

AGREEMENT

THIS AGREEMENT is made and executed to be effective the 1st day of January 2004 by and between the TOWN OF PE ELL, a municipal corporation organized and existing under the laws of the State of Washington, hereinafter referred to as "Town", and LEWIS COUNTY FIRE PROTECTION DISTRICT NO. 11, a political subdivision of the State of Washington having the rights and powers of a municipal corporation of said state, hereinafter referred to as "Fire District", WITNESSETH

RECITALS

WHEREAS, the Town currently operates and maintains its own fire department to provide comprehensive fire suppression, fire prevention services and services incidental thereto to the protection of persons and property in the Town;

WHEREAS, the Fire District's jurisdictional boundaries adjoin those of the Town, the jurisdictions being contiguous;

WHEREAS, the Fire District is capable of providing all of the services currently provided by the Town's fire department;

WHEREAS, the parties desire to contract comprehensive services now performed by the Town's fire department to be provided by the Fire District so that the Town will no longer need to maintain its independent fire department;

WHEREAS, Fire District has for many years worked with the Town in providing fire protection for properties located within the corporate limits of the Town pursuant to an agreement between said parties; and

WHEREAS, the parties have agreed upon certain terms and conditions under which Fire District #11 shall be the sole provider of fire protection services to the Town for the benefit of the properties located within the corporate limits of the Town; and

WHEREAS, the parties desire to formalize their agreements aforesaid and reduce the same to writing;

NOW, THEREFORE, in consideration of the undertakings and agreements herein set forth and the mutual benefits to be derived herefrom and pursuant to the provisions of Chapter 39.34 of the Revised Code of Washington (Cooperation Act"), the parties agree as follows:

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants contained herein, it is agreed as follows:

1. INCORPORATION OF RECITALS. The foregoing recitals are incorporated herein by this reference.

2. UNDERTAKING OF FIRE DISTRICT. Fire District shall, within the limits of the fire protection equipment now owned by it and hereafter during the term of this agreement acquired by it, and within the limits of the ability of the personnel available to it, either on a volunteer basis or, in the event that Fire District should employ career fire fighters, within the limits of the ability of such professional fire fighters, provide fire

protection to all properties situated within the corporate limits of the Town of Pe Ell as the same now exists and as the same may hereafter be expanded by annexation or operation of law, on the same basis that such fire protection is available to all other properties situated within the district boundaries of Lewis County Fire Protection District Number 11.

A. Fire protection services provided shall include as follows:

1. Fire Suppression
2. Fire Prevention and Education

The Fire District shall inform the Town of Pe Ell Building Department/Lewis County Building Official via phone and/or fax of all fires, building evacuations or other public safety occurrences related to the structures within the corporate limits of Pe Ell.

B. COMPENSATION FOR FIRE PROTECTION SERVICES. During the term of this agreement and any and all extensions thereof, Town agrees to pay to Fire District an amount equal to the product of the assessed valuation of all properties situated within the corporate limits of the Town of Pe Ell as certified to Town by the Lewis County Assessor from the previous calendar year, multiplied by the fire protection tax assessment rate applicable during the previous calendar year to all other properties within the boundaries of Lewis County Fire Protection District Number 11 outside the corporate limits of the Town of Pe Ell. The amount determined pursuant to the preceding paragraph shall be billed by Lewis County Fire District Number 11 and paid in equal quarterly installments with payment due on or before March 16, June 16, September 16, and December 16 of each year during the term of this agreement and any and all extensions thereof. Fire District and Town agree to meet in mid-August each year for contract review. Late payments shall be subject to an assessment of an interest charge in the amount of 5% per annum on the unpaid balance until paid.

C. LOCATION OF PRINCIPAL FIRE STATION. During the term of this agreement and any and all extensions thereof, Fire District shall maintain its principal fire protection station within the corporate limits of the Town of Pe Ell or not more than 200 yards outside of such limits if required by temporary Town emergency as determined by the Town Council; provided, however, that nothing herein contained shall prevent Fire District from establishing additional fire protection stations at other locations within the boundaries of Lewis County Fire Protection District Number 11 outside the corporate limits of the Town.

D. WATER FOR FIRE FIGHTING. Within the limits of the capabilities of the water system now owned and hereafter acquired by Town during the term of this agreement, Town agrees to furnish water to Fire District as required for fighting fires both within and outside the corporate limits of the Town of Pe Ell, and Town further agrees to provide water and the use of fire hydrants for fire drills and training purposes. Town will provide annual flow checks and maintain hydrants. Town further agrees to test fire hydrants every year. The District shall supply the Town with monthly water-use logs showing approximate water used, to aid the Town in accounting for all un-metered water usage.

3. TERM. This Agreement shall commence on the 1st day of January, 2004, and continue thereafter on a yearly basis from January 1 to December 31 of each year, indefinitely, until terminated by either party as hereinafter provided. Either party may terminate this Agreement by sending notice to the other party's contact person (the contact person for each party is hereinafter defined) of its intention to terminate the Agreement at the conclusion of the calendar year. For termination at the conclusion of the calendar year to be effective, the termination notice must be sent to the contact person for the other party at least ninety (90) days prior to the last day of the calendar year, PROVIDED FURTHER HOWEVER, that if the Fire District or Town is in material breach of this agreement, the party not in material breach shall have the right to terminate this Agreement at any time upon at least sixty (60) days prior written notice thereof to the other party. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, this contract shall not be terminated by either party prior to the conclusion of the first full calendar year it is in effect.

4. DUTIES AND RESPONSIBILITIES. During the term of this Agreement the Fire District shall provide the services as described in this agreement and any attachments hereto, and the Town shall make payment as set forth herein.

5. TOWN VOLUNTEER FIRE DEPARTMENT MEMBERS. At and upon commencement date of this Agreement:

(a) All Town volunteer fire department members may become personnel of the Fire District and shall operate under the direction and control of the Fire District. There shall not be any Town volunteer fire department members so long as this agreement is in effect.

(b) The Fire District shall maintain an active and trained fire fighter force, during the term of this Agreement. All Town volunteer resident fire fighters shall become members of the Fire District's resident fire fighter program and shall receive benefits provided to such fire fighters by the Fire District in its volunteer resident fire fighter program.

(c) The Fire District shall not take any action under or pursuant to this Agreement or in connection with Town personnel which would cause the Town to be in breach or default under any collective bargaining agreement or other employment relationship relating to its personnel. The Fire District agrees to and shall hold harmless, defend and indemnify the Town from and against any and all claims, liability or damages related thereto.

6. FACILITIES AND APPARATUS.

(a) Facilities. During the term of this Agreement, the Fire District shall possess, control, and be responsible and liable for the operations, maintenance, repair and expenses associated with the Town's main fire station. If the Fire District elects to utilize Town-owned facilities for performing the Fire District's obligations under this agreement, and if the Town agrees to provide such facilities, then the Fire District shall be responsible for paying to the Town, through direct payment or via a credit against amounts owed by the Town pursuant to this agreement, the reasonable rental and use costs associated with such use. The Town is under no obligation to provide any facilities for the fire department and/or district, nor is the Fire District obligated to use

such facilities that the Town may elect to provide barring any rental agreement between the parties. If the Fire District and Town reach an agreement on the Fire District's use of Town facilities, the Fire District shall maintain the premises provided to it by the Town in good condition and repair in accordance with all applicable codes, rules and regulations, and in a neat, clean, attractive and sanitary condition, including interior, exterior and grounds surrounding the same. The Fire District shall be responsible and liable for all utility and service costs associated with the premises, including, but not limited to, water, sewer, electricity, heating/cooling, data line and other utility costs.

(b) Termination-Jointly Acquired Property. It is understood that during the term of this Agreement the Town and the Fire District may jointly acquire facilities, equipment and/or apparatus from time to time. Upon termination, any and all such jointly acquired property shall, be equitably divided between and among such parties according to the proportionate amounts contributed by each such party for such acquisitions. The method, manner and precise nature of such distribution(s) shall be determined by the Review Committee as hereinafter constituted. The Review Committee shall endeavor to make a fair and equitable in kind division and distribution of such items and taking into account any depreciated value of such items since acquisition, if any.

9. INSURANCE. During the term of this Agreement the Fire District shall keep and maintain the following policies of insurance in full force and effect:

(a) Proper Full comprehensive replacement value coverage for damage or destruction of personal property owned by the Town (separately or jointly owned with the Fire District) but that is in the possession or under the control of the Fire District, including all furniture, equipment, gear, apparatus, and vehicles. All real property and fixtures owned by the Town but in the possession or under the control of the Fire District shall be insured against loss by fire and other hazards, including earthquake, with extended coverage, in amounts equal to the fair market value thereof.

(b) General Liability. Liability for injury, death or damage to third parties and the property of third parties to an amount not less than \$1,000,000 for death or injury to any one person; \$1,000,000 for any one occurrence; and \$1,000,000 for property damage; with \$2,000,000 aggregate liability coverage.

7. HOLD HARMLESS. The Fire District agrees to and shall hold harmless, defend and indemnify the Town, and its employees, agents, representatives, volunteers and council members, from and against all liability and damages, and claims of such liability and damages, arising out of or in connection with its performance of services called for herein, and its duties and obligations hereunder. The Town agrees to and shall hold harmless, defend and indemnify the Fire District, and its employees, agents, representatives, volunteers and council members, from and against all liability and damages, and claims of such liability and damages, arising out of or in connection with its performance of services called for herein, and its duties and obligations hereunder.

8. COMPENSATION. During the term of this Agreement the Town shall compensate the Fire District at the Fire District's levy rate (which levy rate shall be calculated each year of this Agreement) of per \$1,000 of assessed valuation within the Town, at the same level and millage as those properties within the Fire District lying

outside of the political and corporate boundaries of the Town, in exchange for the Fire District providing the services called for in this Agreement. Payment of the amount due from the Town to the Fire District shall be paid each year in four equal quarterly installments as set forth above; provided, however, any partial year that may occur shall result in prorated compensation on a per diem basis based upon a 365 day year. PROVIDED FURTHER, however, in the event of a material breach of this agreement by the fire district in providing the services in meeting the performance standards called for herein, the town may withhold scheduled payments until such time as the breach is cured. For purposes of this section, before the fire district is deemed to be in actual breach under the terms of this agreement, the town shall first notify the fire district in writing of the exact nature of the alleged breach, and thereafter the fire district shall be provided with five days after receipt of the notice (ten days if the breach cannot be reasonably cured within five days) to cure the same. These same notice requirements shall also apply from the fire district to the town if the fire district determines the town is in breach under the terms hereof. Before proceeding to arbitration as set forth in section 12, hereof, a party seeking arbitration shall first have complied with these notice requirements with no resolution to the alleged breach having occurred within the time periods set forth herein. If arbitration of a dispute ensues hereunder and if either party is deemed to be in breach by the arbitrator under the terms hereof, the arbitrator shall have full authority to determine the amount of damages caused agreement to provide fire protection by the breach and to make the appropriate award in favor of the non-breaching party against the breaching party.

9. CONTACT PERSONS. During the term of this Agreement, the Town and Fire District shall each designate a "contact person" whom the other party shall be able to contact regarding the implementation of this Agreement and questions arising as a result hereof. The contact person designated by the Fire District shall attend Town Council meetings to report as needed to and/or answer and investigate questions posed by the Town and, also make himself or herself reasonably available, as requested by the Town, to meet with Town Council members, and Town department heads. The contact person designated by the Town shall make himself or herself reasonably available to the Fire District and, when requested, attend Fire District Commissioner meetings to report to and/or answer and investigate questions posed by the Fire District. Promptly after the execution of this Agreement, each party shall notify the other of the name, address, and telephone number of its contact person and, thereafter, of any changes in this position.

10. REVIEW COMMITTEE. During the term of this Agreement the parties shall establish a "Review Committee" to evaluate and make recommendations regarding the implementation of this Agreement and the level of services and performance standards received by the Town from the Fire District under this Agreement. The Review Committee shall consist of two (2) of the Town's elected officials selected by the Town Council, and two (2) of the Fire District's commissioners selected by the Fire District commissioners. The Review Committee shall meet at least twice yearly, in February and September of each year, and at such other times as they may deem appropriate to achieve the purposes of this Agreement. In addition to committee members, the Town and the Fire District may have such staff members as they should

choose attend and address the Review Committee at its meetings in order to advise and analyze issues and concerns that are raised.

11. REASONABLE INTERPRETATION. Prior to the execution of this Agreement, both parties have had adequate opportunity to review and contribute to the terms hereof. This Agreement shall be provided with a reasonable interpretation, which interpretation shall not be biased in favor of either party.

12. NOTICES. All notices called for herein shall be placed in writing and directed to the contact person for the other party by certified mail, return receipt requested. All notices shall be deemed received by the receiving party on the third day after the day of mailing.

13. TERMINATION OF OTHER SERVICE AGREEMENTS. On the date this Agreement takes effect, all prior agreements existing between the Town and the Fire District under the terms of which the Fire District has agreed to provide fire fighting and/or basic life support emergency medical services to all or a portion of the Town shall be terminated; PROVIDED, HOWEVER, this Agreement shall not terminate or modify in any respect the County-wide Mutual Aid Agreement.

14. BINDING ARBITRATION. In the event of any dispute arising out of this Agreement, the parties hereto agree to submit such dispute to binding arbitration by one arbitrator in accordance with the rule then pertaining to Superior Court Rules of Mandatory Arbitration (or its equivalent), except that the arbitration shall be conducted under the auspices of the arbitrator rather than the Superior Court and shall not be subject to the monetary limitations or restrictions on issues dealing with equitable, rather than legal considerations. The arbitration shall be commenced by delivery to the party of a written demand for arbitration which shall include a statement of the basis of the dispute. Within five (5) business days of the delivery of such demand each party shall designate a representative who is not an officer, employee or commissioner of the parties. Those two representatives shall attempt to agree on the arbitrator. If, within ten (10) business days of the designation of the two representatives (or expiration of the time for designation of representatives, whichever occurs first), the two representatives have not reached agreement on the arbitrator, then either party may, on five (5) business days written notice, request the Presiding Department of the Lewis County Superior Court to designate the arbitrator. The arbitrator's fees shall be borne equally by the parties during the course of the arbitration. However, the substantially prevailing party, if any in the arbitrator's opinion, shall be entitled to reimbursement of such fees paid, as well as reasonable attorney fees incurred, as part of the arbitration award. The award rendered by the arbitrator shall be final and binding, and judgment may be entered upon it in accordance with applicable law in Lewis County Superior Court.

15. COOPERATION OF PARTIES. The parties shall strive to cooperate with one another fully at all times so the terms and intent of this Agreement may be fully implemented to the end that timely and quality services are provided from the Fire District to the citizens of Pe Ell.

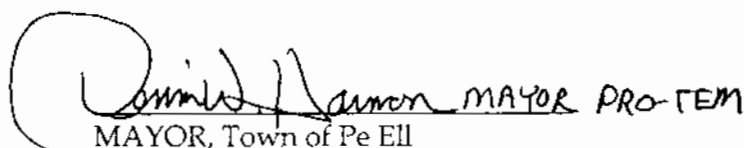
16. DEFAULT.

(a) Time is of the essence of this Agreement.

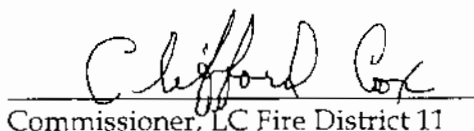
- (b) If, after the execution of this agreement either party fails, without legal excuse, to perform any covenant or agreement contained herein, either party may elect to: (1) terminate this Agreement; (2) specifically enforce this Agreement; or (3) maintain an action for damages, and/or (4) pursue any other legal or equitable remedy to which it may be entitled.

17. COMPLETE AGREEMENT. This contract represents the full and complete agreement between the Town and Fire District regarding the matters contained herein. No other agreements either in written or verbal form are in existence. All amendments hereto shall be in writing and executed by both parties.

18. AUTHORIZATION OF EACH PARTY. Each party hereby represents to the other that it has duly considered and entered into this Agreement according to Washington law through its duly designated representatives at one of its regularly scheduled meetings. The Town approved execution of this agreement at its Town Council open public meeting held on the 18th day of NOVEMBER, 2003, and the Fire District approved execution of this agreement at its Board of Commissioners open public meeting held on the 8th day of December, 2003.


MAYOR PRO-TEM
MAYOR, Town of Pe Ell


Commissioner, LC Fire District 11


Commissioner, LC Fire District 11

Attest:


TOWN CLERK, Town of Pe Ell


Commissioner, LC Fire District 11

Approved as to Form:

Attest:


TOWN ATTORNEY, Town of Pe Ell


Clerk/Sec., LC Fire District 11