

## **Use Agreement Including Indemnification and Hold Harmless City of Sumner and Pierce County**

This Use Agreement, Including Indemnification and Hold Harmless (hereinafter referred to as “Agreement”) is made and entered into between the COUNTY OF PIERCE (hereinafter referred to as “County”) a municipal corporation, and the CITY OF SUMNER (hereinafter referred to as “City”), also a municipal corporation.

### RECITALS

A. WHEREAS counties proximate to Mount Rainier are required to have in place a plan for responding to a volcanic emergency at Mount Rainier; and

B. WHEREAS such response plans include plans for Early Outdoor Warning alarm systems; and

C. WHEREAS the County is responsible for operating and maintaining an Early Outdoor Warning alarm system to be used within the limits of the County; and

D. WHEREAS the County has determined that an efficient and effective installation location for a Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm is at the City’s right-of-way intersection at 24<sup>th</sup> Street East and 142<sup>nd</sup> Avenue E in the City of Sumner (hereinafter referred to as the “Property”), and

E. WHEREAS the property easement is owned and operated by the City; and

F. WHEREAS the City believes that providing an optimal location for a Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm is a legitimate community use for City property. The City wishes to cooperate with the County in providing a place for the County’s Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm, but does not wish to take any responsibility for, or subject itself to potential liability because of, placement of the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm on City property or premises; now

G. THEREFORE, the County and the City enter into this Agreement, as follows:

### AGREEMENTS

1. The City agrees to specify and provide the location upon its Property where the County may set a mounting pole for the installation of the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm. The City shall, in consultation with representatives from the County, have sole authority to determine the exact location upon their property for the mounting pole. It is understood that the mounting pole shall be approximately fifty feet in height and shall be in the nature of a telephone pole, to be securely set into the ground.

2. The County and City shall design the mounting pole so that it does not create an unsafe condition or an attractive nuisance to children or adults, and so that it cannot be climbed.

3. It is understood that the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm is a unit which weighs approximately 500 pounds and that it will be securely mounted on the mounting pole approximately fifty feet above the ground.

4. The County agrees that in carrying out the installation of the pole and the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm, the County shall work cooperatively with, and follow the direction of, City officials in order to minimize the impact of the installation effort on normal City activities at the Property.

5. The County shall be responsible for all costs, unless otherwise agreed upon, related to the installation of the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm, including without limitation any engineering or design costs, equipment costs, construction costs, and clean up costs. The County specifically agrees that upon completion of the installation of the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm, the County shall take all necessary action to restore the grounds to the condition they were in prior to the installation, and shall bear all costs of such restoration.

6. The City shall have no responsibility for any costs or activities associated with the installation, operation, testing, monitoring, repairing or maintaining of the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm, unless otherwise agreed upon.

7. The City and County warrants that, prior to commencement of the installation of the mounting pole or the alarm unit, it will have obtained all required city, county, state, or federal permits, at the County's expense.

8. The County agrees that in carrying out the activities of testing, monitoring, repair, upgrading, operation, or any other activity related to the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm, the County shall work cooperatively with, and follow the direction of, City officials in order to minimize the impact of any such activities on normal City activities at the installation location.

9. The County and City agree not to test the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm unless both have been notified and mutual arrangements are made.

10. The County agrees to indemnify, defend, and hold the City harmless from and against any and all claims, demands and lawsuits, and shall pay all costs and attorney's fees incurred in the defense thereof, alleging any injury to persons or property damage, including nuisance, and including without limitation claims of students, parents, employees, contractors, subcontractors, neighbors, etc., allegedly resulting in any way from the installation, operation, testing, maintenance or in any other manner related to the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm. If the claim, suit or action involves claims of negligence by the City, this indemnification and hold harmless agreement shall be applicable and in full force and effect, except as to any gross negligence by the City. For purposes of this indemnification and hold harmless provision, the City includes past, present, and future employees, officers, board members, agents, and representatives.

11. The duration of this agreement shall be that period commencing on the 1<sup>st</sup> day of August, 2008 and shall have no ending date unless this agreement is sooner terminated in accordance with the terms hereof.

12. Notwithstanding any other provision of this Agreement, the City may at any time, for good cause shown, give notice that it desires to have the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm (including the mounting pole) dismantled and removed from the City property. Upon receipt of such notice, the County shall have ninety (90) days to accomplish the dismantling and removal of the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm. All costs of such dismantling and removal shall be the responsibility of the County. Upon dismantling and removal of the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm, including the mounting pole, the County shall be responsible for promptly restoring the City premises to the condition in which such premises were found prior to the installation of the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm.

13. Notwithstanding any other provision of this Agreement, the County may, on its own initiative, dismantle and remove the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm from the grounds at the property. The County shall provide the City with written notice of its intent to dismantle and remove the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm, and agrees that in scheduling and carrying out the dismantling and removal of the pole and the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm, the County shall work cooperatively with, and follow the direction of, City officials in order to minimize the impact of the installation effort on normal City activities at the property.

14. In any action to enforce this Agreement, the prevailing party, as between the County and the City, shall be entitled to an award of its reasonable attorneys' fees and costs incurred in such action and as a reasonable consequence of the other party's having failed to abide by the terms of the Agreement.

15. 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 herein contained in any one or more instances shall not be construed to be a waiver or relinquishment of any such, or any other, covenant or agreements, but the same shall remain in full force and effect.

16. This Agreement is made pursuant to, and shall be construed in accordance with, the laws of the State of Washington.

17. Any notice required to be given by either party to the other pursuant to the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or sent if either delivered personally or deposited in the United States mail, postage prepaid, registered or certified, return receipt requested, addressed as follows or to such other address as either party may designate in writing from time to time:

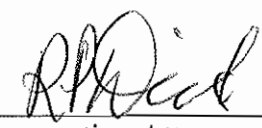
To the County:	Pierce County DEM Office of the Director 2501 S 35 <sup>th</sup> St, Suite D Tacoma, WA 98409	To the City:	City of Sumner Office of the Mayor 1104 Maple Street Sumner, WA 98390
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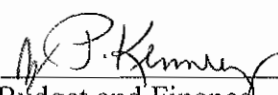
18. This Agreement is the complete agreement between the parties on the subject addressed herein, and it fully integrates and incorporates the understanding of the parties. It supersedes and cancels all prior negotiations, correspondence and communication between the parties with respect to the location, installation, and operation of the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarm. No oral modification or amendment to this Agreement shall be effective. This Agreement may only be modified or amended by written agreement signed by the parties to the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement this 1st day of Aug., 2008.

**PIERCE COUNTY**

**Attest:**

By  Date \_\_\_\_\_  
Prosecuting Attorney  
(as to form only)

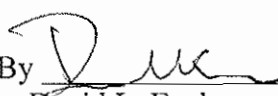
By  Date 8-28  
Budget and Finance

**Approved:**

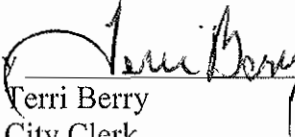
By  Date 9/2/08  
Steven C. Bailey  
Director

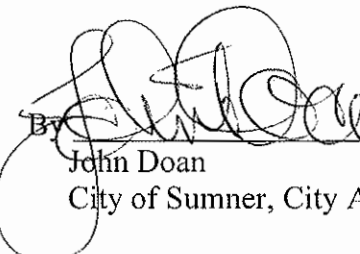
**CITY OF SUMNER**

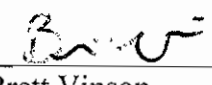
**Approved:**

By  Date 8/14/08  
David L. Enslow  
City of Sumner, Mayor

**Attest:**

By  Date 8/14/08  
Terri Berry  
City Clerk

By  Date 8/14/08  
John Doan  
City of Sumner, City Administrator

By  Date 8/13/08  
Brett Vinson  
Attorney (as to form only)