appoints, and one-half (1/2) of the cost of appointing a third arbitrator and the third arbitrator's fee. Any arbitrator appointed under this provision must be an active member of the Washington State bar.

The arbitration rules and procedures in Chapter 7.04 RCW shall govern the arbitration process, the Washington State rules of civil procedure shall govern pre-hearing discovery to the extent not incompatible with the procedures set forth in Chapter 7.04 RCW, and the law of evidence of the State of Washington shall govern the presentation of evidence at the arbitration hearing.

An award or decision rendered by a majority of the arbitrators appointed under this Agreement shall be final and binding on all parties to the proceeding, and judgment upon any award or decision rendered by the arbitrators may be entered in the Lummi Tribal Court or the Superior Court of Whatcom County, Washington, and enforced in the same manner as any other judgment.

Nothing in this Agreement shall be deemed or construed to give the arbitrators any authority, power, or right to alter, change, amend, modify, add to, or subtract from

any of the provisions of this Agreement, except to the extent that any part of this Agreement is determined to be illegal.

30. Integration. This Agreement, and any signed amendments, contains terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement.

**LUMMI NATION TRIBE**



Chairman- Lawrence Solomon  
Lummi Indian Business Council

4/25/2020

Dated



Robert Wilson  
Chief of Police- Lummi Nation Police Dept.

6-26-2020

Dated

**WHATCOM COUNTY**



Satpal Sidhu  
Whatcom County Executive

7/31/2020

Dated



Bill Elfo  
Whatcom County Sheriff

7/31/2020

Dated



Eric J. Richey  
Whatcom County Prosecuting Attorney

7/31/2020

Dated

**Appendix A**  
**LNPD and WCSO**  
**Law Enforcement Operations and Response Protocols**

The safety of the Lummi Nation and the people that reside in and visit the community is of the utmost importance. It is the intent of Whatcom County Sheriff's Office (hereinafter referred to as "WCSO") and the Lummi Nation Police Department (hereinafter referred to as "LNPD") to work cooperatively in regard to law enforcement activity and actions occurring within the exterior bounds of the Lummi Nation and/or affecting the Lummi Nation.

The following protocol will layout the agreed upon practices and understanding between the WCSO and the LNPD, establishing the jurisdictional responsibilities and how each agency will respond and coordinate law enforcement activities with the other.

**Patrol/Field Operations**

Lummi Nation Police Department will serve as the primary law enforcement agency for calls for service for all land within the exterior boundaries of the reservation of the Lummi Nation and trust land of the Lummi Nation. Only under circumstances requiring immediate action in the interest of public safety, or as otherwise provided in RCW 10.93.070, will LNPD officers exercise the powers of general authority peace officers to enforce state law outside the exterior boundaries of the reservation of the Lummi Nation.

As previously described, calls for service received by WhatComm that originate within the exterior boundaries of the reservation of the Lummi Nation and Lummi trust land will be dispatched to LNPD as the first responders for both emergency and non-emergency calls. In progress, life safety calls for service shall be broadcast to both LNPD and WCSO. LNPD and WCSO will coordinate responses to life safety calls and contain the scene before addressing issues of jurisdiction.

The WCSO will respond to calls for service if specifically requested by a non-Indian reporting party.

LNPD will have primary jurisdiction over Indians whose offenses are a violation of tribal law. The LNPD and WCSO will have concurrent jurisdiction in accordance with RCW 37.12.010 crimes (PL-280 rule).

LNPD will be the primary law enforcement agency for all statutory and common law violations of state law committed by a non-Indian, within the exterior boundaries of the reservation of the Lummi Nation and upon Lummi trust land. For those non-tribal violations that specifically request WCSO, LNPD will advise the duty WCSO supervisor via dispatch for possible response.

When investigating complex crimes involving non-Indian suspects, if the resources required are beyond the capacity of the LNP, the WCSO may be requested to assist and/or be the lead agency on the investigation.

In an emergency situation, LNP may request the aid of the WCSO. Should resources allow, the WCSO may respond to aid LNP in an investigation or call for service for which LNP would otherwise be the primary law enforcement agency.

## **STATE AND LOCAL ENFORCEMENT**

Nothing in this agreement limits, impairs or otherwise affects the existing authority of federal, state and local law enforcement officers to enforce federal and state law within the exterior boundaries of the Reservation of the Lummi Nation or Lummi trust land or to enter in fresh pursuit, as defined in RCW 10.93.120.

LNP Natural Resource Enforcement officers shall maintain jurisdiction over Indian suspects found in violation of Lummi and state fish and wildlife regulations.

### **Training**

The LNP and WCSO may participate jointly in training of officers/deputies that have concurrent jurisdiction. A record of any training will be documented and retained by both agencies in accordance with current retention schedules for public records. The training may include, but not be limited to:

- Cultural education
- Bias-based / Fair and Impartial policing
- Public Law 280 /Jurisdictional issues
- Agency policy and procedure
- Report writing standards and submission
- Prosecution requirements
- Court process and court document flow
- Natural Resource/ Fish and Wildlife enforcement
- Tribal gaming
- Search and seizure
  - 4<sup>th</sup> Amendment
  - Indian Civil Rights Law
  - Article I, section 7, WA State Constitution
- Brady policies and disclosures

### **Officer Involved Shooting**

It is the intent of the LNPd to participate as a member of the Law Enforcement Mutual Aid Response Team (LEMART). As staffing allows, the LNPd would contribute detectives and crime scene investigators to LEMART.

When an officer involved shooting (OIS) involves a LNPd officer acting within the exterior boundaries of the Lummi Nation and trust land owned by Lummi Nation:

- LNPd agrees to sign and participate in the LEMART protocols.
- The LNPd Chief of Police will respond to assist the officer.
- The LNPd Chief of Police may request LEMART to secure and investigate the circumstances related to the officer involved shooting.
- If a shooting within the exterior bounds of the Lummi Nation involves a deputy sheriff, WCSO and LEMART protocols will apply.
- The FBI will have primary jurisdiction for OIS investigations involving Indian suspects.

### **Extraordinary Costs**

Extraordinary costs will be evaluated on a case by case basis and contingent on authorization by the Chief of Police and the Sheriff. In emergent matters involving life safety, the LNPd and WCSO will assess and determine the resources necessary to resolve the situation. Extraordinary costs may include, but are not limited to:

- Personnel overtime
- SWAT resources
- Air assets and support (e.g. helicopter)
- Office space

The parties will make every attempt to resolve any disputes regarding extraordinary costs and who should be responsible. If the parties are unable to reconcile and come to agreement, the parties may seek arbitration as described in Section 16 of this agreement.

# **LEMART**

Law Enforcement Mutual Aid Response Team

# **Protocol**

## **MISSION: TO PROVIDE EXPERT INVESTIGATIVE AID TO ALL LAW ENFORCEMENT AGENCIES WITHIN WHATCOM COUNTY.**

### **GOALS OF THE RESPONSE TEAM**

- 1) To investigate incidents following Critical Incident Protocols developed and approved by the Whatcom County Police Chiefs and Sheriff's Association.
- 2) To promote public trust by conducting professional and consistent multi-jurisdictional investigations of major incidents, primarily officer involved fatalities.
- 3) To maximize the availability and sharing of the latest technological equipment and techniques.
- 4) To consolidate and share the skills of experienced supervisors and investigators.
- 5) To conduct thorough investigations in a timely fashion.

### **BOARD OF DIRECTORS**

The Board of Directors shall consist of (7) members appointed by the Whatcom County Police Chiefs and Sheriffs Association as follows:

- The Whatcom County Sheriff (or representative)
- The Bellingham Police Chief (or representative)
- The Whatcom County (District 7) Commander of the Washington State Patrol (or representative)
- Two (2) Chiefs of Police representing the municipalities of Ferndale, Everson, Nooksack, Lynden, Sumas and Blaine
- A representative for the tribal governments of the Lummi and Nooksack Tribes
- The Whatcom County Prosecuting Attorney.

The Board shall also have advisory liaison members from the Federal Government as follows:

- The Department of Homeland Security, one representative from each agency
- The US Department of Justice (FBI), one representative

A Chairperson of the Board of Directors shall be selected by nomination and approved by a simple majority vote of the full board, approved at a regularly scheduled meeting of the Board in January of each year. The purpose of the meeting will be to receive a comprehensive report from the LEMART Commander concerning activities of LEMART over the past year, address issues pertaining to the operation and support of the Team, address changes to LEMART protocol, and conduct elections of Board members as necessary. For voting purposes three (3) Board Members shall constitute a quorum. Special meetings may be called at any time by the Chairperson of the Board. Special meetings may also be requested by the LEMART Commander.

## **TEAM MEMBERS/RESPONSIBILITIES**

### **TEAM COMMANDER**

The LEMART Commander shall have the rank of Chief Deputy or Deputy Chief. The Commander has the overall responsibility of managing and coordinating assigned incidents as well as ensuring the readiness and training of the Team. The LEMART Commander reports to the Board of Directors, and the administration(s) of affected agencies, and shall be from either the Whatcom County Sheriff's Office or Bellingham Police Department.

### **ASSISTANT TEAM COMMANDER**

The Assistant Team Commander shall be a member of LEMART having the rank of Chief Deputy or Deputy Chief. The Assistant Commander has the overall responsibility to manage and coordinate assigned incidents in the absence of the Team Commander, and to assist in any administrative duties when requested by the Team Commander. The Assistant Commander reports to the Team Commander or the administration(s) of affected agencies, in the Team Commander's absence. The Assistant Commander shall be from the Whatcom County Sheriff's Office or the Bellingham Police Department.

Team Commander and Assistant Team Commander positions will rotate annually between the Whatcom County Sheriff's Office and the Bellingham Police Department.

### **ADMINISTRATIVE LIEUTENANT**

The Administrative Lieutenant shall be from the same agency as the Team Commander and selected by the Team Commander. The responsibilities of the Administrative Lieutenant include: arranging, coordinating, and documenting all training for the Team, maintaining records of Team call-outs, Team personnel records/roster, Team equipment inventory, and managing the financial transactions/records of the Team. The Administrative Lieutenant may act as the LEMART Commander in the absence of the LEMART Commander and/or Assistant Commander.

### **INVESTGATIVE LIEUTENANT**

The Investigative Lieutenant shall be from the same agency as the Assistant Team Commander and shall be selected by the Assistant Team Commander. The Investigative Lieutenant will provide oversight of LEMART supervisors/investigators and assist the Administrative Lieutenant as needed.

### **INVESTIGATIVE TEAM SUPERVISORS**

- Investigative Team Supervisors shall be Sergeants and shall be assigned by the Team Commanders to respond to and supervise the incident. One Sergeant shall be from the Bellingham Police Department Major Crimes Unit and one Sergeant shall be from the Whatcom County Sheriff's Office Detective Unit. If an additional supervisor(s) is needed, the Team Commander shall designate an acting supervisor from within LEMART.
- At the direction of the Team Commanders, Investigative Team Supervisors shall respond to and take direct charge of the crime scene investigation. When multiple Investigative Team Supervisors are required, one Supervisor will be designated as the Lead.



**INVESTIGATORS**

Investigators shall be detectives selected through the LEMART selection process. Investigators shall work in two or more person teams to complete specific investigatory tasks at the direction of a LEMART supervisor. One person shall be designated as the lead investigator for each team.

**EVIDENCE TECHNICIAN**

The Evidence Technicians shall help with documenting, collecting, packaging and transporting evidence, data collection and other duties as assigned when qualified.

**CRIME SCENE INVESTIGATORS**

Crime Scene Investigators shall be selected through the LEMART selection process. Crime Scene Investigators shall work in two or more person teams to complete specific crime scene processing tasks at the direction of the LEMART supervisor. Once person shall be designated as the lead crime scene investigator for each team.

**POSITIONS**

- Commander (1)
- Assistant Commander (1)
- Administrative Lieutenant (1)
- Investigative Lieutenant (1)
- Supervisors (2)
- Investigators (12)
- Evidence Technicians (2)
- Crime Scene Investigators (6)

**ACTIVATION**

- A Chief of Police, or the Sheriff, or their designee shall make the request for LEMART  
The requesting agency shall contact the LEMART Commander
- The LEMART Commander will consult with a Duty Staff Officer (DSO) from either Bellingham Police Department and/or Whatcom County Sheriff's Office when deciding to activate LEMART.
- LEMART Commander will initiate call-outs through the AlertSense platform.
- The LEMART Commander shall assign a Supervisor as the Lead Supervisor. The Lead Supervisor shall be responsible for determining how many investigators will be needed. In cases of officer involved fatalities the Lead Supervisor shall not be from the employing agency.

Note: Each department should establish their own guidelines as to when and if they will request assistance from LEMART. While formed primarily to investigate officer-involved fatalities, and to provide support to smaller agencies with major crimes such as homicides, LEMART can be deployed for non-officer involved incidents. Departments are under no obligation to request the assistance of LEMART.

## **AUTHORITY**

Once the LEMART has been assigned to investigate an incident as requested by the venue agency, the LEMART Commander shall work with the Incident Commander concerning the oversight and direction of the investigation of the incident, and establish objectives and develop an action plan. LEMART will deploy as an investigative component under the Operations section per ICS protocol. The LEMART Commander will report to the Operations Section Chief and/or Incident Commander.

## **VENUE AGENCY RESPONSIBILITIES**

- The venue agency shall be part of the LEMART agreement
- The venue agency shall ensure proper crime scene protection.
- The venue agency shall make the initial request for the LEMART.
- The venue agency shall establish Incident Command and/or Unified Command following ICS protocol.
- The venue agency shall provide an Incident Commander.
- The venue agency shall make all department personnel available to the LEMART.
- The venue agency or their designee shall be responsible for communicating with the media.
- The venue agency shall be responsible for all reasonable investigative expenditures.
- The venue agency shall be responsible for all reasonable non-investigative expenses, to include medical expense. If the subject officer or officers are outside their jurisdiction during an incident, the employer agency shall be responsible for non-investigative expenses.
- The venue agency will coordinate appropriate scene security measures with the LEMART Commander.
- If necessary, such as in cases of officer fatalities, the venue agency will bear the costs of suspect security until the suspect is available for booking. It is understood that special circumstances may dictate that other non-venue agency(ies) may provide assistance and suspect security upon request of the venue agency's Chief or Sheriff..
- The venue agency shall make all documents, reports, and information available to the LEMART.
- The venue agency shall allow use of space and equipment as needed by the LEMART.

## **COSTS**

Each participating agency shall be responsible for their employees' wages and associated costs. Any other costs shall be the responsibility of the venue agency as specified under "Venue Agency Responsibilities" above.

## **EVIDENCE STORAGE**

All evidence shall be stored under the control of the Bellingham Police Department's Property Room or Whatcom County Sheriff's Office Property Room. The venue agency shall be responsible for storage and handling costs of extraordinary items such as vehicles and hazardous materials.

## CASE FILES

- All original reports, statements, and other documentation shall be filed and maintained by the lead investigator's parent agency. Copies of reports, statements, and other documentation shall be submitted to the LEMART lead investigator.
- Copies of all case files shall be made available to the venue agency and/or the employing agency.

## RECORDS

Records shall be maintained of all Team activity including

- Selection process
- Call-out activity
- Team and individual training

## TRAINING

Investigators assigned to duties with LEMART should have attained the minimum level of training as listed below prior to assuming an active role on the team. Agencies may assign additional personnel to assist with investigative duties. Each sponsoring agency shall be responsible for the costs of training for their respective personnel unless funding is pre-approved by a hosting agency

### BASIC TRAINING (recommended)\*

- Criminal Investigation
- Basic Homicide Investigation
- Crime Scene Investigation
- Reid Technique of Interviewing and Interrogation
- Officer Involved Shooting Investigation
- In-Custody Death Investigation

\*Aforementioned courses may be waived based upon evidence of equivalent experience obtained by an appointed investigator. Each agency provides the basic training for their investigator on the team.

### ADVANCED TRAINING

The following advanced training is recommended for team investigators:

- Advanced Homicide Investigation
- Advanced Reid Techniques of Interviewing and Interrogation
- Blood Spatter
- Crime Scene Laboratory Services
- Crime Scene Preservation
- Crime Scene Photography
- Criminal Investigative Analysis
- DNA
- Sudden Infant Death Syndrome
- Excited Delirium and Positional Asphyxia

- Time Management
- Other related training, seminars, and conferences or on-going training as offered by WSCJTA or other training venues on an as available basis.

#### **INSERVICE TRAINING**

- The LEMART shall strive to maintain a team of highly skilled and trained investigators.
- LEMART should train together as a team on at least an annual basis.

#### **APPOINTMENT OF TEAM MEMBERS**

##### **APPOINTED MEMBERS**

- The Team Commander and Assistant Team Commander shall be appointed by their respective agencies.
- The Administrative Lieutenant and the Investigative Lieutenant shall be appointed by the Team Commander and Assistant Commander.
- The LEMART Supervisors shall be appointed by the LEMART Commander
- The LEMART Investigators shall be appointed by the LEMART Commander
- The LEMART Evidence Technicians shall be appointed by the LEMART Commander

##### **PREQUISITES**

- Agency must be part of LEMART agreement
- Commitment of 3 years to LEMART from investigator and agency (absent promotion/exigent circumstances precluding continued LEMART service)
- Commitment to a training plan.
- Willingness to be on call and reasonably available for call-out.

#### **REMOVAL FROM TEAM**

The LEMART Commander shall consult with the employing agency head and a designee of the board of directors prior to the removal of a team member.

#### **EQUIPMENT**

LEMART member agencies shall work together to ensure the LEMART has the necessary equipment to support the mission and goals of the team. Agencies shall supply each team member with basic safety equipment to adhere to current WISHA or OSHA blood borne pathogens rules.

#### **INCIDENT DEBRIEFING/KEEPING AGENCIES INFORMED**

- An Incident Debriefing for LEMART investigators will be conducted as soon as practical after each activation. The debriefing will be scheduled and conducted by the LEMART Commander.
- The LEMART Commander shall ensure the involved agency's Chief Administrator is kept informed of the progress of the investigation. The LEMART Commander shall meet with the involved agency's Chief Administrator the following business day after the initial

investigation. Under no circumstances will information be released that may compromise a LEMART investigation.

#### Summary of Revisions

1. Addition of Investigative Lieutenant to the LEMART Command structure.
2. Added Investigative Lieutenant under the Positions section.
3. Added the following language under Venue agency responsibilities, "*The venue agency shall be responsible for all reasonable non-investigative expenses, to include medical expense. If the subject officer or officers are outside their jurisdiction during an incident, the employer agency shall be responsible for non-investigative expenses.*"
4. Added an exception to the prerequisite requiring 2 years experience to be selected a LEMART investigator.
5. Added the following language in Appendix A , under section 11 - Prosecutor's Office, "  
C. *The Prosecutor's Office will coordinate with the Investigative supervisor for any necessary follow-up investigation.*"
6. Added the following language in Appendix A, under section 12 – Report Writing ,  
" C. *The Investigative supervisor will be responsible for coordinating with the Prosecutor's Office for required follow-up and submission of reports for review.*"
- 7.
8. Add Appendix B – LEMART checklist

# APPENDIX A

## LEMART Administrative Guidelines

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### 1. DEFINITIONS

#### A. "OFFICER-INVOLVED FATAL INCIDENTS / "INCIDENTS"

Incidents occurring in Whatcom County involving agencies that are a party to this agreement and in which a member agency Law Enforcement Employee is a Subject Officer or the recipient of a Fatal Injury, and where a Fatal Injury occurs. Such "Incidents" include but are not limited to the following:

1. Intentional and accidental shootings, including police tactical incidents involving specialized response teams.
2. Intentional and accidental use of any other dangerous or deadly weapon.
3. Assaults upon law enforcement officers; assaults on other law enforcement employees who are on duty or are acting for a law enforcement purpose.
4. Attempts by law enforcement employees to make arrests or to otherwise gain physical control for a law enforcement purpose.
5. Any fatal injury in police custody, excluding fatal injuries of prisoners which occur while the inmate is under a physician's treatment for a disease or other natural condition which has been diagnosed prior to death and which does not involve custodial trauma, custodial suicide or custodial ingestion of a toxic substance.
6. Vehicular collisions, specifically,
  - a. Any vehicle fatality which occurs:
    1. After, although not necessarily as a proximate cause of, police gunfire directed at the suspect or the suspect vehicle.
    2. In connection with use of vehicle(s) by police as a "legal intervention" technique intended to apprehend a suspect. "Legal Intervention" includes vehicle ramming, roadblocks, and forcing a vehicle to alter its course by cutting in front of it or by contact

b. Excluding any vehicle fatality which involves

1. Off-duty non-sworn law enforcement employees who are not, at the time of the incident, acting for an actual, apparent, or purported law enforcement purpose.
2. Solo vehicular collisions in which the only injury is suffered by a law enforcement employee who was the driver and sole occupant of a vehicle, which was not involved in a collision with any other occupied vehicle.

B. "LAW ENFORCEMENT EMPLOYEE"

This Protocol applies to employees and to certain other people affiliated with the law enforcement agencies that are members of this agreement, as follows:

1. Full-time, part-time, and hourly sworn and unsworn officers, whether on-duty or off-duty.
2. Reserve law enforcement officers who are on-duty or who are acting actually, apparently, or purportedly for a law enforcement purpose at the time of the incident.
3. Temporary employees and volunteers, whether paid or unpaid, who are on-duty or who are acting actually, apparently, or purportedly for a law enforcement purpose at the time of the incident.

C. "SUBJECT OFFICER"

1. A person whose act is a "proximate cause" of a fatal injury to another person; or
2. A person who intends that his act be a "proximate cause" of serious bodily injury or death to another person, who is actually killed by another.

D. "PROXIMATE CAUSE"

A cause which, in a natural and continuous sequence, produces the fatal injury, without which cause the injury would not have occurred. Reasonable foreseeability of the fatal injury is not a factor relevant to this definition.

E. "FATAL INJURY"

Death, or injury which is severe and likely to cause death.

**F. "VENUE AGENCY"**

The agency or agencies, within whose geographical jurisdiction the incident occurs.

**G. "EMPLOYER AGENCY"**

The agency that employs the subject officer or with which he/she is affiliated. (In many cases the Venue Agency will also be the Employer Agency).

**H. "RESPONSE TEAM"**

Those investigators assigned by the Venue Agency(s) and the Employer Agency(s) to conduct the criminal investigation of the incident.

**I. "ADMINISTRATIVE INVESTIGATION TEAM"**

Those investigators assigned by the Employer Agency to conduct the Administrative Investigation of the incident.

**J. "MEMBER AGENCIES"**

Those law enforcement agencies that have reviewed and agreed to the terms of this Protocol.

**2. INVOCATION OF THIS PROTOCOL**

**A. AUTOMATIC AND IMMEDIATE**

1. Upon the occurrence of an Officer-Involved Fatal Incident this Protocol automatically becomes effective upon the activation of the Response Team. In lieu of invoking this Protocol, the involved agency may investigate the matter by itself or may seek aid from other agencies.

**B. OPTIONAL**

1. Each Member Agency, when in the capacity of a Venue Agency or Employer Agency, may itself invoke this Protocol upon the occurrence of any sensitive or critical event involving a law enforcement employee which may have possible criminal liability attached. Upon this unilateral invocation, the matter will be investigated under the provisions of this Protocol. Examples are as follows:



- a. A fatality, which is not covered by this Protocol.
- b. An officer-involved incident where the injuries are not fatal.
- c. Any other sensitive or critical event involving a law enforcement employee where criminal conduct is a possibility to be investigated.

### C. SPECIAL DEPLOYMENT

1. While formed primarily to investigate officer-involved fatalities, the Response Team may be deployed for non-officer involved incidents.

## 3. INVESTIGATION AGENCIES, FORMATS, AND RESPONSIBILITIES

To properly recognize and accommodate the various interests and the various rules of law which may be involved in any incident, investigations of these matters must be performed under two separate investigative formats: (A) The criminal investigation, to be conducted by the Response Team, and (B) The administrative investigation, to be conducted by the Administrative Investigation Team.

### A. THE CRIMINAL INVESTIGATION

1. The criminal investigation has investigative priority over the administrative investigation and it begins immediately after an incident has occurred. The criminal investigation is performed by the Response Team.
2. The goal of the criminal investigation is to develop all available relevant information about the incident. This information will be used in two ways.
  - a. To determine presence or absence of criminal liability on the part of those involved in the incident, specifically:
    1. To determine whether the conduct involved is prohibited by statutes which provide for criminal penalties upon conviction; and
    2. If criminal conduct does exist, determine the identity of the person(s) responsible for that conduct; and
    3. If criminal conduct does exist, determine the degree of crime(s), the existence of any factual or legal defenses to that crime, and the presence or absence of any mitigating or aggravating factors..
  - b. To provide factual information to the Employer Agency's management for its internal use.

1. While the criminal investigators do not direct their investigative attention to administration concerns, it is recognized that the criminal investigation's results are of interest to Agency Management for its internal use, and those results are fully available for that purpose unless otherwise prohibited by law.
3. The Response Team shall follow the rules of law which apply to all criminal proceedings including by way of example constitutional, statutory and case law regarding rights which are covered by the U.S. Constitution's 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendments.
4. The investigation shall be performed in a manner that provides both the appearance and the reality of a thorough, fair, complete, and professional investigation, which is free of conflicts of interest.

#### **4. VENUE DETERMINATION**

- A. When an incident occurs in two or more jurisdictions, each of those jurisdiction is a Venue Agency. In such circumstances, the heads of each agency or their designee shall establish a Unified Command in accordance with Incident Command Systems (ICS).
- B. When an incident occurs on the boundary of two jurisdictions, or at a location where the relevant boundary is not readily ascertainable or is in dispute, the Venue Agency(s) shall be:
  1. The Employer Agency if the Subject Officer is employed by either boundary agency; or
  2. Both boundary agencies if Subject Officers are employed by both; or
  3. The agency with the predominant police involvement in the incident or the majority of acts leading up to the fatality occur within its jurisdiction.
- C. For custodial deaths, the agency having custody of the person at the time his/her distress was first discovered is a Venue Agency. Also, a Venue agency is the one within whose jurisdiction any fatal action was inflicted.
- D. If the death was caused by conduct which may be criminal in nature, the lead Venue Agency is the agency within whose geographical jurisdiction the act occurred. In all other cases, the lead Venue Agency is the one having custody of the victim when distress was first discovered.
- E. If an on-duty commissioned law enforcement officer is involved as the Subject Officer in an incident which occurs within the jurisdiction of another Member Agency, and if that officer was acting in the performance of his/her duty at the

time of the incident, the Venue Agency may elect to relinquish its role as a Venue Agency in the criminal investigation.

## **5. VEHICLE COLLISION INCIDENTS**

- A. Accidental collision fatalities shall be investigated by Response Team criminal investigators, joined by collision investigation specialists from the Washington State Patrol (WSP) or other agency with expertise in the area of collision investigation. The collision investigation specialists have the primary responsibility for documentation, collection, and preservation of physical evidence.
- B. If the fatality results from a collision that was not accidental (i.e., use of "legal intervention techniques") OR if vehicle movement was merely incidental to a fatality which was caused by non-vehicular means, the collision investigation specialists may be used by the Response Team for that phase of the investigation, but the collision investigation specialists' role will be limited to investigation of physical movement of the vehicle(s) and to collision reconstruction.

## **6. SCENE SECURITY**

Each agency has initial responsibility for immediately securing crime scene(s) within its territorial jurisdiction. This responsibility includes preservation of the integrity of the scene(s) and its/their contents, access control, and the identification and sequestration of witnesses. Responsibility may be changed by mutual agreement as the investigation progresses.

## **7. SCENE PROCEDURES**

- A. Emergency life-saving measures have the first priority
- B. If a person is transported to a hospital with fatal injuries an officer should accompany that injured person in the same vehicle in order to:
  - 1. Locate, preserve, safeguard, and maintain the chain of physical evidence.
  - 2. Obtain a dying declaration, spontaneous statement, statement of then-existing or previous mental or physical state.
  - 3. Maintain custody of the person if he/she has been arrested.
  - 4. Provide information to medical personnel about the incident as relevant to treatment, and obtain information from medical personnel relevant to the investigation.

5. Identify relevant people, including witnesses and medical personnel.
- C. The scene(s) must be secured immediately, with a perimeter sufficiently large to safeguard evidence. In most circumstances an inner (evidence) perimeter and an outer (control) perimeter are preferable. This shall include the immediate establishment of a crime scene log to record all personnel entering and exiting the scene.
1. Access to the scene(s) shall be limited to only those officials who must enter for an investigative purpose. Written reports are expected from those who enter.
  2. Response Team investigators shall establish a written log as quickly as possible to identify all persons entering the scene(s), the time of their entry and exit, and the reason for entry.
  3. When not needed for live-saving efforts, entry by fire and ambulance personnel should be restricted to the absolute minimum necessary to perform the needed duties.
- D. If any type of weapon or instrument was involved in the fatal incident, the supervisor at the scene shall promptly see to the security and/or collection of such items following the below listed guidelines:
1. Responding supervisors/officers should not handle, remove, make safe, or secure any Subject Officer's weapons unless it is absolutely necessary. If the area is secure, loose weapons or instruments shall be left in place and undisturbed.
  2. If the area is not secure, the supervising officer at the scene shall decide whether the items can be safely left in place or whether prompt removal is necessary. If such items must be moved or removed for protection, they should be photographed in place prior to removal if possible.
  3. If a Subject Officer still has personal possession of a weapon he/she used in the incident, it is acceptable for the Subject Officer to maintain custody and control of the weapon (handgun) on their person while at the scene or waiting for investigators to arrive, as long as an uninvolved officer/investigator is assigned to stay with the Subject Officer to ensure the weapon is not altered. This procedure shall be adhered to until Response Team investigators are available to properly document the Subject Officer's outer appearance and condition of the weapon prior to collecting it. The Subject Officer should be issued a new weapon at the same time or as quickly as possible.

4. If the responding supervisor/officer for any reason determines the need to take possession of a Subject Officer's weapon or instrument prior to Response Team investigators' arrival, the weapon should be photographed and documented in the condition it was found prior to being removed from the Subject Officer. The supervisor/officer should make note of the weapon's general description and condition, the appearance and location of any trace evidence adhering to it, and where the weapon or instrument was first observed by the supervisor/officer.
5. In firearms cases, the supervising officer will also make note of whether the firearm is loaded, has its safety "on" or "off," has its hammer or firing pin back, any apparent jamming of either fired or unfired ammunition, the location and position of the weapon's magazine (i.e., fully or partially inserted, completely separate from the firearm, missing, etc.), to the extent possible without removal of the weapon from its holster.
  - a. If the mechanism of a firearm is obviously jammed, no attempt shall be made to unload the weapon or clear the jam.
  - b. If the firearm is cocked (or if a semi-automatic pistol cannot be determined to be cocked or not), the safety may be put "on" by the supervising officer, who must make note of that fact. If the firearm's hammer is back, it may be lowered, but note must be made of that fact.
6. Any officer receiving a weapon or instrument from another person or obtaining it otherwise shall note its serial number if readily visible without removing the weapon from its holster or otherwise compromising physical evidence, and shall otherwise maintain the chain of evidence.
7. Whenever possible, involved "long weapons" shall be secured in a vehicle at the scene.
8. All collected weapons or instruments shall be transferred to the Response Team investigators upon their arrival, along with the information required in this section.
9. Firearms that do not need to be retained in evidence, as determined by the criminal investigators, will be returned to a designated representative of the Employer Agency promptly after testing has been completed. The criminal investigators recognize that prompt return of the officer's weapon(s) is important, and will return the weapon(s) as soon as possible.
10. Any other physical evidence at the scene that is in danger of being contaminated, destroyed, or removed must be promptly and effectively observed, recorded and then protected for subsequent collection. Evidence

adhering to live participants (such as bloodstains), footprints, and fingerprints, volatile substances, various types of trace evidence, and firearms discharge evidence, are examples. This may lead to the collection of the involved officer's uniform and other equipment worn at the time of the incident.

11. Except as provided in this section, weapons and instruments will not be disturbed in any way. Any handling of weapons and instruments shall be minimal, to preserve the exact state of the weapon or instrument when received.
- E. The transporting and interviewing of involved officers shall be conducted following the below listed guidelines. The venue agency shall provide Response Team investigators with the current organizational policy/procedures and collective bargaining unit language concerning Officer Involved Shootings and/or Use of Force Investigations. It is recommended that Subject Officers follow the policies and procedures of their Employer agency and/or bargaining unit agreements when applicable:
1. Subject Officer(s) will remain on scene (unless seriously injured) until the arrival of Response Team investigators or unless directed by the ranking supervisor on scene to do otherwise. Subject Officer(s) will provide the on scene supervisor with a verbal briefing of the incident. The purpose of the verbal briefing is to provide information to assist with securing the scene, protecting evidence, indentifying or locating suspects/witnesses and ensuring the safety of the public. As soon as practical, the Subject Officer(s) should be relieved of their duties at the scene and taken to the nearest police or sheriff station/precinct unless otherwise directed by the Response Team. Officer(s) not involved in the incident shall be assigned to accompany these officers, either in a group or individually. Subject Officer(s) should be driven to the station by an uninvolved officer. Witness officers should remain at the scene to brief Response Team members. If a witness officer is impacted by the event to the extent that it would be better to remove them from the scene then the above removal protocol should be followed for the witness officer(s).
  2. If circumstances prohibit removal of all witnesses and Subject Officer(s) from the scene at once, the Subject Officer(s) should be removed first.
  3. An uninvolved officer shall remain with the Subject Officer(s), either in a group or individually, until they can be transported from the scene . An uninvolved officer shall remain with the Subject Officer(s) to ensure that their immediate needs are attended to.
  4. Subject Officers should not discuss the case among themselves, other witness officers, or uninvolved officers.

## F. CUSTODIAL DEATH SCENES

When an incident occurs in a jail facility or other location where inmates may have witnessed something, inmates should be identified and separated if possible pending interviews by Response Team criminal investigators.

## 8. INTERVIEWING LAW ENFORCEMENT EMPLOYEES.

- A. Generally speaking it is the intent of Response Team investigators to obtain details of any officer involved incident as soon as possible after the event by interviewing and obtaining reports/statements from Subject Officers and witness officers. In accordance with applicable policies/procedures and/or bargaining unit agreements of their employer agency, Subject and witness officers reports/statements will be collected and reviewed by Response Team investigators.
- B. Response Team investigators should always give the Subject Officer the opportunity to provide a voluntary statement or give details of the incident at any point during the investigation. Response Team investigators should be aware that agency policies, bargaining unit agreements, and officer's constitutional rights may delay access to this statement and shall make reasonable efforts to identify and comply with these issues.
- C. In Custody interviews will be conducted in accordance with all federal and state laws applicable to in custody interrogations.
- D. Subject Officer interviews should be conducted separately and they should be considered as witnesses unless the circumstances dictate otherwise.
- E. Interviews should be recorded.
  1. All tapes will be retained as evidence until all aspects of the case are completed.
  2. After an interview is recorded, a transcript of the recording will be prepared and reviewed by the Response Team investigator who conducted the interview for content, context accuracy and necessary corrections .
- F. Law enforcement employees have the same rights and privileges regarding Response Team interviews that any other citizen would have, including the right

to consult with an attorney or other representative prior to the interview and the right to have the representative present during the interview.

1. The representative should be allowed to consult about the facts of the incident privately with Subject Officers.

## **9. INTOXICANT TESTING**

### **A. Criminal Investigation**

Law enforcement employees have the same rights and privileges of any citizen regarding intoxicant testing. When Response Team investigators determine that a law enforcement employee's state of sobriety is relevant to the investigation, they have these options:

1. Obtain the blood and/or urine sample by valid consent.
2. Obtain a search warrant to obtain the samples.
3. When applicable, utilize the provisions of the Revised Code of Washington statutes, Title 46 RCW, for vehicle driving incidents.

## **10. AUTOPSY**

- A. At least one member of the Response Team's primary investigative team will attend the autopsy. Investigators representing other Response Team agencies may also attend (with the approval of the Medical Examiner).
- B. The Medical Examiner will receive a complete briefing prior to the post-mortem examination. This briefing, which includes all information known at the time that may be relevant to the cause, manner, or means of death, shall be attended by at least one member of the Response Team's primary team and the applicable agency's evidence technician team.
- C. For autopsies conducted in Whatcom County, the Whatcom County Medical Examiner has the responsibility to document and collect all evidence.

## **11. THE PROSECUTOR'S OFFICE**

The Whatcom County Prosecutor's Office ("Prosecutor's Office") has the following roles in Incident Investigations:

- A. Assist and advise the Response Team on various criminal law issues which may arise, such as Miranda, voluntariness, search and seizure, probable cause to arrest, detentions and releases, elements of crimes, immunity, legal defenses.



- B. Upon completion of the criminal investigation, analyze the facts of the incident as well as the relevant law to determine if criminal laws were broken. If so, prosecute in accordance with Prosecutor's Office policies and procedures.
- C. The Prosecutor's Office will coordinate with the Investigative supervisor for any necessary follow-up investigation.

## **12. REPORT WRITING**

- A. All personnel involved in the criminal investigation shall write reports documenting their participation.
- B. Prompt completion and distribution of reports is essential. All involved agencies and investigators will strive for report completion and distribution within 7 days after the incident.
- C. The Investigative supervisor will be responsible for coordinating with the Prosecutor's Office for required follow-up and submission of reports for review.

## **13. THE ADMINISTRATIVE INVESTIGATION**

In addition to its concern about possible criminal law violations by its own employees who are involved in an incident (which concerns are addressed by the criminal investigation), the Employer Agency also has need for information about the incident for non-criminal purposes, to include,

- A. Internal Affairs Inquiries
- B. Agency Improvement:  
Determination of the adequacy of its policies, procedures, programs, training, equipment, personnel programs and supervision.
- C. Government and Community Relationships:  
Informing itself of the incident's details so it may adequately inform its parent governmental body, and so it may be responsive to comments about the incident from the public and the media.
- D. Claims and Litigation:  
Preparing for administrative claims and/or civil litigation that may be initiated by or against the agency.

1. The Employer Agency may use an administrative investigation and/or a more specific "civil litigation investigation" format to investigate these concerns as it considers appropriate. While both the criminal investigation and the administrative investigation are important and should be pursued, investigative conflicts between the two formats shall be resolved by allowing the criminal investigation to have the investigative priority. It is intended that this prioritization will preclude competition between the two formats for access to witnesses, physical evidence, and the involved parties, and that it will prevent the criminal investigation from being compromised by an untimely exercise of the Employer Agency's administrative rights.
2. The initiation of administrative investigations and the extent of those investigations is solely the responsibility of the Employer Agency.
3. Interview statements, physical evidence, toxicology test results, and investigative leads which are obtained by administrative investigators by ordering law enforcement employees to cooperate shall not be revealed to criminal investigators without specific, prior approval of the Prosecutor's Office.  
Other results of the Administrative Investigation may or may not be privileged from disclosure to others, including the Response Team investigators, depending upon applicable law.
4. The Response Team will promptly and periodically brief the Administrative Investigation Team of the criminal investigation's progress.
5. The Administrative Investigation Team is not bound by some of the same investigative restrictions that apply to criminal investigators. Special attention should be given to contents of local contracts, Civil Services provisions in the employer-employee relationship and personnel rules affecting the administrative process.

#### **14. MEDIA RELEASES**

- A. Media releases will be the responsibility of the Venue Agency. The Venue Agency should designate a Public Information Officer (PIO) within their Incident Command.
- B. Media releases should be coordinated with involved agencies, the Prosecutor's Office, the LEMART Commander and the Medical Examiner's Office.

#### **15. INQUESTS**

In accordance with the Whatcom County Charter, and notwithstanding any provision of this protocol, the Whatcom County Medical Examiner shall have

authority to determine whether an inquest will be held in any incident involving a Fatal Injury.

## **16. ACCESS TO REPORTS AND EVIDENCE**

A. Access to reports and material that is created or collected by, or at the request or direction of, Response Team criminal investigators (including the Crime Lab/Ident Lab) will be made available in a timely manner to those agencies that have an interest in the investigation, including the Administrative Investigation Team, as otherwise allowed by law. Examples of material referenced in Section 16A above are:

1. Reports, written and collected;
2. Physical evidence;
3. Photographs, diagrams and videotapes; and
4. Audio recordings

B. When the Response Team and/or Prosecutor's Office concludes that the physical evidence collected by the criminal investigators is no longer needed for criminal law purposes, the Employer Agency shall be notified of that decision so it can assume responsibility for preservation of such evidence if it desires.

C. The Venue Agency is responsible for Public Disclosure Requests (PDR) associated with a LEMART investigation. However, participating agencies will be required to follow applicable state statutes in the event a PDR is filed with that agency. During an active LEMART investigation, all records associated with the investigation are exempt from disclosure. If a participating agency receives a PDR during an active LEMART investigation, the participating agency will notify the requestor that it is an active investigation and exempt from disclosure. The Whatcom County Prosecutor's Office should be consulted on all PDR's.

## **17. CONFIDENTIALITY**

A. LEMART investigators, including LEMART Public Information Officer(s) shall disclose information that is considered law enforcement sensitive or otherwise confidential except for official purposes and only to those authorized to receive such information on a need-to-know basis. Examples of information considered to be confidential include, but are not limited to:

1. Documents related to an active LEMART investigation.
  2. Verbal statements or conversations related to an active LEMART investigation.
  3. Information that would compromise an investigation.
- B. For the purposes of this section, persons authorized to receive information considered confidential include, but are not limited to:
1. Law Enforcement agencies
  2. Prosecutor's Office
  3. Medical Examiner's Office
- C. The confidential nature of any information disclosed pursuant to this section shall remain confidential and all authorized recipients of such information shall abide by the restrictions on its further use.