

Recording Requested By And
When Recorded Mail To:

City of Seattle SPU/Real Prop
700 5th Avenue Suite 4900
PO Box 34018
Seattle, WA 98124-4018

INTERLOCAL AGREEMENT FOR FIRE PROTECTION SERVICES TO SPU PROPERTIES

THIS INTERLOCAL AGREEMENT (Agreement) is made by and between The City of Seattle, a municipal corporation of the State of Washington, acting by and through its Seattle Public Utilities ("SPU") and King County Fire Protection District No. 40, a municipal corporation of the State of Washington, hereinafter referred to as the "Agency." SPU and the Agency also may be collectively referred to as the "Parties" and individually as "Party."

WHEREAS, this Agreement is entered into by SPU and the Agency pursuant to RCW 52.30.020 and Chapter 39.34, RCW; and

WHEREAS, the Agency provides fire protection services to SPU personnel and SPU-owned buildings, equipment and land within and without the boundaries of the Agency; and

WHEREAS, SPU wishes to compensate the Agency for such services; and

WHEREAS, RCW 52.30.020 does not require the Parties to contract for emergency medical services the Agency provides to third parties; and

WHEREAS, the Parties have negotiated this Agreement in good faith.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the Parties agree as follows:

1. Purpose and Scope of Agreement

This Agreement is intended to comply with the requirement of RCW 52.30.020 that the Parties contract for fire protection services and is limited to the fire protection services provided to land, buildings and equipment owned or used by SPU ("SPU Properties"), except those leased to a nontax exempt person or organization. This Agreement establishes the methodology and timing for payments to be made by SPU for fire protection services covered under this Agreement.

The scope of this Agreement includes the provision of fire protection and suppression and emergency medical services, and this Agreement shall apply to the buildings, equipment and land owned, used or operated by SPU set forth in the attached Exhibit A (hereinafter "SPU Properties").

2. Duration of Agreement

This Agreement shall commence on January 1, 2019 (the "Commencement Date")

and shall remain in effect until terminated in accordance with the terms and conditions contained herein.

3. Termination

- 3.1 This Agreement shall automatically terminate upon the effective date of any bill that eliminates the state law requirement that the Parties contract for fire protection services.
- 3.2 Either Party may terminate this Agreement upon six months' written notice to the other Party.
- 3.3 Either Party may terminate this Agreement upon a material breach of the Agreement. A "Material Breach" shall be defined as either (1) the Agency's failure to provide services at the level specified in Section 4; (2) the SPU's failure to pay the contract payments specified in Section 5; or 3) any other failure of a Party to perform an obligation required by this Agreement. Either Party may terminate this Agreement in the event of a Material Breach of this Agreement by the other Party; provided, however, that the non-breaching Party shall provide the breaching Party with written notice which sets forth the alleged Material Breach(es) and states a reasonable time to cure the breach (not to exceed sixty (60) days), the "Cure period." In the event that the breaching Party fails to cure such Material Breaches during the Cure Period, then this Agreement shall automatically terminate without further action.
- 3.4 Upon the effective date of the termination, SPU shall not be obligated to make any additional payments to the Agency.

4. Services Provided

During the term of this Agreement, the Agency agrees to provide all fire protection and emergency medical services to SPU Properties necessary for the protection and safety of personnel and property as required by RCW 52.30.020 ("Services"). The Services will be provided to those SPU Properties identified in Exhibit A to this Agreement. Exhibit A shall be automatically amended to add or delete properties consistent with the scope of properties set forth in RCW 52.30.020 at the time properties are acquired or disposed of by SPU. SPU shall pay the pro-rated amount for any properties added or deleted, and shall notify Agency of any changes on June 1 of each calendar year. Services shall be provided on the same basis as services are available to other property within the Agency.

5. Cost of Services and Payments

In consideration of the services provided by the Agency, beginning in the year 2019, SPU shall annually pay the Agency for the Services. The annual amount shall be calculated by multiplying the most-recent assessed valuation of improvements and land on SPU Properties as identified in Exhibit A by \$1.00/\$1,000.00 AV, as determined by the King County Assessor. During the performance of this Agreement, SPU shall request in writing that the King County Assessor assess the SPU Properties bi-annually to ensure parity between taxpayer and SPU-owned property values. Payment by SPU shall be made annually on or before June 1 of each calendar year.

SPU shall inform the Agency in the event that the King County Assessor fails to

assess the subject properties after two years from the date of written request by SPU to bi-annually assess the subject properties. In such an event, the Parties agree to negotiate a fair increase, if an increase is warranted, in the contract price from the previous year, until such time as the King County Assessor further assesses the subject properties.

Furthermore, in addition to the above annual amount, SPU shall pay a hazardous-materials premium of \$15,000 per year; in exchange, the Agency shall forego its right to pursue recovery for an incident caused by SPU or agents of SPU when transporting or handling hazardous materials, pursuant to RCW 4.24.314. The above premium shall increase annually in accordance with the 12-month change in Consumer Price Index for All Urban Consumers (CPI-U); Seattle-Tacoma-Bellevue; All items, not seasonally adjusted, 1982–1984=100 reference base.

6. Organization

The Parties recognize and agree that the Parties hereto are independent governments. Except for the specific terms herein, nothing herein shall be construed to limit the discretion of the governing bodies of each Party. Nothing herein shall be construed as creating an association, joint venture, or partnership between the Parties, nor to impose any partnership obligations or liabilities on either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party.

The Agency shall have the sole discretion and the obligation to determine the exact method by which the Services described in Section 4 above are provided to SPU Properties, provided such services are provided on the same basis as services are available to other property within the Agency.

No new or separate legal or administrative agency is created by this Agreement. This Agreement shall be administered by the Chair of the Board of Fire Commissioners for the Agency and the Executive Officer of SPU.

7. Indemnification The Agency shall defend, indemnify, and hold SPU and its officers, officials, employees, and agents free and harmless from any and all demands, costs, claims, judgments, orders, or decrees for personal injuries, death or damage to property arising out of or in any way resulting from any act or omission of the Agency, or its officers, officials, employees, volunteers, or agents in the performance of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the SPU, its officers, officials, employees, volunteers, or agent, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Agency; and provided further that nothing herein shall require the Agency to hold harmless or defend SPU from any claims arising from the sole negligence of the SPU, its officers, officials, employees, volunteers, and agents. No liability shall attach to SPU by reason of entering into this Agreement except as expressly provided herein.

- 7.2 SPU shall defend, indemnify, and hold the Agency and its officers, officials, employees, and agents free and harmless from any and all demands, costs, claims, judgments, orders, or decrees for personal injuries, death, or damage to property arising out of or in any way resulting from any act or omission of

the SPU, or its officers, officials, employees, volunteers, or agents in the performance of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the Agency, its officers, officials, employees, volunteers, or agent, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the SPU; and provided further that nothing herein shall require SPU to hold harmless or defend the Agency from any claims arising from the sole negligence of the Agency, its officers, officials, employees, volunteers, and agents. No liability shall attach to the Agency by reason of entering into this Agreement except as expressly provided herein.

- 7.3 Solely for purposes of enforcing the indemnification obligations of a Party under this Section 7, each Party expressly waives, by mutual negotiation, its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, and agrees that the obligation to indemnify, defend, and hold harmless provided for in this Section 7 extends to any such claim brought against the indemnified Party by or on behalf of any employee of the indemnifying Party. The foregoing waiver shall not in any way preclude the Indemnifying Party from raising such immunity as a defense against any claim brought against the indemnifying Party by any of its employees.

8. Insurance

The Agency shall obtain and maintain at all times hereunder (i) a commercial general liability insurance policy with a minimum policy limit of General Liability - \$1,000,000 combined single limit per occurrence and for those policies with aggregate limits, a \$2,000,000 aggregate limit; (ii) a minimum umbrella coverage of \$6,000,000 each occurrence and \$10,000,000 annual aggregate; (iii) errors and omissions coverage including employment practices liability \$1,000,000 per occurrence and \$2,000,000 annual aggregate; (iv) Automobile Liability- \$1,000,000 combined single limit per accident for bodily injury and property damage; and (v) Workers' Compensation - statutory requirements of the state of residence and employer's liability or stop gap coverage of \$1,000,000 per occurrence, each placed with a reputable and financially strong insurance carrier with an A-rating or better. The policy(ies) shall provide that such policy(ies) shall not be terminated or reduced without thirty (30) days prior notice to the SPU. Upon request by the SPU, the Agency will provide a certificate of insurance to SPU evidencing the aforementioned coverage.

9. No Third Party Liability and Public Duty Doctrine

This Agreement shall not be construed to provide any benefits to or create a cause of action for or on behalf of any third parties. Specifically and without limiting the foregoing, this Agreement shall not create or be construed as creating an exception to the Public Duty Doctrine.

10. Nondiscrimination Employment. The Agency agrees not to discriminate against any employee or applicant for employment because of sex, age, race, color, creed, national origin, sexual orientation, marital status, or the presence of any sensory, mental, or physical handicap, unless based upon a bonafide occupational qualification. This requirement shall apply without limitation to all aspects of employment (including lay-offs or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship) and advertisement.

10.2 Services and Activities. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, sexual orientation, age (except minimum age and retirement provisions), marital status, or the presence of any sensory, mental, or physical handicap. Any violation of this provision shall be considered a violation of a material provision of this Agreement and shall be grounds for termination or suspension in whole or in part of this Agreement by SPU and may result in ineligibility for future SPU agreements.

10.3 Other Non-Discrimination Laws. The Agency shall also comply with all applicable anti-discrimination laws or requirements of any and all applicable jurisdictions.

11. Compliance with Laws and Regulations

The Parties shall comply with all applicable rules and regulations pertaining to them in connection with the matters covered herein.

12. Notices

Any notice required to be given by either Party to the other pursuant to any provision of this Agreement or any law, present or future, shall be in writing and shall be deemed to have been duly given or sent if either delivered personally, sent by nationally recognized overnight delivery service or sent via United States Mail addressed to the following:

To Agency:
King County Fire Protection District 40
14810 SE Petrovitsky Road
Renton, WA 98058

To SPU:
Seattle Public Utilities
Attn: Pree Carpenter, Real Property Services
PO Box 34018
Seattle, WA 98124-4018

or, to such other person or address as is hereafter designated in writing by either Party to the other. Each Party may change its notice address set forth in this section by giving notice of a new address to the other Party in accordance with this section.

Notices may also be given by facsimile transmission (provided the fax machine has printed a confirmation of receipt). All notices that are mailed shall be deemed received three (3) business days after mailing. All other notices shall be deemed complete upon actual receipt or refusal to accept delivery.

13. Dispute Resolution

The parties shall use reasonable efforts to mediate any dispute arising under this Agreement. In the event of such a dispute, each party shall designate, in writing, not

more than three (3) candidates it proposes to act as a non-binding mediator within ten (10) days following notification of a dispute. If the Parties cannot agree on one of the mediators from the combined list within five (5) days, then the Parties shall promptly meet and select a mediator by blind draw. Upon selection of the mediator, the Parties shall within forty-five (45) days or as soon thereafter as possible, meet and engage in a mediation of the dispute with the assistance of the mediator. The cost for the mediation services shall be borne equally between the Parties, each party paying one-half of the cost. The mediator shall determine reasonable procedures. Testimony and briefing, if any, provided to the mediator shall be inadmissible in any subsequent court proceedings. If mediation fails to resolve the dispute, the Parties may thereafter seek redress in a court of competent jurisdiction. Nothing in this section shall be construed to prohibit either Party from exercising its right to terminate this Agreement as otherwise provided in this Agreement or be construed as a pre-condition to the exercise of such right to terminate.

14. Assignment

The Parties shall not assign this Agreement or any interest, obligation, or duty herein without the express written consent of the other Party.

15. Approval

This Agreement is expressly conditioned upon and subject to the written approval of the authorized representatives of SPU and by ordinance of the City Council and by resolution of the Agency's legislative bodies and shall not be binding unless and until so approved. This Agreement may be altered, amended, or waived only by a written amendment executed, in the same manner, by both Parties.

16. General Provisions All of the terms, covenants, and conditions in this Agreement shall extend to and bind any approved legal successors and assigns of the Parties hereto.

16.2 This Agreement shall be deemed to be made and construed in accordance with the laws of the State of Washington. Jurisdiction and venue for any action arising out of this Agreement shall be in King County Superior Court.

16.3 The headings and recitals in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.

16.4 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a final decision of any court having jurisdiction on the matter, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect unless such court determines that such invalidity or unenforceability materially interferes with or defeats the purposes hereof, at which time SPU shall have the right to terminate the Agreement for cause.

16.5 This Agreement constitutes the entire agreement between the Parties for the purpose set forth in paragraph 1. There are no terms, obligations, covenants, or conditions other than those contained herein, No

modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both Parties.

16.6 The Agency shall ensure that copy of this Agreement is filed with the King SPU Recorder's Office.

16.7 This Agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall constitute but one and the same instrument.

16.8 The failure of either Party to insist upon strict performance of this Agreement shall not impact that Party's right to insist upon strict performance at a later time.

17. Equal Opportunity to Draft

Each party has had opportunity to consult with counsel in connection with the negotiation, execution and delivery of this Agreement. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction which would render the provisions of this Agreement in favor of or against the party preparing the same will apply in connection with the construction or interpretation of any of the provisions of this Agreement.

18. Benefit Charge Collection

SPU agrees that this Agreement shall not exempt SPU Properties from statutory benefit charges under RCW 52.18.020. SPU expressly agrees that the Agency may impose and collect statutory benefit charges on SPU owned properties in accordance with the law. Provided, however, SPU shall not be required to make payments under this Agreement for any parcel of property for which SPU pays a benefit charge.

IN WITNESS WHEREOF, the Agency and SPU have executed this Agreement as of the latter date of signature below.

For the Agency:

Chair of the Board of Fire Commissioners

Commissioner

Commissioner

Commissioner

Commissioner

Dated: _____

Approved as to Form:

District Attorney

For SPU:

Dated: _____

EXHIBIT A

The following is a list of SPU Properties within the Agency's boundaries with buildings or equipment.

Assessor's Tax Parcel ID#: 2123059020(portion), 212309040, 2723059006, 2723059007, 272305900, 2723059018, 2723059020, 2723059018, 3523059009, 0622069015, 0622069024 (portion), 0122059006)