

**Site Lease Agreement
BETWEEN
MASON COUNTY FIRE PROTECTION DISTRICT NO. 2
&
BELFAIR WATER DISTRICT NO. 1**

Summary for Recorder's Use (RCW 65.04.045):

1. Grantors:

1. BELFAIR WATER DISTRICT NO. 1, a Washington municipal corporation;
2. MASON COUNTY FIRE PROTECTION DISTRICT NO. 2, a Washington municipal corporation.

3. Grantees:

1. BELFAIR WATER DISTRICT NO 1, a Washington municipal corporation;
2. MASON COUNTY FIRE PROTECTION DISTRICT NO. 2, a Washington municipal corporation;
3. The Public

4. Summary Legal Description: Not Applicable.

5. Assessor's Property Tax Parcel Account Numbers: Not Applicable.

THIS AGREEMENT is entered into between **MASON COUNTY FIRE PROTECTION DISTRICT NO. 2** ("Fire District") and **BELFAIR WATER DISTRICT NO. 1** ("Water District"), both of which are municipal corporations of the State of Washington.

Washington State's Interlocal Cooperation Act, Chapter 39.34 RCW, encourages local governmental entities to enter into agreements with one another on a basis of mutual advantage in order to make the most efficient use of their resources for the benefit of their respective constituents.

The Water District owns and maintains a water storage tank ("the tower") located in Mason County, Washington on Mason County Parcel No. 12328003000.

The Fire District possesses the necessary equipment and personnel to enable it to provide fire suppression, fire prevention and EMS service within the boundaries of each party. In order to facilitate the provision of emergency service delivery the Fire District maintains a VHF radio emergency communications system. This system is licensed by the Federal Communications System.

It is the purpose of this Agreement to establish a site lease agreement between the parties to allow for the placement and use of Fire District emergency communications equipment at the base of, along side, and atop the tower in an effort to enhance emergency radio communications for all fire jurisdictions within Mason County.

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This Agreement shall be effective on May 20th, 2012 and shall remain in effect until terminated by either pursuant to the terms of this Agreement hereafter set forth.

NOW THEREFORE, in consideration of the foregoing recitals which are a part of this Agreement, and the promises and covenants of the parties hereafter set forth, they agree as follows:

1. **PREMISES.** The Water District agrees to lease space to the Fire District for the installation of necessary emergency radio equipment. Leased space will include but will not be limited to ground space at the base of the tower for the housing of radio components, space atop of the tower for radio antenna placement, and space along the vertical length of the tank for cable connection of radio and antenna components. Upon initial installation of the Fire District's emergency radio communications equipment said equipment will not be required to be moved unless by provision in this agreement or through written mutual agreement.

2. **USE.** The leased space may be used by the Fire District for the installation and use of emergency radio equipment. The Water District agrees to cooperate with the Fire District, at Fire District expense in making application for and obtaining all licenses, permits, and all other necessary governmental approvals that may be required for the Fire District's intended use of the space.

3. **DURATION OF AGREEMENT.** This Agreement shall commence on May 20th 2012, and will be in effect for ten (10) years unless terminated by either party in accordance with section 5 entitled "Termination". The Fire District shall have the right to extend the term in ten (10) year increments on the same terms and conditions as set forth herein. This agreement shall automatically be extended for each renewal term unless one party notifies the other of its intention not to renew the agreement at least three hundred and sixty (360) days prior to the commencement of the succeeding renewal term. In the event that a hardship is caused to either party as a result of non renewal of the agreement, the parties agree to submit to the dispute resolution process as outlined in section ten (10).

4. **TERMINATION.** This Agreement may be terminated by either party after first providing to the other party a three hundred and sixty (360) day written notice of termination. To be effective, a termination notice shall be sent in writing by the terminating party to the Board of Commissioners of the other party by certified mail, return receipt requested. In the event that a hardship is caused to either party as a result of agreement termination, the parties agree to submit to the dispute resolution process as outlined in section ten (10).

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5. **FACILITIES/UTILITIES/MAINTENANCE/ACCESS.** The Fire District has the right to maintain and operate its radio equipment on the tank and surrounding premises. The Water District has the right to do all work necessary to prepare and maintain the tank and surrounding premises for the Water District's business operations provided that any such preparation and maintenance work will not interfere with the Fire District's emergency communications system. In the event that Water District maintenance such as painting or cleaning of the tank mandates the interruption of the Fire District's emergency communication system, the Water District agrees that it will provide written notice to the Fire District no less than thirty (30) days prior to work commencing and that such interruption will not exceed a 24 hour period.

The Fire District will have access to onsite electricity. The Fire District will pay the Water District for all electricity used for emergency communications at the site. The cost of electricity for the Fire District will be determined with the assistance of Public Utilities District #3.

The Fire District will be responsible for all utility costs related to the use and operation of emergency communication equipment.

The Fire District shall have full right of access to the tower site and across all portions of the premises, not including any of the Water District's structures, for the purpose of maintenance, inspection, and repair of communications equipment. If possible the Fire District shall provide the Water District with twenty four (24) hours of notice of such access, except that notice shall not be required during emergencies or service interruptions.

6. **COMPENSATION FOR SPACE.** In consideration to the Water District for leased space for Fire District emergency radio equipment the Fire District shall extend all emergency and non-emergency services to the Water District at no cost. This service will include but will not be limited to fire suppression, inspection, EMS, traffic control, plans review, and any other assistance that is for the public good. The Fire District also agrees to cover all costs associated with the installation of phone lines necessary for monitoring Water District tank and pump conditions at said location.

7. **LIABILITY / EMPLOYMENT/ HOLD HARMLESS PROVISIONS.** Each party shall at all times be solely and exclusively responsible for the acts or failure to act of its personnel that occur or arise in any way out of the performance of this Agreement. Each party's personnel shall be under the employment or membership of its District for purposes of any injury, loss, claim, damage or liability arising out of or related to this Agreement. Each party further agrees to hold harmless, defend, and indemnify, the other party and its personnel from all costs, expenses, losses, and damages, including cost of legal defense, incurred as a result

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of any acts or omissions of its personnel relating to its performance or wrongful non-performance under this Agreement.

8. **INSURANCE.** Each party agrees to maintain adequate insurance coverage for its equipment, personnel, and operations, in fulfilling the provisions of this agreement.

9. **EXCLUSIVE AGREEMENT.** The Water District shall be precluded from entering into any similar agreement that may interfere with the Fire District's emergency communications system and its operation. The Water District will receive written agreement from the Fire District before allowing for the installation of any communication equipment (both emergency and non emergency) on the tower or around the surrounding premises. The Water District will immediately remove any communication equipment on the premises upon Fire District request for which the Fire District has not provided previous written authorization.

10. **COMMUNICATION/DISPUTES.** It is essential that the parties communicate on a regular basis concerning matters related to this agreement. In the event that a dispute arises, the Board of each District agrees to hold a joint public meeting in an attempt to find resolution. In the event that a dispute resolution is not found following a joint Board meeting, both parties agree to submit to the arbitration proceedings in Exhibit A. It is agreed that the arbitrator(s) will rule in favor of the party that can demonstrate that their position in the pending dispute will result in what is deemed most beneficial to the overall interest of the public.

11. **COMPLETE AGREEMENT.** This Agreement constitutes the full and complete agreement of the parties as to the matters contained herein. No other verbal or prior written understandings shall be provided with any legal effect whatsoever. Any amendments hereto shall be in writing and signed by the parties.

12. **EXECUTION IN COUNTERPARTS.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

13. **AGREEMENT TO BE FILED WITH COUNTY AUDITOR OR PUBLISHED ON WEB SITE.** Pursuant to RCW 39.34.040, this Inter-local Agreement shall be filed by Mason County Fire Protection District No. 2 and Belfair Water District No. 1 with the Mason County Auditor as soon as reasonably practical after its execution, or in the alternative, listed according to subject by each party on its web site or other electronically retrievable public source. Thereafter, each party shall notify the other of the method by which it published this agreement (by either recording it or listing it on its web site) and provide to the other all pertinent information relating thereto.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate (with each party to retain an original hereof) to evidence their respective consent to all terms hereof. Mason County Fire Protection District No. 2 approved and authorized its Fire Chief to sign the same on its behalf at its regularly scheduled Commission meeting held on the 15th day of May, 2012, and Belfair Water District No. 1 approved and authorized its Water Manager to sign the same on its behalf at its regularly scheduled Commission meeting held on the 26th day of June, 2012.


MASON COUNTY FIRE DISTRICT 2

by: 

BEAU BAKKEN, Fire Chief

Date: 5 - 15 - 2012

BELFAIR WATER DISTRICT NO. 1

by: 

Tom Peadon, Water Manager

Date: 7/11/2012

EXHIBIT A

ARBITRATION PROCEDURES

These arbitration procedures are a part of the Dispute Resolution Process (the "Process") set out in the Agreement to which this Exhibit is attached.

Commencement. Arbitration shall be commenced by serving a written demand for arbitration on the other party, either personally or by both regular first class mail and certified mail, return receipt requested. The arbitration need not be filed with any arbitration administrator, but a party may file the arbitration with Judicial Dispute Resolution, Inc. ("JDR") if the party believes that administration by JDR would be beneficial.

Arbitrators. There shall be a single neutral arbitrator, with the provision that that if any party in good faith demands an award greater than \$250,000, excluding interest, attorneys' fees, arbitration fees and costs, three neutral arbitrators shall hear the case and render the award while a single arbitrator shall hear and resolve all prehearing matters. The total award by a single arbitrator shall not exceed \$250,000, excluding interest, attorneys' fees, arbitration fees and costs. If the parties cannot agree on the identity of the arbitrator(s) within 10 days of the arbitration demand, the arbitrator(s) shall be selected by JDR.

Representation by Counsel. The Parties shall have the right to representation by legal counsel at any stage of the proceedings.

Prehearing Matters. There shall be no discovery or dispositive motion practice, except that the arbitrator shall authorize discovery that is appropriate to ensure a fair hearing. Discovery shall not extend the time limits set out below. The arbitrator may enter prehearing orders on any appropriate subject, including mediation, scheduling, discovery, witness disclosure, issues to be heard, preliminary injunctive relief, the joinder of parties (provided the party joined is bound by or contents to this Dispute Resolution Process) or consolidation of the arbitration with any other involving common issues of law or fact or which may promote economy. The arbitrator may impose reasonable sanctions on a party for failure to comply with the arbitrator's orders.

Hearing. The arbitrator(s) shall hold a private hearing within one hundred twenty (120) days of the initial demand for arbitration and shall conclude the hearing within three days. These time limits are included to expedite the proceeding, but the arbitrator(s) may for good cause allow reasonable extensions or delays, and any extensions or delays shall not affect the validity of the award. The arbitrator(s) shall not be bound by the rules of evidence or of civil procedure, but rather may consider such writings and oral presentations as reasonable, governmental or business people would use in the conduct of their day-to-day affairs and may require both parties

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to submit some or all of their evidence through written declarations or using any other manner of presentation that the arbitrator(s) decide is appropriate. Live testimony and cross-examination shall be allowed, but only to the extent necessary to ensure a fair hearing on material issues.

Decision. The arbitrator(s)' written decision shall be made within fourteen (14) calendar days after the hearing, but a failure to meet this deadline shall not affect the validity of the award. The decision shall contain a brief statement of the claim(s) determined and the award made on each claim. The decision and award need not be unanimous; rather, the decision and award of two (2) arbitrators shall be final. Absent fraud, collusion or willful misconduct by an arbitrator, the award shall be final and binding and judgment may be entered in any court having jurisdiction.

Law; Remedies. In making the decision and award, the arbitrator(s) shall apply applicable substantive law. The arbitrator(s) shall not award punitive or exemplary damages. All statutes of limitations that would apply in court shall apply in the arbitration. Questions about whether a dispute must be arbitrated shall be determined by the arbitrator(s). The parties shall bear their own attorney fees and costs, and the cost of the arbitrator(s) shall be paid equally by the parties.

LEASE MODIFICATION AGREEMENT

THIS LEASE MODIFICATION AGREEMENT ("Lease Modification") is entered into between MASON COUNTY FIRE PROTECTION DISTRICT NO. 2 ("Fire District") and BELFAIR WATER DISTRICT NO. 1 ("Water District"), both of which are municipal corporations in the State of Washington.

WHEREAS, Fire District and Water District have entered into a Site Lease Agreement concerning Fire District use of Water District water storage tank for communication purposes; and

WHEREAS, Fire District presented a signed Site Lease Agreement to Water District, which is generally acceptable with the few modifications set out below.

NOW, THEREFORE in consideration of the mutual covenants, the parties agree as follows:

1. All provisions of the Site Lease Agreement between Fire District and Water District shall remain valid and enforceable except as modified hereby. Each provision of this Lease Modification shall supersede any inconsistent provision of the Site Lease Agreement.
2. The Premises shall be limited to the actual ground and tower space necessary for the housing of communications equipment, together with reasonable access. Water District reserves all other portions of the property on which the Premises are located for Water District purposes. Both parties will cooperate to provide Fire District with reasonably adequate space for its communication equipment and neither party shall unreasonably interfere with the other's operations. Water District may utilize the Premises for other communication purposes so long as it does not unreasonably interfere with the communications operations of Fire District. Attached hereto, marked Exhibit "B" is a site drawing, showing the Premises, water storage tank, and the permitted location for installation of Fire District communications equipment. This Exhibit "B" location shall only be modified by mutual written agreement.
3. Sections 3 and 4 of the Site Lease Agreement shall be modified to change the Notice and Termination Notice requirements from the existing three hundred sixty (360) days to one hundred eighty (180) days.
4. Exhibit "A" Arbitration Procedures shall be modified as follows: Either Judicial Dispute Resolution, Inc. or Washington Arbitration and Mediation Services, LLC may be selected as arbitrator. The private hearing shall be held within sixty (60) days of the initial demand, and the hearing shall be concluded within one (1) day, not to exceed ten (10) hours.

IN WITNESS WHEREOF, the parties have executed this Lease Modification Agreement in duplicate (with each party to retain an original hereof) to evidence their respective consent to all terms hereof. Mason County Fire Protection District No. 2 approved and authorized its Fire Chief to sign the same on its behalf at its regularly scheduled Commission meeting held on the 12th day of June, 2012, and Belfair Water District No. 1 approved and authorized its Water Manager to sign the same on its behalf at its regularly scheduled Commission meeting held on the 26th day of June, 2012.

MASON COUNTY FIRE DISTRICT NO. 2:

(x) [Signature]
By: **Beau Bakken**, Fire Chief

Date: June 18th 2012

BELFAIR WATER DISTRICT NO. 1:

(x) [Signature]
By: **Tom Peadon**, Water Manager

Date: 7/11/2012

STATE OF WASHINGTON §
COUNTY OF Mason §

On this 18th day of June, 2012, before me, the undersigned, notary public in and for the State of Washington, duly commissioned and sworn, personally appeared BEAU BAKKEN, to me known to be the Fire Chief of Mason County Fire Protection District No. 2, a Washington State municipal corporation, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned and on oath stated that they were duly authorized to execute the same.

WITNESS my hand and official seal hereto the day and year first above written.



[Signature]
PRINT NAME: Nikki Ann Madsen
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, residing at Belfair
My Commission expires: 9/30/2012

STATE OF WASHINGTON §
COUNTY OF Mason §

On this 11th day of July, 2012, before me, the undersigned, notary public in and for the State of Washington, duly commissioned and sworn, personally appeared TOM PEADON, to me known to be the Water Manager of Belfair Water District No. 1, a Washington State municipal corporation, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned and on oath stated that they were duly authorized to execute the same.

WITNESS my hand and official seal hereto the day and year first above written.



[Signature]
PRINT NAME: Tammie L. Neal
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, residing at Belfair, Mason Co.
My Commission expires: 2-19-16.