

RESOLUTION NO. R- 63-13

A RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF PULLMAN AND WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES TO PROVIDE FOR STATE FIRE SERVICE MOBILIZATION REIMBURSEMENT.

WHEREAS, the City Council for the city of Pullman has before it an interlocal agreement between the city of Pullman and the Washington State Department of Natural Resource (WDNR) entitled "WDNR Agreement #IAA 13-400" which is attached hereto and marked as Exhibit "A"; and,

WHEREAS, this Council believes it to be in the best interests of the city of Pullman to adopt said Agreement, pursuant to RCW Chapter 39.34, Interlocal Cooperation Act; now, therefore,

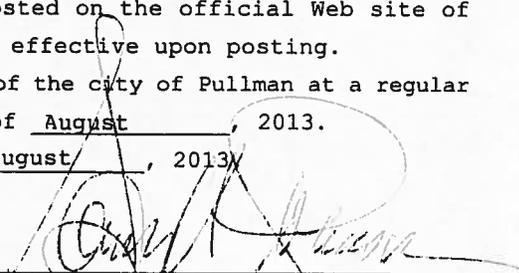
IT IS HEREBY RESOLVED that the Mayor and finance director each are hereby authorized and directed to execute the Agreement attached hereto as Exhibit "A" and to deliver an executed original thereof to Washington State Department of Natural Resources.

IT IS FURTHER RESOLVED that the Mayor and finance director are each hereby authorized and directed to take such further action as may be appropriate in order to effect the purpose of this Resolution and the Interlocal Agreement authorized thereby.

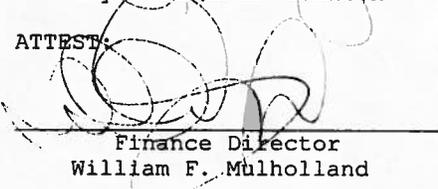
BE IT FURTHER RESOLVED that an executed copy of said Interlocal Agreement shall be posted on the official Web site of the city of Pullman and shall be effective upon posting.

ADOPTED by the City Council of the city of Pullman at a regular meeting held on the 13th day of August, 2013.

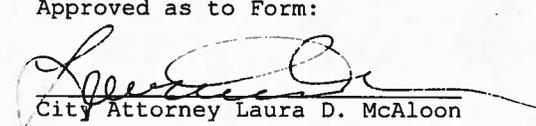
DATED this 14th day of August, 2013

  
\_\_\_\_\_  
Mayor Glenn A. Johnson

ATTEST:

  
\_\_\_\_\_  
Finance Director  
William F. Mulholland

Approved as to Form:

  
\_\_\_\_\_  
City Attorney Laura D. McAloon

**FILED**

AUG 14 2013

CITY CLERK'S OFFICE  
PULLMAN WASHINGTON



**WDNR Agreement # IAA 13-400**

**INTERAGENCY AGREEMENT WITH The City of Pullman**

This Agreement is between the City of Pullman, referred to as City of Pullman, and the Washington State Department of Natural Resources, Resource Protection Division, referred to as DNR.

DNR falls under authority of RCW Chapter 43.30 of Washington State, Department of Natural Resources. DNR and City of Pullman enter into this agreement under Chapter 39.34, Interlocal Cooperation Act.

The purpose of this Agreement is for City of Pullman to make available City of Pullman employee Fire Chief Mike Heston, referred to as employee, as a single resource for wildfire or emergency response, and for DNR to reimburse City of Pullman for the costs associated with his time.

**IT IS MUTUALLY AGREED THAT:**

- 1.01 Statement of Work.** The City of Pullman shall furnish the necessary personnel necessary for performing work set forth in the Attachment "A".
- 2.01 Period of Performance.** The period of performance of this Agreement shall begin on June 1, 2013, and end on June 30, 2015, unless terminated sooner as provided herein.
- 3.01 Payment.** Pay for the work provided is established under RCW 39.34.130. The parties estimate that the cost of accomplishing the work will not exceed forty thousand dollars (\$40,000). Payment for satisfactory performance of work shall not exceed this amount unless the parties mutually agree to a higher amount before beginning any work that could cause the maximum payment to be exceeded. Pay for services shall be based on the rates and terms described in Attachment "B".
- 4.01 Billing Procedures.** The City of Pullman shall submit invoices quarterly. Payment to the City of Pullman for approved and completed work will be made by warrant or account transfer within 30 days of receiving the invoice. When the contract expires, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.
- 5.01 Records Maintenance.** The City of Pullman shall maintain books, records, documents and other evidence, to sufficiently document all direct and indirect costs incurred by The City of

Pullman in providing the services. These records shall be available for inspection, review, or audit by personnel of the DNR, other personnel authorized by the DNR, the Office of the State Auditor, and as authorized by law. The City of Pullman shall keep all books, records, documents, and other material relevant to this Agreement for six years after agreement expiration. The Office of the State Auditor and any persons authorized by the parties shall have full access to and the right to examine any of these materials during this period.

Records and other documents in any medium furnished by one party to this agreement to the other party will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose this material to any third parties without first notifying the furnishing party and giving it a reasonable opportunity to respond. Each party will use reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

**6.01 Rights to Data.** Unless otherwise agreed, data originating from this Agreement shall be “works for hire” as defined by the U.S. Copyright Act of 1976 and shall be owned by the DNR). Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to use, copyright, patent, register and the ability to transfer these rights.

**7.01 Independent Capacity.** The employees or agents of each party who are engaged in performing this agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

**8.01 Amendments.** This Agreement may be amended by mutual agreement of the parties. Amendments shall be in writing and signed by personnel authorized to bind each of the parties.

**9.01 Termination.** Either party may terminate this Agreement by giving the other party 30 days prior written notice. If this Agreement is terminated, the terminating party shall be liable to pay only for those services provided or costs incurred prior to the termination date according to the terms of this Agreement.

**10.01 Termination for Cause.** If for any cause either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of the terms and conditions, the aggrieved party will give the other party written notice of the failure or violation. The aggrieved party will give the other party 15 working days to correct the violation or failure. If the failure or violation is not corrected within 15 days, the aggrieved party may immediately terminate this Agreement by notifying the other party in writing.

**11.01 Disputes.** If a dispute arises, a dispute board shall resolve the dispute like this: Each party to this agreement shall appoint a member to the dispute board. These board members shall jointly appoint an additional member to the dispute board. The dispute board shall evaluate the facts, contract terms, applicable statutes and rules, then determine a resolution. The dispute board’s determination shall be final and binding on the parties. As an alternative to the dispute

board, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330. In this case, the Governor's process will control the dispute resolution.

**12.01 Governance.** This contract is entered into the authority granted by the laws of the State of Washington and any applicable federal laws. The provisions of this agreement shall be construed to conform to those laws.

If there is an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- (1) Applicable State and federal statutes and rules;
- (2) Statement of Work; and
- (3) Any other provisions of the agreement, including materials incorporated by reference.

**13.01 Assignment.** The work to be provided under this Agreement and any claim arising from this agreement cannot be assigned or delegated in whole or in part by either party, without the express prior written consent of the other party. Neither party shall unreasonably withhold consent.

**14.01 Waiver.** A party that fails to exercise its rights under this agreement is not precluded from subsequently exercising its rights. A party's rights may only be waived through a written amendment to his agreement.

**15.01 Severability.** The provisions of this agreement are severable. If any provision of this Agreement or any provision of any document incorporated by reference should be held invalid, the other provisions of this Agreement without the invalid provision remain valid.

#### **16.01 Insurances.**

At all times during the term of this agreement, the City of Pullman shall, at its cost and expense, buy and maintain insurance of the types and amounts listed below. Failure to buy and maintain the required insurance may result in the termination of the agreement at DNR's option.

All insurance shall be issued by companies admitted to do business in the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best Reports unless otherwise approved by DNR. Any exception must be reviewed and approved by the DNR Risk Manager or in the absence of, the Contracts Specialist at FMD, before the contract is accepted. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC

Before starting work, City of Pullman shall furnish DNR, with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in the bid/proposal, if applicable, and Agreement. Said certificate(s) shall contain the Contract number IAA 13-400, name of DNR Project Manager, a description, and include the State of Washington, DNR, its elected and appointed officials,

agents, and employees as additional insured on all general liability, excess, umbrella and property insurance policies.

City of Pullman shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit City of Pullman's liability or responsibility.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by DNR. City of Pullman waives all rights against the DNR for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this Agreement.

DNR shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications.

- (1). Insurers subject to Chapter 48.18 RCW (Admitted and Regulated by the Insurance Commissioner): The insurer shall give the DNR 45 days advance notice of cancellation or non-renewal. If cancellation is due to nonpayment of premium, the DNR shall be given 10 days advance notice of cancellation.
- (2). Insurers subject to Chapter 48.15 RCW (Surplus lines): The DNR shall be given 20 days advance notice of cancellation. If cancellation is due to nonpayment of premium, the DNR shall be given 10 days advance notice of cancellation.

In lieu of the coverages required under this section, DNR at its sole discretion, may accept evidence of self-insurance by the City of Pullman, provided City of Pullman provides the following:

City of Pullman shall provide a statement by a CPA or actuary, satisfactory to the DNR, that demonstrates City of Pullman's financial condition is satisfactory to self-insure any of the required insurance coverages.

DNR may require City of Pullman to provide the above from time to time to ensure City of Pullman's continuing ability to self-insure. If at any time the City of Pullman does not satisfy the self insurance requirement, City of Pullman shall immediately purchase insurance as set forth under this section.

By requiring insurance herein, DNR does not represent that coverage and limits will be adequate to protect City of Pullman, and such coverage and limits shall not limit City of Pullman's liability under the indemnities and reimbursements granted to DNR in this contract.

The limits of insurance, which may be increased by DNR, as deemed necessary, shall not be less than as follows:

- (1) **Commercial General Liability (CGL) Insurance:** City of Pullman shall maintain general liability (CGL) insurance, and, if deemed necessary as determined by the DNR, commercial umbrella insurance with a limit of not less than \$1,000,000 per each occurrence and \$2,000,000 for a general aggregate limit. The products-completed operations aggregate limit shall be \$2,000,000.

CGL insurance shall be written on ISO occurrence form CG 00 01 (or substitute form providing equivalent coverage). All insurance shall cover liability arising out of premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) conditions.

- (2) **Employers Liability (Stop Gap) Insurance:** If City of Pullman shall use employees to perform this contract, City of Pullman shall buy employers liability insurance, and, if deemed necessary as determined by the DNR, 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:** City of Pullman shall maintain business auto liability and, if deemed necessary as determined by the DNR, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of any Auto. Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage and cover a covered pollution cost or expense as provided in the 1990 or later editions of CA 00 01.

City of Pullman waives all rights against DNR for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

- (4) **Workers' Compensation Insurance:** City of Pullman shall comply with all State of Washington workers' compensation statutes and regulations. Workers' compensation coverage shall be provided for all employees of City of Pullman and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this contract. Except as prohibited by law, City of Pullman waives all rights of subrogation against the DNR for recovery of damages to the extent they are covered by worker's compensation, employer's liability, commercial general liability or commercial umbrella liability insurance.

City of Pullman shall indemnify DNR for all claims arising out of City of Pullman's, its subcontractor's, or sub-subcontractor's failure to comply with any State of Washington worker's compensation laws where DNR incurs fines or is

required by law to provide benefits to or obtain coverage for such employees. Indemnity shall include all fines, payment of benefits to City of Pullman or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to DNR by City of Pullman pursuant to the indemnity may be deducted from any payments owed by DNR to City of Pullman for performance of this Contract.

- (5) To the fullest extent permitted by law, City of Pullman shall indemnify, defend and hold harmless DNR, its officials, agents and employees, from and against all claims arising out of or resulting from the performance of the Agreement. "Claim" as used in this agreement means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' fees, attributable for bodily injury, sickness, disease or death, or injury to or destruction of tangible property including loss of use resulting therefrom. City of Pullman's obligation to indemnify, defend, and hold harmless includes any claim by City of Pullman's agents, employees, representatives, or any subcontractor or its employees. City of Pullman expressly agrees to indemnify, defend, and hold harmless DNR for any claim arising out of incident to City of Pullman's or any subcontractor's performances or failure to perform the Agreement. City of Pullman's obligation to indemnify, defend, and hold harmless DNR shall not be eliminated or reduced by any actual or alleged concurrent negligence of DNR or its agents, agencies, employees and officials.

**17.01 Complete Agreement in Writing.** This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties.

**18.01 Contract Management.** The Project Coordinator for each of the parties shall be the contact person for this agreement. All communications and billings will be sent to the project coordinator.

**19.01 Project Coordinators.**

- (1) The Project Coordinator for the Agency is Mike Heston, Telephone Number (509) 338-3272.
- (2) The Project Manager for DNR is Liz Smith. Telephone Number (360) 902-1207.

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

Dated: 8/14, 2013

City of Pullman

By: 

Glenn A. Johnson

Title: Mayor

Address: 325 SE Paradise St.  
Pullman, WA 99163

Phone: 509-338-3208

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

Dated: 8/19, 2013

By: 

Albert Kassel

Title: Resource Protection Division Manager

Address: PO Box 47037  
Olympia, WA 98504

Interagency Agreement  
Approved as to Form 9/29/97  
By the Assistant Attorney General  
State of Washington

**STATEMENT OF WORK**

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DNR agrees to the following

1. Record Employee's time spent in performance of this Agreement. A copy of the time record shall be provided to Employee who will provide a copy to the City of Pullman.

The City of Pullman agrees to the following:

1. Employee will be available and ready to respond when called by DNR. DNR may request additional standby time during emergency situations.
2. A final billing on City of Pullman letterhead will be sent to the address below within ninety days of demobilization. Billing should contain Employee's regular, and overtime hours along with other reimbursable expenses incurred in the fulfillment of this agreement, and each correlating DNR incident identifier.

Bills shall be sent to:  
DNR Resource Protection Division  
Attn: Liz Smith  
1111 Washington Street SE MS 7037  
Olympia, WA 98504

**BUDGET**

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**Invoice Identification and Information**

Each invoice voucher submitted to the DNR by the City of Pullman will clearly reference WDNR Contract Number IAA-13-400.

<b>Employee</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Overtime Rate</b>
Mike Heston	Fire Chief	\$42.84	\$42.84