

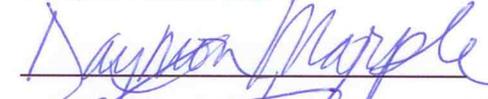
RESOLUTION NO. 2013-05

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF GARFIELD, WASHINGTON, authorizing the Mayor to execute on behalf of the Town that particular interlocal agreement between the Town and Whitman County Rural Fire District No. 3 establishing a joint fire department.

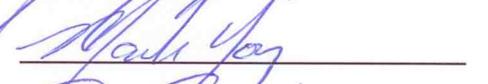
BE IT HEREBY RESOLVED by the Town Council of the Town of Garfield that the Mayor shall be and is hereby authorized to execute on behalf of the Town of Garfield that particular interlocal agreement between the Town of Garfield and Whitman County Rural Fire District No. 3 establishing a joint fire department, and forming a joint fire board to operate and manage the fire department for the benefit of the residents of the Town of Garfield and Whitman County Rural Fire District No. 3.

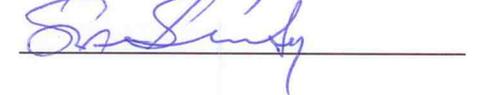
PASSED this 13th day of March, 2013.

TOWN COUNCIL:







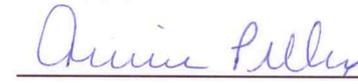


APPROVED:



Mayor

ATTEST:



AGREEMENT

AGREEMENT for the joint operation of the Garfield Fire Department by and between:

TOWN OF GARFIELD, a municipal corporation organized under the laws of Washington, hereinafter "Town",

and

WHITMAN COUNTY RURAL FIRE DISTRICT NO. 3, a municipal corporation organized under the laws of Washington, hereinafter "District".

PREMISES:

- A. The Town Council of the Town of Garfield and the District Board of Commissioners for Whitman County Rural Fire District No. 3 desire to ensure that the residents of the Town and of the District have quality fire protection; and
- B. RCW 35.27.370 and 52.12.031 and 52.30.020 provide that the Town and the District may contract for fire protection and Chapter RCW 39.34, Interlocal Cooperation Act, permits agreements for joint or cooperative actions, and the parties desire now to contract consistent with such statutes; and
- C. The Town Council and the Fire District Commissioners believe it to be in the best interests of both municipal corporations and the residents of their respective areas of responsibility to enter into an agreement to establish a joint fire protection board to administer and direct the joint operation of the Town of Garfield Fire Department and the Garfield Rural Fire Department as the Garfield Fire Department.

Now, therefore, in and for consideration of these premises, and in and for consideration of the benefits to be derived by each party under the terms of this agreement, it is hereby agreed as follows:

1. **Term.** This Agreement shall be effective from and after April 1, 2013 and will remain in effect until terminated as set forth in Section 2, below.

2. **Termination.** Either party may terminate this Agreement by mutual agreement or by providing 90 days written notice of their desire to terminate. If termination is by 90 day notice, the notice shall be made in accordance with Section 31 of this Agreement. Once notice is made and 90 days from mailing of notice has passed, this Agreement shall be considered terminated.

3. **Purpose.** The purpose of this Agreement is to establish a joint fire protection board which will administer and direct a joint fire department which will provide fire prevention and protection services to the residents of the Town of Garfield and Whitman County Rural Fire District No. 3.

4. **Joint fire department.** The individual fire departments of the Town and the District shall be combined for operational purposes and hereafter shall be referred to as the Garfield Fire Department.

5. **Joint fire protection board.** A joint fire protection board is hereby established for the purpose of administering and directing the Garfield Fire Department. This board shall be known as the Garfield Fire Protection Board (Board) and shall consist of six members. Each of the parties shall appoint three members. The Board members from the Town shall be members of the Town Council and/or the Town Mayor. The Board members from the District shall be members of the Fire District Board of Commissioners. The term of office for each member shall be one year, from

January 1 through December 31. In the event of a vacancy, the respective party represented by the vacant position shall appoint a replacement. The replacement member shall serve for the remainder of the term.

6. **Authority.** The Garfield Joint Fire Protection Board shall have the authority to administer and manage the operations of the Garfield Fire Department, all jointly owned properties and equipment and all properties and equipment of each party used by the Garfield Fire Department. The Board shall have authority and powers granted by this Agreement and such additional authority and powers as may from time to time be conferred on it by the legislative bodies of the parties.

The Board shall have the authority and duty to prepare and propose in accordance with Section 12, below, an annual fire department budget; however, all funding decisions shall continue to be made by the respective municipal corporations and in no event shall the Board have the authority to commit the funds of either municipal corporation to any particular endeavor. Consequently, the fire department budget authorized and proposed by the Board must also be ratified by the Town Council and the District Board of Commissioners.

7. **Meetings of the Board.** All meetings of the Board shall be held in compliance with the Open Public Meetings Act, RCW Chapter 42.30. The date and time of the regular monthly meeting of the Board shall be established by resolution of the Board, but in any event, meetings shall be held a minimum of once monthly.

8. **Quorum.** A quorum of the Board shall consist of four members, of whom two must be members from the Town, and two from the District. Actions of the board shall require the affirmative vote of at least four members of the Board.

9. **Officers.** The Board shall elect from its membership a Chairperson and Vice-Chairperson. Except as may be otherwise provided under any By-laws which may be adopted by the Board and approved by the governing body of each party, each officer shall have the powers and duties customarily and typically held and performed by such office. The term of office of each officer shall be one year, from January 1 through December 31. In the event of a vacancy, the Board shall elect a replacement officer for the vacant position, who shall then serve for the remainder of the term.

The Board may also appoint an administrative secretary to take minutes of the Board meetings and other such proceedings, and to perform such other secretarial tasks and duties as the Board may from time-to-time direct.

10. **Dispute resolution.** In the event the Board cannot reach agreement on any matter before it, such matter shall be referred to the Town Council and the Board of Commissioners of District 3 for resolution. The parties shall first attempt to negotiate a settlement of any such dispute between themselves. If such negotiation is unsuccessful the parties may submit the matter to arbitration. Arbitration shall be initiated upon request of either party. To initiate the arbitration process, the party requesting the arbitration shall provide written notice of the request to the other. The notice shall state the issue(s) for which arbitration is sought. Within 15 days after the

other party receives notice of the arbitration, each party shall appoint an arbitrator; the parties shall notify each other as to the name and address of their respective arbitrators. The two arbitrators shall then appoint a third arbitrator; provided, if the two arbitrators are unable to agree upon the third arbitrator within 15 days after both have been appointed, then either party may petition the Whitman County Superior Court for the appointment of the third arbitrator. The three arbitrators shall then decide the issues submitted for arbitration. The arbitrators' decision shall be based upon the determination of a majority of the arbitrators. The decision of the arbitrators shall be made within 30 days after the appointment of the third arbitrator, and the decision shall be binding upon the parties.

Each party shall bear the cost of its own arbitrator, and both parties shall pay one-half the cost of the third arbitrator. If either party fails to appoint its own arbitrator within the period specified, the arbitration process shall proceed without such an arbitrator, and the decision of the two arbitrators shall be binding upon both parties just as if there had been three arbitrators. During the arbitration process, all pending lawsuits or other actions to enforce any part of this agreement that may be affected by the issues being arbitrated shall be suspended.

11. **Personnel.** The Board shall oversee all employment-related matters for the Garfield Fire Department. The Board shall fill such fire department positions as the Board deems necessary and in accord with the Joint Operating Budget. The Board

shall appoint a person to act as Fire Chief of the Garfield Fire Department. The Fire Chief shall have such authority and administrative duties as the Board shall designate.

12. **Joint operating budget.** The Board shall prepare and present a recommended operating budget to the Town and District no later than August 31st of each year. The Joint Operating Budget shall be prepared in accordance with the Budgeting, Accounting and Reporting System (BARS) established by the Washington State Auditor's Office. The Budget shall establish the annual income and expense requirements of the Garfield Fire Department and the capital expenditures required for the operation of the department. Both parties must approve the Joint Operating Budget. In the event the parties disagree on any budget item, the parties shall resolve the dispute in accordance with Section 10 of this Agreement.

13. **Budget amendments.** In the event it shall be necessary to amend the Joint Operating Budget, the Board shall prepare a budget amendment. The amendment shall be submitted to the governing body of each party for approval if the amendment requires any additional contribution of funds by either party.

14. **Joint operating expense fund.** The Board shall create a special operating fund with the Garfield Town Clerk/Treasurer, to be used for the payment of the operating costs of the fire department. The Board shall be responsible for the proper management and accounting of all funds coming into the possession of the Board. The financial affairs of the Board and the Garfield Fire Department shall be conducted in accordance with applicable federal and state laws and regulations.

15. **Funding of joint operating expense fund.** Initially, sixty percent (60%) of the operating costs of the Garfield Fire Department shall be paid by the District, and forty percent (40%) by the Town. These proportionate shares of the operating costs shall be subject to annual review and adjustment as may be mutually agreed between the parties. The Board, or such person as they shall designate, shall, on a monthly basis, determine the Garfield Fire Department's operating costs for that month. The Board (or their designee) shall then inform the parties of these costs on or before the 2nd day of the succeeding month, and each party shall pay into the Joint Operating Expense Fund its respective share of the costs. Such payments shall be due and payable within fifteen days after receipt of the monthly statement of costs.

16. **Capital reserve funds.** It is agreed that each party shall maintain a capital reserve fund for future capital expenditures that may become necessary or desirable. Each party covenants to use it best good faith efforts to maintain a reasonable balance in its respective fund.

17. **Property ownership.** All property, facilities, vehicles and equipment currently owned by the District or Town shall remain the property of the respective parties. Any property, facilities, vehicles and equipment acquired under the Joint Operating Budget after the effective date of this Agreement will be jointly owned, with each party having an undivided interest therein, proportional to their contribution.

18. **Inventory.** All separately owned fire fighting or fire department related property of either party shall be inventoried and a written inventory prepared by the

respective parties prior to the effective date of this Agreement. This inventory shall be made for the purpose of maintaining a record of all separately owned property. This written inventory is attached hereto as EXHIBITS "A" and "B" and by this reference is made a part hereof.

19. **Acquisition and sale of properties.** All acquisitions of joint property by the Board shall be provided for in the Joint Operating Budget or an amendment thereto. All sales of joint property shall be at the discretion of the Board. During the term of this Agreement, the proceeds from any sale of jointly owned property shall be placed in the Joint Operating Expense Fund and credited equally to each party. Once this Agreement is terminated, all jointly-owned property shall be divided equally between the parties.

20. **Operational plans.** Once this Agreement is effective, the Board shall meet and adopt a plan for the orderly implementation of this Agreement. The Board shall, from time to time, adopt and implement rules and regulations to govern the operations of the Garfield Fire Department.

21. **Level and quality of service.** During the term of this Agreement, the Garfield Fire Department shall provide services to the areas covered under this Agreement with the department's closest available personnel and equipment.

22. **Discretion as to response.** The Fire Chief of the Garfield Fire Department, or his authorized representative, shall have the right, in his discretion, to determine the number and amount of equipment or personnel that will be dispatched in response to

the request for assistance. In making this determination, the Fire Chief shall first consider the threat to human life, then the threat to property in light of the personnel and equipment available to the District at the time of the request.

23. **Determination of priority.** Dispatch of personnel or equipment in response to a request for assistance shall be at the discretion of the Fire Chief of the Garfield Fire Department. There shall be no violation of this Agreement if the Fire Chief, in his professional judgment, determines that response to a request for assistance made by any resident of the District or Town may jeopardize the fire or other protection afforded to the other residents of the District or Town; provided, at no time shall the protection of property be placed before that of human life.

24. **Operation control.**

24.1 **Control of fire fighting.** The Fire Chief of the Garfield Fire Department, or his authorized representative, shall have the sole responsibility for conducting all fire fighting or emergency operations at the scene, however, the Fire Chief may delegate management authority over all or any part of such operation.

24.2 **Emergency scene management.** The Fire Chief, or his authorized representative, shall have management authority over the control and direction of the fire fighting operations at the fire.

24.3 **Control of personnel.** Notwithstanding any other provision herein, the officers, firemen and other personnel of the Garfield Fire Department shall remain under the control and direction of the Fire Chief, or his authorized representative and shall not become the agent, employees, or representatives of any other party.

24.4 **Right to protect personnel and equipment.** The Fire Chief shall have and retain the right to refuse to commit their personnel or equipment to any position which is considered unreasonably dangerous to the life of any of their personnel, another person, or to equipment. The Fire Chief, or his

authorized representative, shall have the sole and exclusive right and discretion to determine the extent and imminence of any such danger.

25. **Liability insurance.** The parties agree to jointly fund liability insurance as part of the Joint Operating Budget, to protect the parties against liability arising from the operation of the Garfield Fire Department pursuant to the terms of this Agreement. The liability insurance limits shall be determined and set by the Board.

26. **Insurance for equipment.** Each party shall be responsible for obtaining and maintaining insurance on the equipment owned by it. The parties agree to fund insurance for jointly owned equipment. The Board shall be responsible for obtaining insurance for such jointly owned equipment which provides protection against casualty, loss and damage to said equipment. Insurance for jointly owned equipment shall be provided for in the Joint Operating Budget or by amendment thereto.

27. **Immunities to continue.** This Agreement is not intended to, and it shall not be construed to, waive, relinquish, alter, amend or effect in any manner whatsoever the privileges and immunities otherwise provided by law to any of the parties hereto whether while responding to a request for assistance under this Agreement or otherwise, and each party shall have and retain all privileges and immunities it otherwise would be entitled to or possess when it performs the same functions within its own area.

28. **Entire agreement.** This Agreement and the exhibits or appendices hereto set forth all of the covenants, promises, agreements, conditions and understandings between the parties hereto, and there are no covenants, promises, agreements,

condition or understandings, either oral or written, between the parties other than as herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement, or any appendix thereto, shall be binding upon the parties hereto unless reduced to writing and signed by them. This document constitutes a final, complete and exclusive statement of this Agreement.

29. **Miscellaneous.**

(a) Unless this Agreement otherwise requires, words in the singular include the plural, and in the plural include the singular. Words in the masculine gender include the feminine and the neuter; and when the sense so indicates, words in the neuter refer to any gender.

(b) The article numbers in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of this Agreement, nor in any way affect the Agreement.

(c) The laws of the State of Washington shall govern the validity, interpretation, performance and enforcement of this Agreement. The invalidity or unenforceability of any provisions of this Agreement shall not affect or impair any other provisions. Venue as to any action, claim, or proceeding arising out of, or based upon this Agreement, including, but not limited to, any action for declaratory or injunctive relief, shall be the appropriate Court sitting in Whitman County, Washington.

(d) Each provision contained herein shall be deemed to constitute both a covenant and condition of this Agreement, the breach of which shall constitute a default.

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

(f) Words of broad or general meaning shall in no wise be limited because of their use in connection with words of more restricted significance.

30. **Assignment.** This Agreement shall be binding upon the successors and assigns of the parties hereto, provided, however, that no party shall assign this Agreement without the prior written consent of each of the other parties hereto.

31. **Notice.** Any notice, demand, or request required or authorized by this Agreement shall be deemed properly given if in writing and deposited in the United States mail, postage prepaid, certified, return receipt requested, addressed to the parties at the following addresses:

Attention: Chairman, Board of Commissioners
Whitman County Rural Fire District No. 3
P.O. Box 142

Garfield, Washington 99130

With copy to: _____

Attention: Town Clerk/Treasurer
Town of Garfield
P.O. Box 218
Garfield, Washington 99130

With copy to: Bishop Law Office
P.O. Box 337
Garfield, Washington 99130

32. **No special relationship created.** The purpose of this Agreement is to provide for additional and better services to the public and not to protect or provide additional services to any person or class of persons.

33. **Contract renegotiation.** In the event either party desires to reopen contract negotiations to revise, add or delete the provisions of the Agreement, the request for such reopening shall not be deemed to be a cancellation of the Agreement.

WHEREFORE, the parties have executed this Agreement effective as of 1st day of April, 2013, at Garfield, Washington.

TOWN OF GARFIELD,

By: [Signature]
Mayor

ATTEST: [Signature]
Clerk

(SEAL)

WHITMAN COUNTY RURAL FIRE
DISTRICT NO. 3

By: [Signature]
Chairman, Board of Commissioners

ATTEST: [Signature]
District Secretary

(SEAL)