

City of Cheney
609 Second Street
Cheney, Washington 99004

**CITY OF CHENEY, WASHINGTON
RESOLUTION D-587**

A RESOLUTION APPROVING AN INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITY OF CHENEY AND EASTERN WASHINGTON UNIVERSITY FOR FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES.

WHEREAS, Chapter 39.34 of the Revised Code of Washington authorizes municipal subdivisions of the State of Washington to enter into interlocal cooperation agreements with Washington State Agencies; and

WHEREAS, the City of Cheney and Eastern Washington University wish to enter into an interlocal cooperation agreement where the City of Cheney will provide fire protection and emergency medical services to Eastern Washington University; and

WHEREAS, an interlocal agreement is attached, has been presented to the City Council for action; and


WHEREAS, the terms and conditions of the attached interlocal cooperation agreement are of benefit to the City of Cheney and Eastern Washington University.

NOW THEREFORE, BE IT RESOLVED the Cheney City Council by majority vote hereby authorizes the Mayor to enter into the attached interlocal cooperation agreement between the City of Cheney and Eastern Washington University.

ADOPTED, on this 10th day of February, 2009 by the Cheney City Council at their regularly scheduled council, meeting at Cheney Council Chambers, 609 2nd Street, Cheney, WA 99004.


C. Allan Gainer, Mayor

Attest:


Cynthia L. Niemeier, City Clerk

INTERLOCAL AGREEMENT
For
FIRE PROTECTION and RELATED SERVICES
Between
EASTERN WASHINGTON UNIVERSITY
And
THE CITY OF CHENEY

THIS AGREEMENT, is made and entered into this 1st day of January, 2009, by and between Eastern Washington University, an institution of the state of Washington, hereinafter referred to as "University", and the City of Cheney, a municipality in the state of Washington, hereinafter referred to as the "City", pursuant to chapter 39.34 RCW and in accordance with RCW 35.21.775, RCW 35.21.779 and RCW 28B.35.190.

WITNESSETH:

WHEREAS, the City furnishes fire protection and emergency services to the University by reason of authority granted to it under various sections of the Revised Code of Washington, and

WHEREAS, the University and City desire to enter into this Agreement, to provide for payment of the University's fair share of fire protection and related services and the enhancement the City's ability to provide fire protection and emergency services for the benefit of the University.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the PARTIES agree as follows:

SECTION NO. 1: PURPOSE

This Agreement establishes the services, costs and payments for Fire Protection services provided by the City to the University, in order to protect persons and property.

SECTION NO. 2: DURATION

This Agreement shall commence January 1, 2009, and end December 31, 2010 (the "Term"). Upon expiration of the Term, this Agreement shall automatically renew for successive two (2) year terms (the "Renewal Term"). This Agreement may be terminated by either party providing, at least, 120 days prior to the expiration of the Term or a Renewal Term written notice of intent to terminate this Agreement.

SECTION NO. 3: PARTY CONTACTS

The following individuals are hereby designated as the party representative for the purpose of coordinating the fire protection and related services pursuant to the terms of this Agreement:

EWU Representative:
Mary Voves
Vice President for Business and Finance
Showalter #307 – (509) 359-4210

City of Cheney Representative:
Michael Winters
Fire Chief
611 Fourth Street – (509) 498-9291

SECTION NO. 4: COST OF SERVICES AND PAYMENTS

In consideration of the services provided during the Term, the University shall pay the City, three hundred fourteen thousand seven hundred and seventy-five dollars (\$314,775.00), the "Cost of Service". The formula to determine the service costs are provided in Appendix "A", and may be used as the basis for subsequent agreements. The above amount may be paid quarterly but shall be paid in full by the 15th day of December. Commencing every second year of this Agreement (eg. January 1, 2010, January 2012, etc.), the Cost of Service may be adjusted by the City. No later than October 15 of the year prior to an adjustment, the City shall give the University notice of the new Cost of Service based upon the best available information. The Parties shall meet and confer and attempt to reach agreement. In the event an agreement is not reached on the new Cost of Service, this Agreement shall continue for the next calendar year with a two and one-half percent (2.5%) increase to the Cost of Service and automatically terminate on December 31, unless agreed otherwise.

SECTION NO. 5: SERVICES PROVIDED

The City shall provide fire protection and related services to Eastern Washington University in accordance with: (1) the Cheney Fire Department's Standard Operating Guidelines, as adopted by City Council Resolution and (2) the Fire Department's equipment, operating budget and personnel. The City reserves the right to change or modify the Standard Operating Guidelines.

- (a). The City in response to incidents shall direct and control fire fighting and services provided by its Fire Department.
- (b). The City, subject to the discretion of the City Council, shall include in its annual budget for the Term necessary funds to provide services under this Agreement.
- (c). Management and control of the Cheney Fire Department operations will remain exclusively with the City. Services provided to the University will be the same or substantially similar to that provided to other persons and property in the City as reasonably determined by the Fire Chief, or his representative.

(d). It is understood and agreed that provision of fire protection and emergency services to the University by the City is not dependent upon this Agreement or upon the existence of any agreement between the parties.

SECTION NO. 6: INDEMNIFICATION

Each party shall indemnify and hold the other, its officers, employees, agents, and volunteers, harmless from, and against, any and all claims, demands, orders, decrees, or judgments for injuries, death, or damage to any person or property arising, or resulting, from any act or omission on the part of said party, or its agents, employees or volunteers, in the performance of this Agreement. Neither party assumes any responsibility to the other party for the consequences of any act or omission of any person, firm, or corporation not a party to this agreement.

SECTION NO. 7: ASSIGNMENT – THIRD PARTY LIABILITY AND PUBLIC DUTY DOCTRINE

This contract shall not be assigned nor shall the terms herein create a cause of action for or on behalf of a third party. Nothing in this contract shall modify, supplant, or supersede the public duty doctrine.

SECTION NO. 8: RELATIONSHIP OF THE PARTIES

The parties intend that an independent contractor relationship will be created by this Agreement. No agent, employee, servant or representative of either party shall be deemed to be an employee, agent, servant or representative of the other party for any purpose.

SECTION NO. 9: TERMINATION

This agreement may be terminated, without cause upon one hundred eight (180) days' advance written notice.

(a). The University will not be obligated to make additional payments beyond the Term except for the unpaid obligations set forth in this Agreement.

(b). A notice of termination, with or without cause, shall be mailed to following persons:

EWU: Mary Voves
Vice President for Business and Finance
307 Showalter Hall
Cheney, WA 99004
(509) 359-4210

City of Cheney: Cynthia L. Niemeier
City Clerk/Director of Finance
602 Second Street
Cheney, WA 99004
(509) 498-9215

AND

Michael Winters
Fire Chief
611 Fourth Street
Cheney, WA 99004
(509) 498-9291

(c). Any Party may terminate this Agreement, with cause, upon a breach by the other Party, provided the Party seeking to terminate the Agreement shall provide at least thirty (30) days advance written notice and ad state a reasonable period to cure. Following a failure to cure the breach, this Agreement shall automatically terminate without further action.

SECTION NO. 10: ADVISORY BOARD

The parties agree to establish an advisory board consisting of three (3) individuals. Each party shall nominate to the Board one person, with the two nominees appointing the third Board Member. The Board shall: (1) advise the Fire Chief, Mayor, and President of the University as to all matters related to fire protection for the University; (2) meet at least annually; and (3) prepare a written report of its activities, findings and recommendations.

SECTION NO. 11: PROPERTY AND EQUIPMENT

The ownership of all property and equipment shall remain with the original owner, unless specifically and mutually agreed by the parties to this Agreement.

SECTION NO. 12: GENERAL TERMS

This Agreement contains terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement. No changes or additions to this Agreement shall be valid or binding upon the parties unless such change or addition is in writing, executed by the parties.

Each Party agrees to aid and assist the other parties in accomplishing the objectives of this Agreement.

This Agreement shall be binding upon the parties hereto and/or their successors.

In the event any portion of this Agreement should become invalid or unenforceable, the rest of the Agreement shall remain in full force and effect. And, if any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

The parties shall observe all federal, state and local laws, ordinances and regulations, to the extent that they may be applicable to the terms of this Agreement.

This Agreement shall be construed under the laws of Washington State. Any action at law, suit in equity or judicial proceeding regarding this Agreement or any provision hereto shall be instituted only in courts of competent jurisdiction within Spokane County, Washington.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.

SECTION NO. 13: DISPUTE RESOLUTION

Any controversy or claim arising out of, or relating to this contract, or the breach (of this contract), shall be settled by arbitration in accordance with the Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

A person initiates an arbitration proceeding by giving notice by mail certified or regular, return receipt requested and obtained, or by service as authorized for the initiation of a civil action. The notice must describe the nature of the controversy and the remedy sought.

All arbitration proceedings shall be confidential unless both parties agree in writing to waive confidentiality.

Initially, each party shall be required to pay one half of the cost of the arbitration, but the Arbitrator may require one party to pay the entire cost as part of the final award.

If either party discovers a claim or demand against the other party that is subject to arbitration under this agreement, the party discovering such claim shall have **one calendar year** from the date of such discovery in which to settle such claim or to commence arbitration on it. If such party fails to initiate arbitration within the period stated, the claim or demand in question shall be deemed to have been abandoned.

Venue for said Arbitration shall be in Spokane County, Washington.

SECTION NO. 13: RCW 39.34 REQUIRED CLAUSES

A. PURPOSE

See Section 1 above.

B. DURATION

See Section 2 above.

C. ORGANIZATION OF SEPARATE ENTITY AND ITS POWERS

No new or separate legal or administrative entity is created to administer the provisions of this Agreement.

D. RESPONSIBILITIES OF THE PARTIES

See provisions above.

E. AGREEMENT TO BE FILED

The CITY shall file this Agreement with its City Clerk and a copy of this Agreement with the Spokane County Auditor.

F. FINANCING.

See section 4 above.

G. TERMINATION.

See provision 10 above.

H. PROPERTY UPON TERMINATION.

See section 11 above.

SECTION 14: APPROVAL

This Agreement shall be subject to the written approval of the authorized representatives of the University and by resolution of the Cheney City Council, and shall not be binding until so approved. This Agreement may be altered, amended or waived only by a written amendment executed, in the same manner, by both parties.

IN WITNESS WHEREOF, the PARTIES have caused this Agreement to be executed on date and year opposite their respective signatures.

CITY OF CHENEY

EASTERN WASHINGTON UNIVERSITY

By: 
C. Allan Gainer, Mayor

By: 
Vice President for Business & Finance

Attest: 
Cynthia L. Niemeier, City Clerk

APPENDIX "A"

Assessed Valuation Method
of
Computing Fire Service Fees between Eastern Washington University
and
City of Cheney

The annual assessed valuation as assigned each to the University and the City by the Spokane County Assessor's Office shall be divided into a percentage ratio, to be multiplied by the City of Cheney proposed Fire and Emergency Service Budget of that same year.

The 2009 Fire Protection Service fee is determined as follows:

Spokane County assessed valuation for the City of Cheney	\$	452,491,026
Spokane County assessed valuation for the University	\$	110,729,380
Percentage ratio =		.25 %
Multiplied by the 2008 City of Cheney Fire Department Budget	\$	1,259,100
2008 Fire Service Fee for the University (\$1,259,100 x .25) =	\$	314,775
