



## **FIRE DISTRICT ASSISTANCE AGREEMENT CITY OF OLYMPIA - OLYMPIA FIRE DEPARTMENT**

### **Agreement No. 93-100271**

This Agreement is entered into by and between the State of Washington, Department of Natural Resources, hereinafter referred to as "DNR", and Olympia Fire Department, hereinafter referred to as "Department" and collectively referred to as the "Parties".

Authority: This Agreement is entered into by DNR under the authority of RCW 76.04.015(6), by Fire Protection Districts, under the authority of RCW 52.12.031 and Fire Departments under the authority of RCW 35.21.010 in conformity with RCW 39.34, the Interlocal Cooperation Act.

In consideration of the terms, conditions and covenants contained herein, or attached and incorporated and made a part hereof, the Parties mutually agree as follows:

**Purpose:** This Agreement addresses the terms and conditions for: (1) all federal excess property sub-loaned by DNR to the Department under the Federal Property and Administrative Services Act of 1949, as amended (P.L. 94-519) and section 7 of the Cooperative Forestry Assistance Act of 1978 (P.L. 95-313), hereinafter referred to as the Federal Excess Personal Property program; and (2) the transfer of firefighting and emergency service property, facilitated by DNR, to the Department under the Rural Fire Department Equipment Priority Act, 10 USC 2576b, hereinafter referred to as the Firefighter Property program.

### **SECTION 1: FEDERAL EXCESS PERSONAL PROPERTY**

- 1.01 Federal Excess Personal Property:** Upon request from the Department, and subject to its compliance with the requirements imposed by law and this Agreement to administer, account for, use and dispose of Federal Excess Personal Property (FEPP) acquired under the Federal Property and Administrative Services Act, DNR will sub-loan eligible FEPP to the Department. Federal regulations are amended from time to time and Department agrees to comply with current and future regulations.
- 1.02 Property Acquisition:** The Department is required to identify its needs by completing a request form provided by DNR. DNR will acquire eligible FEPP suitable for conversion into firefighting or fire prevention apparatus. FEPP will be sub-loaned to fire districts and departments "as is" with no disclosure or warranty of implied condition.
- (1) Ownership of all non-consumable FEPP shall remain the property of the U.S. Forest Service.

- (2) All FEPP must be used for firefighting and fire prevention activities. Personal use of FEPP for purposes not directly associated with normal responsibilities of the Department is prohibited.

**1.03 Identification:** DNR will identify all non-consumable FEPP with a program identification tag with an inventory tracking number.

**1.04 Equipment Use, Refurbishment, and Maintenance Requirements:**

- (1) The Department agrees to accept FEPP in “as is” condition, and to refurbish, equip, repair, and maintain it at no cost to DNR. FEPP must be put into service within one year of acceptance. The Department may receive an extension of the one-year time limit for good cause upon written request to DNR prior to the one-year anniversary date.
- (2) If FEPP is not put into service within one year and the Department does not receive written approval from DNR for an extension, DNR will notify the Department of an “in service” violation and reallocate or dispose of the item.
- (3) All vehicles and trailers must be registered and licensed by the Department through the Washington Department of Licensing, and copies provided to DNR.
- (4) Prior to placing FEPP in service, the Department must remove all military or governmental exterior logos, insignias and identification numbers. FEPP must be painted when original paint is deteriorated or peeling. In addition, remove or paint over all military paint patterns for vehicles, trailers, and other equipment operated on public roads.
- (5) Cannibalization. Cannibalization is the practice of disassembling unserviceable FEPP to use serviceable parts on similar units. The removal of any parts other than minor items is cannibalization. It is permissible to strip components from one or more pieces of FEPP to create a usable apparatus subject to written approval of the USDA Forest Service through DNR. The process to strip and dispose of excess components must be completed within one year of written approval to cannibalize. The Department will notify DNR immediately after cannibalization is complete. DNR will dispose of remaining components through the USDA Forest Service and General Services Administration (GSA).
- (6) In case of loss, theft, damaged, destroyed, or vandalized property, the Department is required to notify DNR within 48 hours of occurrence. Upon notification, DNR will submit appropriate forms to the Department for documentation, and to the USDA Forest Service for appropriate action. If the property is insured, USDA Forest Service must receive a share of any insurance proceeds equal to their ownership share in the property. If gross negligence is involved, the Department may be required to pay fair market value for the FEPP or repair or replace the property at Department expense.

**1.05 Property Disposal:** The Department agrees to report, in a timely manner, all inoperable, cannibalized, not in use, or seldom used FEPP to DNR for reallocation or disposal. DNR will conduct reallocation or disposal activities at the Department’s facility. The

Department agrees to facilitate all required activities and to obtain signed documents to complete the reallocation or disposal process.

- 1.06 Property Inventory/Audit:** Upon request by DNR, the Department agrees to make FEPP items available for the purpose of conducting a physical inventory and to facilitate a program review. The Department shall provide access to and the right to examine all records, books, papers, or documents relating to the FEPP to facilitate a State or Federal audit. The Department is required to maintain property records for a minimum of six (6) years and three (3) months after receipt of all non-consumable FEPP (i.e. registration, insurance, final disposal).

## **SECTION 2: FIREFIGHTER PROPERTY PROGRAM**

- 2.01 Firefighter Property Program:** Upon request from the Department, and subject to Department compliance with the requirements imposed by law and this Agreement to administer, account for, use and dispose of Department of Defense (DOD) excess property, DNR will facilitate transfer of such property to the Department under the Firefighter Property (FFP) program, as authorized by 10 U.S.C. 2576b. Federal regulations are amended from time to time and Department agrees to comply with current and future regulations.
- 2.02 Property Acquisition:** The Department is required to identify its FFP needs by completing a request form provided by DNR. DNR will facilitate transfer of FFP suitable for use or conversion to use in support of the Department's firefighting and emergency services. FFP will be transferred "as is" with no disclosure or warranty as to implied condition.
- 2.03 Title and Ownership:**
- (1) Conditional ownership and title (when title is applicable) to all non-consumable FFP will be transferred to the Department, with the exception of "controlled property" as defined in 2.05 below. The Department is responsible to register and transfer title to any vehicle or trailer obtained through the FFP program in the name of the Department in accordance with applicable state law, and provide copies to DNR. Full ownership and title will vest in the Department upon meeting the requirements in 2.04(1) below.
  - (2) The sale or transfer of FFP property to non-FFP participants must be in compliance with U.S. Export Control Regulations, including the Export Administration Regulations (EAR) (15 CFR Parts 730-774) and the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). Department must notify future purchasers or transferees, in writing, of this requirement.
  - (3) FFP cannot be sold or transferred to non-U.S. citizens, and the sale or transfer of Demilitarization Q6 FFP requires Trade and Securities Commission approval.
- 2.04 Property Use:**
- (1) All FFP shall be refurbished and put into service in support of the Department's firefighting or emergency services within one year of transfer, at no cost to DNR. In

addition, all FFP must be retained and used in service for a minimum of one year after being put into service.

- (2) If the Department does not meet the FFP program in service requirements, the Department agrees, at no cost to DNR, to return, transfer, or scrap the FFP as directed by DNR and in compliance with FFP program requirements. In addition, DNR may suspend the Department from future participation in the FFP program.
- (3) Department will label all FFP with an inventory number provided by DNR. Inventory number must remain readable until in-service requirements are complete.
- (4) Within one year after transfer, Department will provide proof in a form acceptable to DNR that FFP is in service.
- (5) Department use of FFP must be for its intended purpose. Personal use is prohibited.
- (6) Cannibalization of FFP is prohibited.
- (7) Prior to placing FFP in service, the Department must remove all military or governmental exterior logos, insignias and identification numbers. In addition, remove or paint over all military paint patterns for vehicles, trailers, and other equipment operated on public roads.

#### **2.05 Controlled Property:**

- (1) FFP identified by DOD as demilitarization B, C, D, E, F, G, and Sensitive Q3 (referred to as "controlled property") remains in the ownership of DOD, and will be tracked and inventoried in the USDA Forest Service Federal Excess Property Management Information system (FEPMIS) until final disposition. The Department is required to return controlled property to the nearest DOD Defense Logistics Agency (DLA) Disposition Services site. If a DLA site is not close, the Department may be allowed to demilitarize the FFP on site, through crushing, mutilation, cutting, and to make the item unusable for its original intended use. The USDA Forest Service and DNR will coordinate demilitarization activities through the Distribution Reutilization Policy Director at the Defense Logistics Agency. Costs required for the Department to return or demilitarize controlled property shall be the responsibility of the Department.
- (2) Department must request DNR approval prior to removing any parts or components from controlled property, and must return removed parts to the nearest DLA site at its own expense.
- (3) In case of lost, missing, stolen, or destroyed controlled property the Department is required to notify DNR within 48 hours of occurrence. Upon notification, DNR will submit appropriate forms to the Department for documentation, and to the DOD through the USDA Forest Service for appropriate action. If the FFP is insured, DOD must receive any insurance proceeds.

#### **2.06 Records:** The Department agrees to provide access to and the right to examine all FFP, records, books, papers or documents for all equipment transferred under the FFP program

to the USDA Forest Service (including its Office of Inspector General), DNR, DOD (including its Office of Inspector General), the Comptroller General of the United States, or their authorized representatives. The Department is required to maintain property records for a minimum of six (6) years and three (3) months after receipt of all non-consumable FFP property (i.e. registration, insurance, final disposal).

### SECTION 3: GENERAL

- 3.01 Program Information:** FEPP and FFP program information is available on the DNR website.
- 3.02 Hold Harmless:** To the extent permitted by federal law, Department shall indemnify and hold the U.S. Government harmless from any and all actions, claims, debts, demands, judgments, liabilities, costs, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property, or injuries, illness or disabilities to or death of any person or legal or political entity including state, local and interstate bodies, in any manner caused by or contributed to by Department, its agents, servants, employees, or any person subject to its control while in, upon or about the sale site and/or the site on which the property is located, or while the property is in the possession of, used by, or subject to the control of Department, its agents, servants, or employees after the property has been removed from U.S. Government control. The U.S. Government assumes no liability for damages or injuries to any person(s), or property arising from the use of the excess DoD personal property.
- 3.03 Insurance:** The Department shall, at all times during the term of this Agreement at its sole cost and expense, buy and maintain insurance of the types and amounts listed below to cover damages or injuries to persons or property relating to the use of property obtained under this agreement. Failure to buy and maintain the required insurance may result in the termination of the Agreement at DNR's option. If the District/Department is self-insured, evidence of its status as self-insured will be provided to DNR, and if deemed acceptable by DNR, shall satisfy the insurance requirements specified by this Section.

**Minimum Coverage Requirements:** These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these minimum limits of coverage does not relieve the Department from liability for losses and settlement expenses greater than these amounts.

During the term of the Agreement, Department must purchase and maintain the insurance coverage and limits specified below:

- (1) **Commercial General Liability (CGL) Insurance or District/Department Equivalent.** Department must purchase and maintain CGL on an Insurance Services Office (ISO) form CG 00 01 or equivalent form, covering liability arising from premises, operations, independent contractors, personal injury, products-completed operations, and liability assumed under an insured contract. Such insurance must be provided on an occurrence basis. If insurance is written on a "claims made" basis, the policy shall provide full coverage for prior acts or include

a retroactive date that precedes the effective date of this Agreement. Insurance must include liability coverage with limits not less than those specified below:

<u>Description</u>	<u>Dollar Amount</u>
General Aggregate Limit (Other than products-completed operations)	\$2,000,000
Each Occurrence Limit	\$2,000,000

- (2) **Employer's liability ("Stop Gap") Insurance:** Department shall purchase and maintain employer's liability insurance and if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.
- (3) **Business Auto Policy (BAP) Insurance:** If activities pursuant to this Agreement involve the use of vehicles, the Department must purchase and maintain a BAP on an Insurance Services Office (ISO) form CA 00 01 or equivalent form with such insurance covering liability arising out of "Any Auto".

Such insurance must be provided on an occurrence basis. The BAP insurance must include liability coverage with limits not less than those specified below. The Department is responsible for any deductible.

<u>Description</u>	<u>Each Accident</u>
Bodily Injury and Property Damage	\$1,000,000

- (4) **Workers Compensation Insurance or Equivalent:** The Department shall comply with all state of Washington workers compensation statutes and regulations. Coverage shall be provided for all employees and volunteers of the Department and shall include bodily injury (including death) that arises out of or in connection with the performance of this Agreement

- 3.04 Non-Discrimination.** During the performance of activities under this Agreement, Department shall comply with all federal, state and local non-discrimination laws, regulation and policies. In the event of non-compliance or refusal to comply with any non-discrimination law, regulation or policy, this Agreement may be rescinded, cancelled or terminated in whole or in part, and Department may be declared ineligible for further participation in FEPP and/or FFP.
- 3.05 Renegotiation and Modification:** The terms and conditions of this Agreement may be renegotiated at the request of either Party. Any modification or amendment of this Agreement must be in writing and signed by duly authorized agents of the Parties.
- 3.06 Assignment and Delegation:** This Agreement, or any right or interest therein, may not be assigned or otherwise transferred by either Party without the prior written consent of the other Party. Any attempted assignment shall be void unless made in strict conformity with this section. Either Party may perform its duty through a delegate or agent, but shall not be thereby relieved of any duty to perform or any liability for breach.
- 3.07 Remedies:** Any remedy exercised by either Party shall not be deemed exclusive, and either Party may pursue any and all other remedies available to it under the law.

- 3.08 Non-Waiver:** Waiver by either Party of strict performance of any provision of this Agreement shall not act as a waiver of the right of the other Party to require future strict performance of the same provision or any other provision.
- 3.09 Interpretation and Venue:** This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington. The venue of any action brought under this Agreement shall be in the Superior Court of Thurston County.
- 3.10 Severability:** If any provision of this Agreement is held to be invalid, such invalidity shall not effect the other provisions of this Agreement that can be given effect without the invalid provision(s), and to this end the provisions of this Agreement are declared to be severable.
- 3.11 Termination:** This Agreement may be terminated by either Party upon ninety (90) days written notice. Termination of this Agreement makes the Department ineligible to participate in FEPP or FFP, and Department agrees to dispose of all FEPP per 1.05 above and all FFP that has not met the requirements of 2.04(1) above per 2.04(2) above.
- 3.12 Compliance with Laws:** The Department shall comply with all applicable federal and state laws and regulations that govern each component of this Agreement.
- 3.13 Term of Agreement:** This Agreement shall be effective from the date of the last signature for a term of five years unless otherwise terminated in accordance with the terms of this Agreement.
- 3.14** This Agreement supersedes all previous agreements.

By signature below, the Agencies certify that the individuals listed in this document, as representatives of the Agencies, are authorized to act in their respective areas for matters related to this instrument.

**IN WITNESS WHEREOF, the parties have executed this Agreement.**

**CITY OF OLYMPIA**

**STATE OF WASHINGTON**

**DEPARTMENT OF NATURAL RESOURCES**

Signature

Date

Steven J. Burney

Printed Name

Interim City Manager

Title

Signature

Date

Scott Sargent

Printed Name

South Puget Sound Region manager

Title

Approved as to Form:

  
Deputy City Attorney