

RESOLUTION NO. 2936

RESOLUTION AUTHORIZING THE MAYOR TO SIGN A NINE-PAGE JOINT
OPERATING AGREEMENT WITH YAKIMA COUNTY FIRE PROTECTION
DISTRICT NO. 2

WHEREAS, the City desires to replace the preexisting written agreement between the City's Fire Department and Yakima County Fire Protection District No. 2 with a new nine-page agreement – labeled Joint Operating Agreement; and

WHEREAS, the terms of the proposed new agreement are acceptable to City staff;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, that the Mayor be and is authorized to sign the new nine-page Joint Operating Agreement in the form appended hereto.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 23rd day of August, 2022.

Sherry Raymond
Sherry Raymond, Mayor

ATTEST:

Dale E. Novobielski
Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:

Rob Case
Rob Case, City Attorney

JOINT OPERATING AGREEMENT

**CITY OF SELAH
AND
YAKIMA COUNTY FIRE PROTECTION DISTRICT NO. 2**

1. PARTIES:

1. City of Selah, a non-chartered code city, "City" hereafter.
2. Yakima County Fire Protection District No. 2, "District" hereafter.

2. RECITALS:

2.1 This agreement is entered into by the City under the authority of RCW 35A.11.040 and the District under the authority of RCW 52.12.031 and in conformity of RCW 39.34, the Interlocal Cooperation Act.

2.2 The City has maintained a fire department and has been rendering fire protection and emergency aid services inside and outside its corporate limits in conjunction with the District.

2.3 The District has maintained a fire department and has been rendering fire protection and emergency aid services inside and outside its corporate limits in conjunction with the City.

2.4 The City and District have had between them written agreements regarding fire protection services up to the present and both agencies now desire to clarify and change the respective duties and obligations of the parties herein.

2.5 In the best interests of the City and the District they established a Joint Operating Agreement executed on November 29, 2017, to govern the operation of the fire department and set forth the duties and obligations of the parties herein.

2.6 The term "fire department" or "department" refers to the organization, equipment, and personnel necessary to provide fire protection and emergency aid services both inside and outside the corporate limits of each party.

3. AGREEMENT:

3.1 Membership. The parties agree to establish a Joint Fire Board, "Joint Board" hereinafter, for the purpose of overseeing the operation of the fire department in carrying out the objectives provided for in this agreement and to ensure that the mission of each party to provide fire protection and emergency medical services is accomplished. The Joint Board shall consist of the City Mayor or the Mayor's designee, and the Chairman of the District Commissioners or the Chairman's designee from the Commissioners of the District.

3.2 Authority. The Joint Board shall implement the terms and conditions of this agreement. Neither the City or the District shall have the authority to modify or revise the terms of this agreement on their own, nor shall either party have the authority to incur financial liabilities or obligations on behalf of either party to this agreement, except as provided by this agreement. In the event the Joint Board is unable to achieve a majority vote on a matter reasonably necessitating a decision and action on such matter, then such unresolved matter or matters shall be referred to each party.

3.3 Meetings. The Joint Board shall meet annually during budget preparation, and as needed. The time and place for the meetings shall be established by the Joint Board. A quorum of the Joint Board shall consist of each representative present for each of the parties to this agreement. Actions of the Joint Board shall require the affirmative vote of both members of the Joint Board. The City or the District shall provide a secretary to the Joint Board who shall take minutes of the Joint Board meetings and provide such other secretarial services as may be required by the Joint Board.

4. SERVICES:

4.1 The City, in association with the District, shall provide the following services within the boundaries of the City including any areas that may be annexed to the City during the term of this agreement:

1. Fire Suppression Services
2. Emergency Medical Services (EMS)
3. Fire Prevention Education Services
4. International Fire Code Inspection Services
5. International Fire Code Pre-Application Review
6. Fire Investigation Services

4.2 The District, in association with the City, shall provide the following services within the boundaries of the District including any areas that may be annexed to the District during the term of this agreement:

1. Fire Suppression Services
2. Emergency Medical Services (EMS)
3. Fire Prevention Education Services
4. Assist County Fire Marshall in International Fire Code Inspections
5. Assist County Fire Marshall in Fire Investigation Services

4.3 Fire and EMS Services. Fire suppression and emergency medical services shall be provided to each party. Neither party assumes the liability for failure to provide such services by reason of circumstances beyond that party's control. In the event of simultaneous fire or medical aid calls within the City and District resulting in the resources of the Department being taxed beyond its ability to render equal protection, the officers and agents of the Department shall determine how to allocate the resources of the Department.

4.4 Education Services. Fire Protection Education Services shall be provided to each party, to include programs in schools, public and private groups.

4.5 Inspection Services. The City, in association with the District, shall conduct a Fire Prevention Inspection Program in compliance with the provisions and guidelines of the International Fire Code. All costs associated with the enforcement of the International Fire Codes, within the City, shall be borne by the City.

4.6 Fire Investigation Services. The Fire Chief or their designee shall be responsible for the investigation of fires within the City and maintain cooperation with the County Fire Marshall and any other investigative agency for fires in the District.

4.7 Contracts, Agreements. Both the City and the District shall continue to comply with all existing contracts and mutual aid agreements to which the respective parties are signatory.

4.8 Services to the Public. For the purpose of providing efficient services, the parties shall implement the facilities, equipment and personnel into one Department known as the "Selah Fire Department."

5. FUNDING:

5.1 The City agrees, each year, to levy, collect and provide for operation of the Department a public safety utility tax and an ad valorem tax of the assessed valuation of the City of the current year property tax levy and in addition all funds received for providing fire protection to County, State and Federal properties within the City of Selah.

5.2 The District agrees, each year, to levy, collect and provide to the City, for operation of the Department an ad valorem tax, up to the maximum allowable levy amount per \$1,000 of assessed valuation of the District, in accordance with the Revised Code of Washington 84.52.050. The funds, together with the funds collected by the City pursuant to the immediately preceding paragraph herein (minus the funds retained by the District) shall constitute the Joint Budget as referred to herein. The District Fire Commissioners shall be allowed to retain a portion of the amounts levied and collected, referred to above, for the purpose of maintaining the operation of their offices, and capital improvements to District facilities. The Fire District Commissioners shall be responsible for accounting for the use of the funds retained by the District.

5.3 The formula used to calculate the City and Districts' portion of the Joint Budget shall be the combined 3-year average of the percentage of population, and call volume.

Example:

City					
	2014	2013	2012	3-year average	
Population	7340	7290	7205	7278	38.9%
	2013	2012	2011		
Call Volume	584	514	527	542	44.3%

Share of Fire Department Budget	41.6%
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6. JOINT OPERATING BUDGET:

6.1 Budget. The Fire Chief shall propose and present a Joint Budget for the Department, based on funds projected to be deposited or transferred to Fund number 103 - Fire Control and Fund number 150 - Equipment Reserves, to the City Administrator or their designee and the Fire Commissioners of the Fire District, in accordance with the BARS manual by October 15th of each respective year, itemizing operations, programs and capital purchases which mutually benefit the combined jurisdictions represented. The Fire Chief shall then present the proposed budget to the Joint Board at the annual November meeting for the purpose of recommending the approval or disapproval of the Joint Budget. Upon approval of said Joint Budget, the Joint Board shall recommend its approval to each party for approval by November 20th of each year.

6.2 Budget Accounting. The City on behalf of the Joint Board shall have the responsibility for fiscal accounting to the Washington State Auditor on behalf of both parties for the Joint Budget. The District shall have the responsibility for fiscal accounting to the Washington State Auditor for matters relating to the funds which the District retains for operations of the office pursuant to paragraph 5.2 above.

6.3 Reserve Funds. Reserve funds shall be established as needed, for property, facilities, apparatus and equipment. All unexpended revenues, donations and unanticipated revenues will be placed in a reserve fund controlled by the City. As of the date of this agreement, the Department fund numbers and titles are as follows:

<u>Fund Number</u>	<u>Title</u>
103	Fire Control
150	Fire Equipment Reserve
153	EMS Equipment Reserve
303	Fire Building Reserve

7. PROPERTY OWNERSHIP:

7.1 Joint Ownership. It is also understood that all equipment purchased after the "Contract for Fire Prevention and Protection," August 8, 1966, City Ordinance No. 357 and the revision, October 28, 1980, City Resolution 589, are jointly owned by the parties; however, all property, apparatus and equipment purchased in its entirety by either party before or after this agreement shall, in the event of termination of this agreement, remain the sole property of the purchasing party. In the event it cannot be determined who was the "purchasing party," the parties agree that those apparatus, equipment, and property purchased to the date of this agreement and not listed on Schedule "A" shall be divided by their value on the date of termination in a ratio equal to the percentage of the amount paid by each party. An up-to-date list of property (herein referred to as Schedule "A") will be made available to the parties each year for consideration in their budget cycle.

7.2 Salvage Funds. All funds recovered by the sale or salvaging of any properties, facilities or equipment shall be applied to the cost of replacing said equipment or placed in the equipment reserve funds, Funds No. 150 and 153, for future purchase of equipment and need not necessarily replace like equipment.

7.3 Maintenance. The cost of maintenance and repair of all properties, facilities, vehicles and equipment shall be paid for by funds from the Joint Budget.

8. PERSONNEL:

8.1 Personnel. All employees of the Department shall be employees of the City. The employees of the Department are not employees of the District. The City shall fill all full-time, and part-time positions as approved in Joint Budget. The Fire Chief and/or their designee shall have the responsibility to fill all volunteer positions within the Department. The Mayor of the City and/or their designee shall have direct supervisory and evaluation responsibilities of the Fire Chief subject to paragraph 8.3 below. The City shall also oversee other employment and related matters for the Department, including but not limited to layoffs, suspensions, demotions, termination of employment and other sanctions. All full-time Department employees of the City shall serve at the pleasure of the Mayor, subject to the provisions regarding the Fire Chief in paragraph 8.3 below. All full-time department employees, including the Fire Chief, are subject to City of Selah personnel rules and regulations, Fire Civil Service regulations or, if the employee is a union member, the collective bargaining agreement. All volunteer members are considered "at will" and have no property right in any position held. The Fire Chief and/or their designee shall have direct supervisory and evaluation responsibilities for volunteer members.

8.2 Fire Chief. The Selah Fire Chief shall serve as Fire Chief for both the City and District and shall act to implement the policies and resolutions of the City and the District.

8.3 Fire Chief Position, Hiring and Firing. The parties recognize that the position of Fire Chief is an extremely important position and acknowledge that it is in the best interest of the parties herein to have employed as Fire Chief the most qualified individual. In the event of a vacancy in the position of Fire Chief, the parties agree that the position shall be filled by the joint efforts of the City and the District. The Mayor of the City of Selah shall have the authority to appoint the Fire Chief, but only with the agreement of a majority vote of the entire Fire District Commissioners Board. In the event that the Mayor and the Fire District Commissioners Board cannot agree on an individual to fill the position (and only after 120 days have passed since the Mayor informed the Board in writing of their choice for the position) either party may require binding arbitration to determine who shall fill the position. The arbitrator shall base the decision on who is the "best qualified individual for the position." The Mayor shall also oversee other employment and related matters for the Fire Chief, including but not limited to, layoff, suspension, demotion, termination of employment and other sanctions, but only with the agreement of a majority vote of the Fire District Commissioners Board. In the event that the Mayor and the Fire District Commissioners Board cannot agree on the termination of the Fire Chief (and only after 30 days have passed since the Mayor informed the Board in writing of their choice to terminate the employment of the Fire Chief) either party may refer the matter to binding arbitration to determine whether termination is justified under the then existing City of Selah employee rules and regulations and the Fire Civil Service regulations. If the parties cannot agree to a single arbitrator, then the matter shall be referred to three arbitrators, one to be appointed by each party, and the third to be appointed by the other two arbitrators. The arbitrators' decision shall be final and binding, and the arbitration shall be in accordance with the rules adopted by the arbitration service. The Mayor of the City of Selah shall have the authority to appoint an Interim Fire Chief in the event of a vacancy in that position with the agreement of majority vote of the Fire Commissioner's Board.

8.4 Location and Use of Personnel and Equipment. The Fire Chief shall have full authority and responsibility for the location and use of equipment owned by the City and the District. The Fire Chief shall also have full authority and responsibility for the assignment of personnel, provided that the assignment of personnel is consistent with the job descriptions adopted by the City. Each party agrees that its equipment may be used in aid of the other and will be operated as the resources of this Department.

9. INSURANCE:

9.1 Liability Insurance. All liability insurance will include Omission and Errors Coverage for the Department, Fire District Commissioners and any related Department functions or activities. Cost of the insurance will be provided for in the Joint Budget referred to in paragraph 6.1 above and purchased through the City's insurance package. The limits of the liability insurance shall be determined by the City and the District, and each party agrees to bear responsibility for any uninsured liability incurred in the joint operation of the Department.

9.2 Property Insurance. The City agrees to provide property insurance coverage, under the City's insurance package, for all Department, facilities, apparatus and equipment. The premiums for said property insurance coverage shall be paid for through the Joint Budget.

9.3 Named Insured. The City and the District shall be named on the insurance policies as their interest may appear.

10. NOTICES:

10.1 All notices, requests, demands and other communications required by this agreement shall be in writing and, except as expressly provided elsewhere in this agreement, shall be deemed to have been given at the time of delivery if personally delivered, or at the time of mailing if mailed by first class, postage prepaid, and addressed to the party at its address as stated in this agreement or at such address as any party may designate at any time in writing.

11. SEVERABILITY:

11.1 If any provision of this agreement or its application is held invalid, the remainder of this agreement and its application shall not be affected.

12. MODIFICATION:

12.1 This agreement represents the entire agreement between the parties. No changes, termination or attempted waiver of any of the provisions of this agreement shall be binding on either of the parties unless executed in writing by authorized representatives of each of the parties. The agreement shall not be modified, supplemented, or otherwise affected by course of dealings between the parties.

13. ACQUISITION:

13.1 Acquisition and sale of properties, facilities, and capital inventory. All future purchases of properties, facilities and capital inventory items from the Joint Budget will be jointly controlled.

14. BENEFITS:

14.1 This agreement is entered into for the benefit of the parties of this agreement only and shall confer no benefits, direct or implied, on any third persons.

15. DISPUTE RESOLUTION:

15.1 Prior to the use of the arbitration procedures listed herein, the parties agree, in the event of a dispute between the parties, to call a joint meeting of the City Council and the Fire District Board in an effort to resolve the dispute.

15.2 In the event a dispute cannot be resolved by the joint meeting procedure, it is hereby agreed that the dispute shall be referred to binding arbitration. The arbitrator selection shall be the same procedure as listed in paragraph 8.3 above.

15.3 In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award or fails to comply with the arbitrator's award, the other party is entitled to costs of suit including a reasonable attorney's fee for having to compel arbitration or defend or enforce the award.

16. TERMINATION:

16.1 Termination. Either party may terminate this agreement by notification to the other party in writing twenty-four (24) months in advance of the termination date.

16.2 Ownership of Property. On termination the parties agree that each party shall retain the equipment and real property owned by each party as described on Schedule "A".

16.2a Parties agree that all property acquired to the date of this agreement shall be divided pursuant to the provisions of paragraph 7.1 of this agreement.

16.2b Fire Station at North Third Street and West Fremont Avenue, Project 920601. The valuation of the improvements to real property shall be in ratio to the funds contributed by each party through Fund No. 150 and 303.

16.2c As to all other equipment and apparatus purchased subsequent to the date of this agreement, it shall be divided in ratio to the funds contributed by each party from the effective date of this agreement until the termination date.

16.2d Property shall be divided based upon the contributions of each party and shall be valued at its market value on the date of terminations.

16.2e Apparatus and equipment shall be divided, to the extent possible, in such manner that each party received equipment and apparatus necessary for the practical operation of each fire department.

17. TERM:

17.1 Effective Date:

17.2 Duration of Agreement. This agreement shall continue unless terminated in the manner specified above.

18. AMENDMENT TO AGREEMENT:

18.1 This agreement may be amended or modified by the joint decision of both parties.

19. MERGER:

19.1 All prior agreements of the parties are merged into this agreement and this agreement shall supersede any prior written or oral agreements between the parties.

EXECUTED this 23 DAY OF AUGUST, 2022

CITY OF SELAH

YAKIMA COUNTY FIRE PROTECTION
DISTRICT No. 2

By Sherry Raymond
Mayor Sherry Raymond

By Brad Helms
Commissioner Chairman Brad Helms

ATTESTED:

By Dale Probst
City Clerk/Treasurer