



WILDFIRE

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
Hillary Franz, Commissioner of Public Lands
Interagency Agreement with
Chelan Fire Protection District No. 1**



DNR-CFPD#1 Interagency Agreement No. 93-096074

This agreement is between the Chelan Fire Protection District #1, referred to as CFPD#1 and the Washington State Department of Natural Resources, Wildfire Division, referred to as DNR.

DNR and CFPD#1 enter this agreement under the authority of Chapter 39.34 RCW, Inter-local Cooperation Act, and Chapter 76.04.135 Cooperative Agreements.

The purpose of this Agreement is to enable DNR Operational Control of CFPD#1's UH-1 (MR-911) for Initial Attack Aerial Firefighting in Washington State providing suppression of wildfires that threaten life, property, and Natural Resources. CFPD#1's Area of Responsibility (AOR) is included in this purpose.

The parties mutually agree to the terms, conditions and covenants described below, attached, or referenced as follows:

1. Rights and Obligations

Attachment A contains the General Terms and Conditions governing work to be performed under this Agreement, the nature of the working relationship between DNR and CFPD#1, and specific obligations of both parties. All rights and obligations of the parties to this Agreement shall be subject to and governed by the terms herein and within Attachments A-C, outlined below; the contents of which collectively describe the general and special terms and conditions, and which individually and collectively are incorporated herein by reference.

- (1) Attachment A-General Terms and Conditions
- (2) Attachment B-Financial Agreement
 - a. Individual Agency Obligations
 - b. Daily Availability Rate and Flight Hour Rate
 - c. Billing, Invoicing, and Payment Procedures
 - d. Reimbursement and Reconciliation of Cost Division
 - e. Revenue Production and Schedule
 - f. Schedule of Services
- (3) Attachment C-Exhibits
 - a. Exhibit 1 – Helicopter Daily Use and Cost Summary (HCM-15)
 - b. Exhibit 2 – Daily Crew Resource Cost Sheet
 - c. Exhibit 3 – CFPD#1 MR-911 Certificate of Insurance

GENERAL TERMS AND CONDITIONS

The general terms and conditions of this Agreement are described in Attachment A, which in its entirety is incorporated herein by reference.

SPECIAL TERMS AND CONDITIONS

Special terms and conditions are enumerated below and included in Attachments B and C as outlined above; which individually and collectively are incorporated herein by reference.

ORDER OF PRECEDENCE

In the event of a conflict between the General and Special Terms and Conditions, the Special Terms and Conditions take precedence, unless the General Terms in question is required by law. In the event of another conflict, the Agreement shall be interpreted utilizing the following order of precedence: 1st – Special Terms and Conditions; 2nd – General Terms and Conditions.

2. Scope of Work

- (1) CFPD#1 will provide the aircraft and maintenance (Separate Agreement through DNR Wildfire Aviation Maintenance). The aircraft will be exclusively managed by DNR that includes the following:
 - a. Program Management
 - i. Deployment
 - ii. Mission Approval
 - iii. Phasing for Maintenance
 - iv. Safety and Risk Management
 - v. Dispatching – Operational Cost Tracking
 - vi. Crew Resourcing
 1. Crew Scheduling
 2. Crew Training
 3. Crew Trainee Approval
 4. Crew Certification / Qualification
 - vii. Service Support
- (2) The CFPD#1 specifically acknowledges the agreement is contingent upon, and CFPD#1 certifies by entering into this agreement that, CFPD#1 is committed to the contents of which collectively describe the general and special terms and conditions including the Financial Agreement, and CFPD#1's Representations, Certifications, and Other Statements.
- (3) CFPD#1's aircraft (MR-911) primary base for the operation will be located near **Wenatchee, Washington**, but may be moved at DNR's discretion throughout the State of Washington in support of fire operations.
- (4) DNR shall ensure that CFPD#1's aircraft (MR-911) is operated in accordance with applicable Federal and State laws, regulations, policies, and guidelines as a Public Aircraft Operations platform.

3. Conduct of Work

- (1) DNR shall furnish a fuel truck chase vehicle, Bambi bucket, long lines, swivels, and all associated aerial firefighting equipment that not part of the aircraft.
- (2) DNR shall furnish fuel and fire suppressant chemicals for the aircraft and system.
- (3) DNR shall furnish all necessary qualified personnel, material, maintenance (through existing agreement) and management, and direct the same to timely completion of the work described in this Agreement. CFPD#1 shall pay DNR for aircraft crew resourcing of DNR personnel. See Exhibit 2 for costs.
- (4) DNR shall reimburse CFPD#1 for the operational employment of the aircraft minus the operational time worked to employ the aircraft as an aerial firefighter outlined in Attachment B-Financial Agreement.
- (5) CFPD#1 shall ensure the aircraft remains under the operational control of DNR for the duration of the agreed upon Exclusive Use Period of Performance and shall not utilize the aircraft in any capacity unless otherwise approved by the Wildfire Division Manager, DNR.
- (6) DNR shall provide CFPD#1 with aircraft daily cost sheets (HCM-15 see Exhibit 1) depicting the use of the aircraft and the agreed upon revenue earned outlined in Attachment B-Financial Agreement from DNR's use of the aircraft.
- (7) DNR will pay CFPD#1 the agreed upon rates for the use of the aircraft to be exclusively used by DNR Wildfire Division for aerial firefighting on Interagency fires.
- (8) DNR shall notify CFPD#1 within 4 hours of aircraft being moved away from the pre-planned standby position near Wenatchee.

4. Operational Provisions

- (1) The parties intend that CFPD#1's aircraft (MR-911) shall be available for a minimum of a twenty four-hour daily operating period. DNR may adjust hours of operation as daylight and fire potential dictate. Exact operating hours will be determined by DNR based on current and predicted fire danger.
- (2) CFPD#1 acknowledges and agrees that this agreement relinquishes control of the aircraft to DNR during the Exclusive Use Period of Performance or upon agreement termination. MR-911 will be under the operational control of DNR and any missions assigned must be approved by DNR during the Exclusive Use Period of Performance
- (3) CFPD#1 shall provide unlimited and uninterrupted utilization of MR-911 and DNR shall respond promptly to any notice to take off.
- (4) The aircraft will be based primarily at **Wenatchee, WA**, but may be moved anywhere in the State of Washington, based on fire danger and DNR's needs.

The primary area of operation will be in the State of Washington, but MR-911, crew, maintenance and service support may be used in adjacent states to meet DNR cooperative agreements.

If DNR or the Central Washington Interagency Communications Center (CWICC) launches MR-911 from Wenatchee or determines that there is sufficient fire threat elsewhere, DNR will make the assessment as to whether or not the Wenatchee area will be backfilled for coverage from another DNR helicopter. DNR shall consult with CFPD#1 to address concerns regarding coverage.

Secondary areas of operation may include other DNR bases and airports within the State of Washington, as a contingency for fire emergency. If the aircraft, crews, and support are requested by DNR to move, DNR will determine a reasonable time for relocation and will not count toward unavailability.

- (5) CFPD#1 shall adopt and DNR will implement DNR's established and documented safety program as part of its operating procedures. All CFPD#1's personnel operating under this Agreement shall utilize DNR's established procedures for notification and documentation of potential safety issues.

5. Agreement Term and Exclusive Use Period of Performance

- (1) The Agreement is effective on the **last date signed** by every party hereto, and shall expire **one calendar year** from the effective date, unless terminated sooner as provided in this Agreement, or extended through a properly signed Amendment prior to the expiration date.

The term of the Agreement may be extended for up to two annual calendar years by mutual agreement of the parties. The maximum duration of the Agreement, including all extensions, shall not exceed five years.

- (2) The Exclusive Use Period of Performance of this Agreement shall begin on **August 10, 2017** and end on **October 15, 2017**; which may be amended or extended during the term of the Agreement through a properly signed Amendment prior to the expiration date.
- (3) Federal approval to utilize the aircraft, fuel truck and personnel are solely for the DNR and will not be utilize by CFPD#1 at any time.

DNR will notify the CFPD#1 at least five full days prior to the start date and CFPD#1 will ensure the aircraft, and support are in place and operational no later than the 1st day of the Exclusive Use Period of Performance predetermined start time. Thereafter, the aircraft and personnel shall be held in readiness for takeoff upon five minutes notice during the standby period.

CFPD#1's Aircraft and DNR's personnel shall be available to provide coverage for seven days per week. Standby status will be for fourteen consecutive hours per day. Daily times of availability shall be determined by DNR. The daily standby period may be extended up to a maximum of fourteen duty hours per day. If the daily standby period is extended, DNR shall provide for pilot and support personnel time.

Availability requirements shall be deemed satisfied for the day when a pilot has flown the maximum allowable flight hours for that day outlined by the USFS regulations for crew rest mandate.

6. Compensation and Payment

- (1) Amount of Compensation: Total compensation including expenses payable to CFPD#1 for satisfactory performance of the work under this Agreement shall be as outlined in Attachment B – Financial Agreement.

DNR shall pay CFPD#1 a daily availability rate to assure aircraft availability plus flight time at an hourly rate. DNR shall maintain records of availability with detail sufficient for DNR to determine accuracy of CFPD#1's services. These rates are outlined in Attachment B-Financial Agreement.

DNR shall transport the aircraft, support vehicles, equipment, supplies, and personnel to the base of operation at no cost. If DNR expends labor and time to position the aircraft, it shall be at no cost to CFPD#1.

DNR reserves the right to change the primary base of operation from preplanned location to a different location in Washington, at no charge to CFPD#1. DNR will be responsible for all costs of lodging, meals, and any costs for DNR personnel while stationed at the primary base of operations as outlined in Attachment B-Financial Agreement. If CFPD#1 personnel are operating/utilizing the aircraft for training or as a certified crewmember, then CFPD#1 shall be responsible for all costs of lodging, meals, and any costs associated with their human support. DNR will provide landing and aircraft parking space and will be responsible for any airport fees.

CFPD#1 agrees that when the aircraft does not meet the availability requirements, the aircraft will be considered unavailable and no daily availability payment will be made. The unavailability rates will be calculated and prorated as indicated in Attachment B – Financial Agreement.

On days when the aircraft is flown, DNR will be responsible for recording:

- Flight date
- Agreement number/name
- Aircraft registration
- Aircraft number
- Incident number and name
- Name of pilot
- Location from which flight for the day commenced, and beginning time
- Location at which flight for the day ended, and time flight ended
- Gallons of retardant or foam delivered per fire
- Daily Availability and Flight rate

Flight time shall be logged daily and turned in daily to be acknowledged by DNR's Aviation Program Manager through Helicopter Daily Use and Cost Summary (HCM-15 see Exhibit 1). Such flight logs shall be the basis for payment for flight time and daily availability.

Compensation for flight time will be paid at the agreed upon flight rate in Attachment B – Financial Agreement. Flight time will be measured in hours and tenths, and will begin when the aircraft starts its takeoff run on an ordered flight and ends when the aircraft has taxied to the parking or loading site upon landing. No flight time will be paid for loading, refueling or warm-up operations. All flights will be recorded on a Helicopter Daily Use and Cost Summary (HCM-15 see Exhibit 1) with start and stop times recorded and converted to hours and tenths. Known distance flown and known speed of aircraft will be used as a basis to determine that flight time is reasonable. No payment will be made for unreasonable flight time, as reasonably determined by DNR's Aviation Program Manager.

DNR may conduct routine maintenance during the availability period and the availability charged to DNR shall be pro-rated as a percentage of the day it was available to fly missions. Preventative maintenance that will enhance safety and availability for operation is allowed during the availability period. If preventative maintenance performed exceeds the five minute response-time requirement, no penalty towards unavailability will occur unless a dispatch is received.

If DNR removes the aircraft from on-duty or standby status for unscheduled maintenance, DNR shall annotate the removal and loss of revenue due to the maintenance on the Helicopter Daily Use and Cost Summary (HCM-15 see Exhibit 1) for that day. Availability will continue to be measured and paid throughout this period, but shall be pro-rated based on percentage of availability during the day. During periods of approved maintenance, the aircraft must be airborne within sixty minutes from the time of dispatch orders. Failure to meet this requirement may result in a determination that the aircraft is unavailable. DNR's Aviation Program Manager and Helicopter Coordinator must be notified of maintenance conducted and the resulting flight condition and or restrictions prior to its return to service.

- (2) Invoices: Payment for services rendered shall be payable when the CFPD#1 submits properly completed invoice vouchers based on DNR provided cost sheets (HCM-15 see Exhibit 1). Invoices shall include information necessary for the DNR to determine the exact nature of all expenditures and shall identify all equipment and personnel for whom compensation is sought (if any), the amount of hours billed, and the rate of compensation. The rate of compensation shall not exceed the amount agreed to as outlined in Attachment B – Financial Agreement. Each invoice will clearly indicate that it is for the services rendered in performance under this Agreement. Requests for payment shall be submitted to the DNR Aviation Program Manager and Finance Department.

- (3) **Time of Payment:** Payment is timely if DNR pays within 30 days after receiving properly completed invoice vouchers. The CFPD#1 can invoice when each deliverable has been reviewed and accepted by the DNR Aviation Program Manager. DNR will send payments to the address designated by the CFPD#1. The DNR may terminate the Agreement or withhold payments claimed by the CFPD#1 for services rendered if the CFPD#1 fails to materially comply with any term or condition of this Agreement following notice and opportunity to cure. DNR will process and make payment for CFPD#1.
- (4) **Invoices:** Invoices shall be processed and paid on a bi monthly basis as long as the invoices are submitted correctly in a timely manner.
- (5) **Expenses:** No additional costs or expenses are allowable. All costs and expenses associated with the CFPD#1 fulfilling the terms and conditions of the Agreement are included in the amount of payment stated in this section and Attachment B – Financial Agreement.
- (6) **Biennial Closures:** Under biennial closing procedures, the CFPD#1 must submit all invoices and/or billings for services or material supplied under this Agreement through **June 30, 2018**, to DNR no later than **July 10, 2018**. If DNR does not receive properly completed invoices for work completed through June 30, 2018 by July 10, 2018, a considerable delay in payment may result.

7. Federal Sub-Agreement

When DNR is passing federal funds to the CFPD#1, the CFPD#1 will be considered a "sub-contractor" and shall ensure compliance with the most up-to-date applicable federal laws, rules and regulations in order to carry out the terms and conditions of this agreement. DNR will serve as consultant and manage the regulatory mandates required by federal law. CFPD#1 will be responsible for all costs associated with federal compliance of the aircraft. The CFPD#1 may obtain a copy of the federal agreement governing this Agreement by contacting the DNR Aviation Program Manager.

8. General Insurance Requirements

At all times during the term of this Agreement, the CFPD#1 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's Reports unless otherwise approved by DNR. Any exception must be reviewed and approved by the DNR Risk Manager or, in the absence of Risk Manager, the DNR Agreements Specialist, before the Agreement 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, CFPD#1 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 this Agreement. No sub-contracting for this aircraft shall be executed while operating under this agreement regardless of insurance coverage.

All insurance provided in compliance with this Agreement shall be primary as to any other insurance or self-insurance programs afforded to or maintained by DNR. CFPD#1 waives all rights against the State of Washington, 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 accordance with the following specifications.

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

By requiring insurance herein, DNR does not represent that coverage and limits will be adequate to protect CFPD#1, and such coverage and limits shall not limit CFPD#1's liability under the indemnities and reimbursements granted to DNR in this Agreement.

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: CFPD#1 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 CFPD#1s, products-completed operations, personal injury and advertising injury, and liability assumed under an insured Agreement (including the tort liability of another assumed in a business Agreement), and contain separation of insureds (cross liability) conditions.

- (2) Employers Liability (Stop Gap) Insurance: If CFPD#1 shall use employees to perform this Agreement, CFPD#1 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:** CFPD#1 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 mutual liability coverage and cover a “covered pollution cost or expense” as provided in the 1990 or later editions of CA 00 01. CFPD#1 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:** CFPD#1 shall comply with all State of Washington workers compensation statutes and regulations. Workers’ compensation coverage shall be provided for all employees of CFPD#1. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Agreement. Except as prohibited by law, CFPD#1 waives all rights of subrogation against the DNR for recovery of damages to the extent they are covered by workers’ compensation, employer’s liability, commercial general liability or commercial umbrella liability insurance.

CFPD#1 shall indemnify DNR for all claims arising out of CFPD#1’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 CFPD#’s employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to DNR by CFPD#1 pursuant to the indemnity may be deducted from any payments owed by DNR to CFPD#1 for performance of this Agreement.

- (5) **Aviation Liability Insurance:** CFPD#1 shall maintain aviation liability insurance with coverage for bodily injury and property damage arising out of the use or ownership of the aircraft, including passengers and crew, with a limit of not less than \$2,000,000 per occurrence. The State of Washington, Department of Natural Resources shall be listed as an additional insured by the endorsement for aviation liability insurance.

9. Specific Requirement to Maintain Federal Certification

CFPD#1 specifically acknowledges an obligation to empower DNR as its agent, at all times during the term of this Agreement and any extensions hereto, to fully and continuously maintain approval of the United States Forest Service and the United States Department of Interior equipment and operational requirements that resulted in federal Letter of Approval, File Code 5700, dated June 26, 2015. DNR shall coordinate inspection by the USFS of the aircraft and maintain awarded cooperator letters granted from the inspection. CFPD#1 shall empower DNR as its agent to be responsible for obtaining and continuing throughout the term of this Agreement all

licenses, permits, and inspections for all pilots and aircraft under the Agreement, as required by law and regulations duly promulgated under law.

These shall include, but not be limited to, various FAA licensing and regulations for each aircraft and pilot. All aircraft, pilots, personnel and equipment must meet and be in compliance with all requirements mentioned in DNR's awarded USFS cooperator letters and with all applicable requirements of the Washington State Department of Transportation, Aviation.

10. Amendments

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

11. Assignment

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the CFPD#1 without prior written consent of DNR.

12. Limitation of Authority

Only the agent delegated in advance prior to action shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by the party's agent.

13. Force Majeure

Neither DNR nor CFPD#1 shall be responsible for delay or default caused by an unallocated risk, such as fire, riot, acts of God, war, or any other cause which is beyond the party's reasonable control. Parties shall, however, make all reasonable efforts to remove or eliminate such causes of delay or default, and shall diligently pursue performance of their respective obligations under this agreement. DNR and CFPD#1 may terminate the Agreement upon written notice after reasonably determining that such delay or default will likely prevent successful performance of the Agreement.

14. Project Managers

- (1) The Project Manager for CFPD#1 is Mike Burnett, mburnett@chelancountyfire.com, (509) 264-0402 (cell), (509) 662-4734 (desk).
- (2) The Project Manager for DNR is Michael Cuthbert, michael.cuthbert@dnr.wa.gov, 360-902-1736 (desk), 360-867-3275 (cell).

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.

COUNTY OF CHELAN
FIRE PROTECTION DISTRICT #1

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES



8-15-17

Signature

Date



8/13/17

Signature

Date

Mike Burnett

Name

Megan Duffy

Name

Fire Chief

Title

Department Supervisor

Title

**P.O Box 2106
Wenatchee, WA 98007**

Address

**1111 Washington Street SE, MS 47001
Olympia, WA 98501-7001**

Address

(509) 264-0402

Telephone

(360) 902-1034

Telephone

FTIN:
UBI Number:

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