

Exhibit H

USE AGREEMENT

(paragraph 7.1)

CITY OF MOUNTLAKE TERRACE FIRE STATION USE AGREEMENT WITH SNOHOMISH COUNTY FIRE PROTECTION DISTRICT NO. 1

THIS USE AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into this 13th day of January, 2005, by and between the CITY OF MOUNTLAKE TERRACE (hereinafter referred to as the "City") and Snohomish County Fire Protection District No. 1 (hereinafter referred to as the "District").

ARTICLE I

Recitals

- 1.1 **PRELIMINARY STATEMENT:** This Agreement is made with reference to the following facts:
- a. The parties hereto have entered into an Interlocal Agreement for Fire and Emergency Medical Services dated January 13, 2005 (hereinafter referred to as the "Interlocal Agreement");
 - b. The City is the owner of certain real property in Mountlake Terrace, Washington which has been used as a fire station by the City (the "Premises"); and
 - c. The Interlocal Agreement calls for the City to allow the District to use the Premises as a fire station during the term of the Interlocal Agreement.
- 1.2 **DEFINED TERMS:** The following terms shall have the meanings specified in this Article, unless otherwise specifically provided herein. Other terms may be defined in other parts of this Agreement.

<u>City:</u>	City of Mountlake Terrace
<u>City's Address:</u>	23204 – 58 th Avenue West Mountlake Terrace, WA 98043
<u>District:</u>	Snohomish County Fire Protection District No. 1
<u>District's Address:</u>	12310 Meridian Avenue Everett, WA 98208
<u>Description of Premises:</u>	Fire Station 19
<u>Description of Building:</u>	The building which is located at 23204 58 th Ave W., Mountlake Terrace, Washington

Use of Premises: Fire Station

Exhibits: Exhibit "A" – Legal Description of Premises
Exhibit "B" – Map of Premises

The above-described exhibits are attached to this Agreement and by this reference are made a part hereof.

Term: Concurrently with the Interlocal Agreement

ARTICLE II

Premises and Term

- 2.1 **PREMISES:** In consideration of the Interlocal Agreement, the City hereby grants to the District exclusive use and possession of the Premises on the terms and conditions herein.
- 2.2 **TERM:** The term of this Agreement shall run concurrently with the Interlocal Agreement.

ARTICLE III

Charges and Utilities

- 3.1 **USE CHARGE:** No use charge shall be assessed to the District. The parties agree that the rights and contractual obligations contained within the Interlocal Agreement constitute adequate consideration for the District's use and possession of the Premises.
- 3.2 **UTILITIES AND SERVICES:** The District shall be responsible for the cost of all utilities used on the Premises, except for those utilities supplied by the City. If a separate meter is unavailable for any utility which the District is responsible to pay, then the cost shall be equitably apportioned to the District in a manner agreeable to both parties.
- 3.2.1 The City will ensure the supply of all utilities necessary for the Use of the Premises, which shall include: water, sewer, garbage, heating, air conditioning, electrical power, and telephone.

ARTICLE IV

Use of Premises, Condition of Property, Improvements, Removal of Property, Maintenance, and Utilities

- 4.1 **LESSEE'S USE OF THE PREMISES:** District shall be entitled to use the Premises as a fire station.
- 4.2 **CONDITION OF PREMISES:** The City agrees to keep the Premises and the Building in good condition and repair as reasonably requested by the District for use as a fire station during the term of this Agreement, at its own expense. The

City shall, at all times, keep the Building suitably equipped as fully functioning and operational fire stations.

- 4.3 **IMPROVEMENTS:** Upon the District's request, the City shall install such improvements as are normal and customary in connection with the District's Use of Premises set forth herein. The City shall pay for such improvements.
- 4.3.1 Both parties recognize that the current Station 19 Building is inadequate, and the City has agreed to address this issue on or before March 27, 2006 as set forth in Article 7 of the Interlocal Agreement. When completed, the replacement or remodeled fire station shall be deemed the "Premises" under this Lease.
- 4.3.2 As of the date of this Agreement, firefighters occupy a temporary trailer at the site of Station 19. In the event that the City does not have an occupancy permit for the new or remodeled fire station on or before March 27, 2006, the City agrees to be responsible for all fines/penalties assessed by the Washington Department of Labor & Industries relating to the District's continued use of the temporary trailer. In the event of such citation, the District may relocate its personnel until such time as the District can occupy the new or remodeled fire station.
- 4.4 **REMOVAL OF PERSONAL PROPERTY:** The District shall remove all non-fixed equipment and personal property placed upon the Premises by the District during the period of this Agreement. Any property not removed from (i) Station 18 within 60 days after the termination of this Agreement or (ii) Station 19 within 60 days after the District's vacation of that facility shall revert to, and become the property of, the City.
- 4.5 **MAINTENANCE OF PREMISES:** Maintenance of the Building, the Premises and all improvements thereon is the sole responsibility of the City. Such responsibility includes without limitation, repair of walls, floors, ceiling, interior doors, interior and exterior windows and fixtures, sidewalks, landscaping, driveways, parking areas, walkways, building exterior and signs.
- 4.5.1 City shall maintain in good condition the structural parts of the Building which shall include the foundation, bearing and exterior walls, subflooring and roof, the unexposed electrical, plumbing and sewerage systems, including those portions of the systems lying outside the Premises, exterior doors, window frames, gutters, downspouts on the Building and the heating, ventilating and air conditioning system servicing the Premises.
- 4.5.2 All janitorial services for routine cleaning of the Building shall be the responsibility of the District.

ARTICLE V

Insurance and Financial Security

5.1 **CASUALTY LOSS:** The parties hereto agree that the City shall not be responsible to the District for any property loss or damage done to the District's personal property occasioned by reason of any fire, storm or other casualty whatsoever beyond the control of the City. The District shall insure its personal property located on the Premises.

5.1.1 The District shall not be responsible to the City for any loss or damage to the Buildings or Premises which is not caused by the sole negligence of the District. The City shall insure the Premises and Buildings against such loss or damage. The District shall repair any damage to the Buildings caused by its sole negligence.

5.1.2 In the event of a casualty which renders the Premises reasonably unsuitable for the Use set forth herein, then the City shall provide the District with another suitable location for the District until such time as the Premises have been repaired. The cost of repairs, and the costs of relocation between the Premises and the substitute location, shall be borne by the City.

ARTICLE VI

Environmental Liability

6.1 **INDEMNIFICATION FOR ENVIRONMENTAL CLAIMS:** Each party shall indemnify and hold the other party harmless from any and all claims, demands, judgments, orders, or damages resulting from the release of Hazardous Substances on the Premises caused in whole or in part by the activity of the indemnifying party, its agents, employees, licensees or invitees. The term "Hazardous Substances," as used herein, shall mean any substance heretofore or hereafter designated as hazardous under the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1257 et seq.; the Clean Air Act, 42 U.S.C. Sec. 2001 et seq.; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et. Seq.; or the Hazardous Waste Cleanup-Model Toxic Control Act, RCW 70.105D all as amended and subject to all regulations promulgated thereunder.

ARTICLE VII

Miscellaneous Provisions

7.1 **INDEMNIFICATION AND HOLD HARMLESS:** Each party agrees to protect, save, defend, hold harmless and indemnify the other party, its officers, employees and agents from any and all demands, claims, judgments, or liability for loss or damage arising as a result of accidents, injuries, or other occurrences on the Premises, occasioned by either the negligent or willful conduct of the indemnifying party, regardless of who the injured party may be.

7.2 **ASSIGNMENT OF AGREEMENT:** The District may not assign this Agreement, except to an entity who assumes the obligations of the District under the Interlocal Agreement.

7.3 **TERMINATION:** Upon termination of this Agreement or any extension thereof, whether by expiration of the stated term or sooner termination thereon as herein provided, District will surrender to City the Premises peaceably and quietly.

7.4 **DEFAULT AND REMEDIES:** Failure of the City to perform repairs or maintenance to the Building or Premises within a reasonable period after notice by the District shall constitute a breach under the terms of this Agreement. For purposes of this Agreement, a reasonable period shall be construed to mean five (5) days.

7.4.1 Notwithstanding anything to the contrary, if the nature of the repair constitutes a situation which materially affects the District's use of the Premises or Building, the City shall perform the repair no later than forty-eight (48) hours after receiving notification from the District.

7.4.2 If the City fails to timely perform the repair or maintenance after notification, the District may have such repair or maintenance performed at the City's expense. The cost of the repair or maintenance shall be forwarded to the City, which shall pay the cost within thirty (30) days after notice. Notwithstanding anything to the contrary, the City shall not be in breach of any repair or maintenance obligation herein if the repair cannot be completed within the time set forth herein so long as the City is diligently pursuing completion of the repairs.

7.5 **NOTICES:** All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

The District:

Snohomish County Fire Protection District No. 1
Attention: District Secretary
12310 Meridian Avenue
Everett, WA 98208

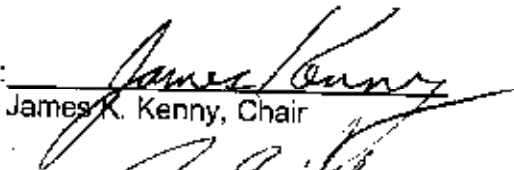
The City:

City of Mountlake Terrace
Attention: City Manager
23204 – 58th Avenue West
Mountlake Terrace, WA 98043


7.6 **SUCCESSORS AND ASSIGNS.** This Agreement is binding on the successors and assigns of the parties hereto.

Signed this 13th day of January, 2005.

**SNOHOMISH COUNTY FIRE PROTECTION
DISTRICT NO. 1**

By: 
James R. Kenny, Chair

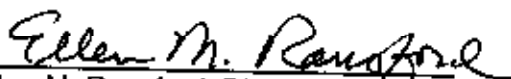
By: 
Charles E. Graham, Vice Chair

By: 
Brian S. McMahan, Commissioner

By: 
Joan E. Miller, Commissioner

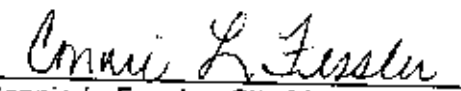
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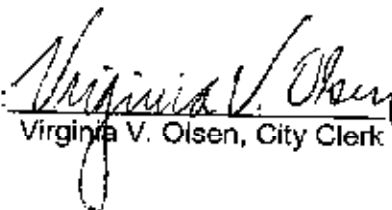
By: 
Lawrence Hadland, Commissioner


Ellen M. Ransford, District Secretary

Signed this 13th day of January, 2005.

CITY OF MOUNTLAKE TERRACE

By: 
Connie L. Fessler, City Manager

Attest: 
Virginia V. Olsen, City Clerk