

EQUIPMENT USE AGREEMENT

This Agreement dated December 11, 2012 is entered into between PROSSER FIRE DISTRICT No. 3, a municipal corporation, "District" and CITY OF SUNNYSIDE, a municipal corporation "City."

RECITALS

1. The District owns the specialized HazMat equipment identified in Exhibit A "Equipment" and HazMat consumables identified in Exhibit B "Consumables."
2. The City Fire Department has the necessary personnel trained to provide HazMat services and has a need for the Equipment and Consumables.
3. The District and the City are authorized to enter into this interlocal agreement pursuant to RCW 39.34.

AGREEMENT

To carry out the purposes of this Agreement and in consideration of the benefits to be received by each party, it is agreed as follows:

1. **Equipment and Consumable Use.** The District agrees to allow the City to possess and use the Equipment and Consumables during the term of this agreement subject to the requirements identified herein.
2. **Equipment Expenses and Maintenance.** The City shall be solely responsible for all expenses associated with operating the Equipment and for maintenance of the Equipment. The City shall be solely responsible for all Equipment repairs and shall replace any Equipment that cannot be repaired with an equivalent unit.
3. **Possession of Equipment and Consumable.** The City shall have possession of the Equipment and Consumables subject to the District's retained right to take possession and use the Equipment and Consumables after the expiration of the 60 day notice period provided in Section 10 below. The City shall not part with possession or control of the equipment or sell, pledge, mortgage, or otherwise encumber the equipment or otherwise dispose of or encumber any interest under this agreement without the express written consent of the District.
4. **Equipment and Consumable Ownership.** The Equipment and Consumables are owned by the District and shall remain the property of the District in the event of the termination of this Agreement. In the event the District or the City purchase additional Equipment or Consumables such additional Equipment and Consumables shall remain the property of the purchasing party. On the expiration or termination of this agreement, the City, at its own cost and expense, shall return the Equipment and unused Consumables, unencumbered, and in the same condition as received,

reasonable wear and tear excepted, to the District or to such address as the District may specify.

- 5. Consideration.** The City agrees to provide HazMat, Confined Space and Technical Rescue services to the District when requested by the District "Services" subject to the following conditions:

 - 5.1.** Such Services shall be rendered on the same basis as such protection is rendered to other areas within the City, but the City assumes no liability for failure to do so by reason of any circumstances beyond its control. In the event of simultaneous calls within the City and outside of the City whereby facilities of the City are taxed beyond its ability to render equal protection, the officers and agents of the City shall have discretion as to which call shall be answered first.
 - 5.2.** The City shall indemnify and hold harmless the District and its officers, agents, volunteers and personnel from and against any and all claims, damages, losses and expenses (including reasonable attorney's fees) arising out of or resulting from the City's provision of Services. To the extent any of the damages referenced by this paragraph were caused by or resulted from the concurrent negligence of the District and its officers, agents employees or volunteers, this obligation to indemnify, defend and hold harmless is valid and enforceable only to the extent of the negligence of the City, its officers, agents employees and volunteers. It is further specifically and expressly understood that the indemnification provided herein constitutes the City's limited waiver of immunity under industrial insurance, Title 51 RCW, solely to carry out the purposes of this indemnification clause. The City further acknowledges that it has mutually negotiated this waiver.
- 6. Risk of Loss.** As between the District and the City, the City assumes all risks of loss, damage, destruction, or interference with the use of the equipment and Consumables while in the City's possession or control for any cause.
- 7. Property Insurance.** The City agrees to provide property insurance coverage for the Equipment. The City shall furnish to the District appropriate documentation showing that such coverage is in effect and that the District is a named insured on the policy.
- 8. Warranty Disclaimer.** The District is neither the manufacturer of the Equipment or Consumables, nor the manufacturer's agent and MAKES NO WARRANTY NOR REPRESENTATION, EXPRESS OR IMPLIED, REGARDING THE FITNESS, QUALITY, DESIGN, CONDITION, CAPACITY, SUITABILITY, OR PERFORMANCE OF THE EQUIPMENT OR OF THE MATERIALS OR WORKMANSHIP IN THE EQUIPMENT and is not responsible for any repairs, service, or defects in the Equipment or its operation, it being agreed that all such risks are to be born by the City at its sole risk and expense, as the City itself has made its own selection of the Equipment and Consumables based upon its own judgment. The City accordingly shall not make any claim against the District for any

deficiency of the Equipment or Consumables. The City further agrees, regardless of cause, not to assert any claim against the District for consequential damages.

9. Indemnification. The City assumes the risk of liability arising from or pertaining to the possession, operation, or use of the Equipment and Consumables. The City shall indemnify and hold the District harmless from and against any and all claims, costs, expenses, damage, and liabilities, including attorney's fees, arising from or pertaining to the use, possession, or operation of the Equipment and Consumables.

10. Term. This Agreement shall be effective on December 11, 2012 and shall continue until terminated by either party with 60 days advance written notice.

11. Miscellaneous

11.1. No Separate Entity Created. This Agreement does not establish a separate legal entity, joint board, or administrative section for the purpose of acquiring, managing, or disposing of property, or any other financial obligation allowed under the Act.

11.2. Administration. Unless the Parties otherwise agree, there shall be no lead agency responsible for the administration of this Agreement. This Agreement shall be administered jointly by the chief officers of the respective Parties.

11.3. Property Ownership. This Agreement does not provide for jointly owned property. All property presently owned or hereafter acquired by the either party to enable it to perform the services required under this Agreement, shall remain the property of the acquiring party in the event of the termination of this agreement.

11.4. Benefits. This agreement is entered into for the benefit of the parties to this agreement only and shall confer no benefits, direct or implied, on any third persons. Specifically and without limiting the foregoing, this Agreement shall not create or be construed as creating an exception to the Public Duty Doctrine.

11.5. Filing/Web Site. Filing/Web Site. This Agreement shall either be filed with the County Auditor or by listing on either of the party's websites in accordance with RCW 39.34.040.

11.6. Non-Waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements, or options, and the same shall be and remain in full force and effect.

- 11.7. Resolution of Disputes and Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the parties are unable to settle any dispute, difference, or claim arising from the parties' performance of this Agreement, the exclusive means of resolving that dispute, difference, or claim, shall only be by filing suit exclusively under the venue, rules, and jurisdiction of the Benton County Superior Court, Benton County, Washington, unless the parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit arising from the parties' performance of this Agreement, each party shall pay all its own legal costs and attorneys' fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the parties' right to indemnification under this Agreement.
- 11.8. Assignment.** Any assignment of this Agreement by either party without the prior written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.
- 11.9. Modification.** No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party and subject to ratification by the legislative body of each party.
- 11.10. Entire Agreement.** The written terms and provisions of this Agreement, together with any Exhibits attached hereto, shall supersede all prior communications, negotiations, representations or agreements, either verbal or written of any officer or other representative of each party, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the Exhibits are hereby made part of this Agreement.
- 11.11. Severability.** If any section of this Agreement is adjudicated to be invalid, such action shall not affect the validity of any section not so adjudicated.
- 11.12. Interpretation.** Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.
- 11.13. Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary. Any written notice hereunder shall become effective upon personal service or three (3) business days after the date of mailing by

registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

PROSSER FIRE DISTRICT NO. 3

CITY OF SUNNYSIDE

By: Douglas D. Merritt

By: Frank A Sweet

Print Name: Doug Merritt
Fire Chief

Print Name: Frank A Sweet
Its Interim City Manager

DATE: 11/29/12

DATE: 12-11-12

NOTICES TO BE SENT TO:

NOTICES TO BE SENT TO:

Delilah Stenz, City Clerk
818 E. Edison Ave.
Sunnyside, WA 98044

CITY CONTRACT NO: A-2012-77
RESOLUTION NO: 2012-85
COUNCIL MTG: 12/10/12

Exhibit "A"

Equipment

- 2- Western Shelter WW-5 Tent Frame Sets
- 2- Western Shelter WW-5 Tent Roof/Wall Kits
- 1- Western Shelter Shower Unit
- 2- Single Raised Floor Section
- 3- Double Raised Floor Section
- 1- Wheeled Litter Transport Cart
- 1- SCI Supplied Air Bottle Cart
- 2- 4500psi "1 hour" carbon wrapped SCBA bottles
- 2- Air Hose Reels
- 2- Boxes replacement air-line hose
- 10- MSA PremAire Air Line escaper packs w/ bottles

Exhibit "B"

Consumables

1- Miscellaneous Shower Tub w/ curtains, hangers, spray nozzles

1- Sump Pump

10- Boxes Post-Decon Patient Covers

4- Bundles PVC Flagging Tape Holders

Case of Level B Coverall:

2- Medium

4- Large

5- Extra Large

8- 2X Large

2- 3X Large

4- 4X Large

Case of Tyvek Suits:

1- Extra Large

3- 2X Large

1- 3X Large

6- Case of Misc. Sized HazMat Overboots

1- Case Disposable Spider Straps

2- Case of 4/1 gal. Baby Soap

1- Case Shower Covers

1- Case Body bags

1- Box Chemical/Incident Reference Materials

1- Chemical Detection Kit