

FINAL

RESOLUTION 2013 168

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY,
WASHINGTON:**

IN THE MATTER OF EQUIPMENT MAINTENANCE, RE: APPROVING THE EQUIPMENT MAINTENANCE AGREEMENT BY AND BETWEEN BENTON COUNTY AND PROSSER FIRE DISTRICT #3

WHEREAS, Benton County Public Works has been maintaining Prosser Fire District #3 (PFD #3) equipment under an informal agreement; and

WHEREAS, it was brought to Public Works' attention that there was no formal agreement when PFD #3 requested rates for emergency after hours service; and

WHEREAS, PFD #3 wishes to formalize the agreement and continue to have Benton County provide maintenance for Fire District vehicles; and


WHEREAS, it is in the public interest that the public agencies cooperate to provide effective and cost efficient services; and

WHEREAS, the proposed agreement has been reviewed by and has been Approved as to Form by the Prosecuting Attorney's Office and is recommended for approval by the Benton County Public Works Manager; NOW, THEREFORE,


BE IT RESOLVED that the Equipment Maintenance Agreement between Benton County and Prosser Fire District #3 be approved and signed by the Board of County Commissioners; and

BE IT FURTHER RESOLVED the attached Equipment Maintenance Agreement shall commence the date executed by both parties and shall remain in effect until terminated by either party.

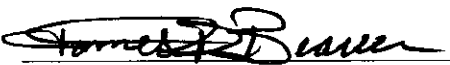
Dated this 26th day of February 2013.



Chairman



Chairman Pro-Tem



Member

Attest: 
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

EQUIPMENT MAINTENANCE AGREEMENT

By and Between
BENTON COUNTY

And
PROSSER FIRE DISTRICT #3

This AGREEMENT, made and entered into this 26 day of Feb, 2013, between Prosser Fire District #3 (hereinafter referred to as PFD #3) and Benton County (hereinafter referred to as BC) collectively hereinafter referred to as the "PARTIES".

WHEREAS, the PARTIES hereto desire to enter into this Agreement for their mutual benefit and hereby acknowledge that the mutual promises contained herein constitute good and valuable consideration.

WITNESSETH:

BC maintains, services, and repairs vehicles and equipment at its Prosser Shop Facility (herein after referred to as the PSF) located at 14303 North Hinzerling Road, Prosser, WA and at its Kennewick Shop Facility located at 1709 S. Ely Street, Kennewick, WA (herein after referred to as the KSF) and desires to contract with PFD #3 to provide such services and use of facilities to PFD #3, and

PFD #3 provides services in Benton County by motor vehicles and equipment and desires to contract with BC for the use of its PSF or KSF to include the maintenance, service and repair, and

BC and PFD #3 agree that BC shall provide at the PSF or KSF, service to PFD #3 vehicles, as described herein.

All of the above shall be provided in accordance with the terms as set forth herein.

SECTION I

Preventive Maintenance, Mechanical Maintenance, Repairs, and General Service of PFD #3 Vehicles

A. Preventive maintenance and repairs performed will be in compliance with Federal Motor Carrier Regulations. BC will provide routine preventive maintenance and repair of engines, drive trains, mechanical parts, and accessories according to the rates as established in Section IV of this Agreement. Examples of services and repairs available by the PSF include maintenance and rebuild/repair/replacement of all vehicle components such as:

1. Lubricants, fluids and filters
2. Brakes
3. Electrical systems

4. Mufflers and exhaust systems
 5. Engine blocks and heads
 6. Alternators, starters, air compressors and other engine components
 7. Transmissions, drive trains and differentials, alignment, steering and suspensions
 8. Controls, gauges and interiors
 9. Chassis repairs including paint
 10. Tire repair, replacement, rotation and balancing
 11. DOT Annual Inspections
 12. DOT Brake Inspections and adjustments
- B. BC shall determine, in consultation with PFD #3, the need for emergency road services.
- C. All service outsourcing will be authorized and coordinated through PFD #3.
- D. PFD #3 shall determine its vehicle maintenance schedule and will ensure that PFD #3 vehicles covered by this agreement are made available for service at the PSF or KSF at the dates and times that shall be mutually agreed upon and coordinated between PFD #3 and BC Designees. PFD #3 will provide copies of all available shop manuals and vehicle maintenance records requested by BC.
- E. PFD #3 shall work with BC to coordinate, schedule and deliver vehicles for service.
- F. BC will keep a complete record of service for each PFD #3 vehicle.
- G. Any PFD #3 vehicle deemed by BC to be inoperable shall be red tagged. BC shall give written notice to PFD #3 when a PFD #3 vehicle has been red tagged, with a copy of said notice filed in the vehicle maintenance file. PFD #3 vehicles become operational only after BC has deemed the vehicle is operational (red tag removed).

SECTION II

BC Emergency Service and Assistance for Disabled PFD #3 Vehicles

- A. BC will provide a service vehicle, equipment, and manpower to respond to emergency calls for a disabled PFD #3 vehicle covered by this Agreement as identified by the PFD #3 designee. The BC and PFD #3 designees will coordinate in-field, outsourced or PSF or KSF service and repairs depending upon PSF or KSF availability and the location of the disabled vehicle.
- B. PFD #3 vehicles will receive equal response for emergency calls, to include (outsourced) towing where necessary, with other vehicles in the BC fleet. Such services will generally be available at the PSF and KSF during normal working hours. Normal working hours are from 7:00 a.m. to 3:30 p.m. during regularly scheduled workdays. However, the Tuesday after Memorial Day through the

Friday before Labor Day, PSF and KSF normal work hours shift to 6:00 a.m. to 2:30 p.m. PSF and KSF hours of operation are at the discretion of BC.

- C. BC shall provide comparable service to both BC and PFD #3 fleets. In the event that BC is unable to respond to a PFD #3 emergency call, the BC and PFD #3 designees will coordinate to outsource to reliable alternative service at the request of the PFD #3 designee. If BC is unable to respond to the emergency call for the disabled PFD #3 vehicle, PFD #3 will secure such emergency services on its own from a source of its own choosing.
- D. BC shall extend to PFD #3 priority service in performance of all work under this Agreement to the extent that such priority service does not adversely affect work and service to be performed on the BC fleet, or any other performance required pursuant to law or agreement.
- E. Emergency service calls will be billed at the rates specified in Section IV below.

SECTION III

Consideration of PFD #3 Services to BC

- A. PFD #3, as may be mutually agreed to with BC, shall provide certain administrative and information system services to BC. Such services may include vehicle maintenance records, recall notices, vehicle manuals, inventory/purchasing records and any vehicle operating data analysis appropriate to maintaining PFD #3 vehicles.
- B. Such services may be extended to PFD #3 when needed by BC for record keeping purposes. Maintenance record updates will also be provided by BC to PFD #3 upon request of the PFD #3 designee.
- C. Prior to providing services, costs for requested additional data services over and above traditional associated services shall be negotiated between the parties.
- D. PFD #3 will pay for all services provided pursuant to this Agreement pursuant to this Agreement.

SECTION IV

Rates, Charges and Billings

- A. BC will bill and PFD #3 will pay as follows:
 - 1. **Hourly Rate for Service:** The hourly shop rate is \$72.93. BC/Union contract rates are adjusted annually and new rates commence on January 1 of each year. The shop rate shall be adjusted on January 1 of each year respective to labor negotiations. If labor negotiations have not concluded by January 1 of any particular year, the rates shall be increased by two

and one half percent (2.5%) and adjusted to the true costs once labor negotiations have concluded.

2. **Overtime:** Will be paid according to the terms of the most recent collective bargaining agreement between BC and its labor union. Over time will be calculated as: \$39.43 (average hourly rate without benefits or overhead) times applicable overtime rate plus benefits plus overhead.

BC/Union contract rates are adjusted annually and new rates commence on January 1 of each year. The shop rate shall be adjusted on January 1 of each year respective to labor negotiations. If labor negotiations have not concluded by January 1 of any particular year, the rates shall be increased by two and one half percent (2.5%) and adjusted to the true costs once labor negotiations have concluded.

3. **Service Call Outs:** In addition to the hourly service rate, equipment rental for the service vehicle used by Benton County shall be invoiced at the current rental rate.
 4. **Parts/Fluids/Lubricants:** In addition to the product cost, a ten percent (10%) markup will be assessed on all billings for all parts, fluids and lubricants purchased by BC and supplied to PFD #3. No fees will be charged for parts purchased by PFD #3 and delivered to the PSF.
- B. At the end of each month BC shall deliver to PFD #3 an itemized invoice showing all work performed. The invoice shall list the amount owing for each vehicle serviced by BC. PFD #3 shall make payment in full in its normal course of business during the month following the billing.
- C. A 4.06% Administrative Fee will be added to the total of the invoice and applicable Washington State Sales Tax will be charged.

SECTION V

Breach and Termination

Either party may terminate this Agreement at any time with a 30 day notice. Nothing in this paragraph shall limit the parties' right to remedies as afforded by law.

SECTION VI

Liability, Insurance and Hold Harmless Agreement

- A. PFD #3 shall hold harmless, indemnify and defend BC, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness,

disability or death to persons or damage to property or business, arising in connection with the work performed under this Agreement, or caused or occasioned in whole or in part by reason of the presence of PFD #3 or its subcontractors or their property upon or in the proximity of the property of the County. PROVIDED, that PFD #3's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of BC, its officers, officials, employees or agents.

In any and all claims against the BC, its officers, officials, employees and agents by any employee of PFD #3, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for PFD #3 or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that PFD #3 expressly waives any immunity PFD #3 might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Agreement, PFD #3 acknowledges that the foregoing waiver has been mutually negotiated by the parties. PFD #3's obligations under this Section [VI] shall survive termination and expiration of this Agreement.**

PFD #3's obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by PFD #3, its employees, agents or subcontractors.

- B. BC shall not be held liable for damage caused by vandalism, theft, or accidental damage caused to any PFD #3 property.
- C. BC participates in a self-insurance liability pool and PFD #3 is insured by Enduris, a Government Investment Pool located in Spokane, Washington. The parties further agree that when a claim arises, they will work with their respective insurers to determine 1st and 2nd position in coverage. PFD #3 will provide evidence of coverage to BC from their insurance management agency or private insurer on an annual basis and such coverage should name BC as an additional insured for activities related to the PSF operations.
- D. BC and PFD #3 shall obtain and keep in force, during the full term of this Agreement, the following insurance coverage:
 - 1. Evidence of coverage for General Liability to include Bodily Injury/Property Damage and Personal Injury/Advertising Injury for minimum limits of:

Bodily Injury/Property damage	\$2,000,000
Personal Injury/Advertising Injury	\$2,000,000
Automobile Liability per Accident	\$2,000,000

BC and PFD #3 also shall maintain employers liability insurance with limits of not less than two million dollars (\$2,000,000) each incident for bodily injury by accident or two million dollars (\$2,000,000) each employee for bodily injury by disease.

2. A letter of Evidence of Coverage shall be provided by each entity within two (2) weeks after the execution of this Agreement evidencing proof of coverages in accordance with this Agreement.
- E. BC and PFD #3 insurers shall agree to provide a thirty-day (30) written notice of cancellation or substantial change in coverage if such a change occurs.
 - F. PFD #3, its employees, agents, and representatives are not employees, agents, or representatives of BC.

SECTION VII

Termination, Renegotiation, or Continuation of Terms

- A. This Agreement may be terminated at any time by either party upon the service of notice of intent to terminate not later than thirty (30) days prior to the desired date of termination.
- B. No amendment or modification shall be made to this Agreement, unless set forth in a written amendment signed by both parties.
- C. The terms and conditions of this Agreement, if neither party terminates or renegotiates this Agreement, shall run on a continuing basis following the expiration date of this Agreement until a new Agreement is adopted.
- D. Upon execution of this Agreement, an annual review shall occur to determine the need for any modifications or alterations. The BC and PFD #3 designees shall participate in the review.

SECTION VIII

Contract Administration

- A. Financing and Budget: Each party shall be solely responsible for its own budget and arrangement for financing performance of this Agreement. No joint financing or budget is required by the Agreement, except as set forth in this Agreement.

- B. Administration: This Agreement, subject always to the approval and direction of the Board of County Commissioners and the Benton County Fire Protection District #3, shall be administered by the following persons acting on behalf of each party:

For Benton County

Administrator: Public Works Manager

Designee: Public Works Manager

Phone: 509-786-5611 (Prosser); 509-736-3084 (Tri-Cities)

For Prosser Fire District #3

Administrator: Board Chairman

Designee: Chief

Phone: 509-781-0050

No joint board or single administrator is necessary to administer this Agreement or the performance thereof.

- C. Filing of Agreement: After the Agreement has been fully executed, a signed original copy of this Agreement will be duly filed with each respective body.
- D. Severability: If any provision of this Agreement is held invalid or unenforceable for any reason, the remainder of this Agreement shall not be affected thereby, but shall continue in full force and effect.
- E. Applicable Law -- Venue: The laws of the State of Washington shall govern this Agreement. Venue for any action hereunder shall be in Benton County, Washington.
- F. Term: the terms of this Agreement shall be effective from the date executed by the parties and remain in effect thereafter as noted in Section VII.
- G. Entire Agreement: The parties agree that this Agreement is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Agreement are specifically excluded.

SECTION IX

Execution

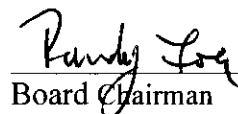
IN WITNESS WHEREOF, the parties have hereunto set their hands.

For Benton County

For Prosser Fire District #3




Shon Small, Chairman
Board of County Commissioners



Randy Logg
Board Chairman

Date 2/26/2013


Date 2-4-13

Attest: 

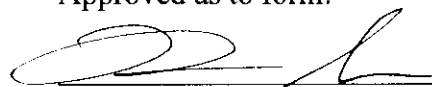
Clerk of the Board

Approved as to form:

Approved as to form:



Deputy Prosecuting Attorney



Legal Counsel

Date 2-4-13

Date 2-4-13