

**ORIGINAL**

**Right-of-Way Occupancy and Use Agreement  
City of Orting and Pierce County**

This Use Agreement, (hereinafter referred to as "Agreement") is made and entered into between the COUNTY OF PIERCE (hereinafter referred to as "County") a municipal corporation, and City of Orting (hereinafter referred to as "City").

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 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 County has determined that efficient and effective installation locations for Mount Rainier Volcanic Emergency Early Outdoor Warning Alarms are at City's right-of-way at various locations to be mutually agreed upon (hereinafter referred to as the "Property"), and
- E. WHEREAS City has the authority to control the occupancy and use of its right-of-ways; and
- F. WHEREAS City believes that providing an optimal location for the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarms is a legitimate public occupancy and use for City right-of-ways. City wishes to cooperate with the County in providing a place for the County's Mount Rainier Volcanic Emergency Early Outdoor Warning Alarms, 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 Alarms on City property or premises; now
- G. THEREFORE, County and City enter into this Agreement, as follows:

AGREEMENTS

- 1. City agrees to specify and provide, at no cost to the County, a location(s), see Exhibit A, within its right-of-ways where the County may construct, install, and set mounting poles for the installation of the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarms. City shall, in consultation with representatives from the County, have sole authority to determine the exact location for construction, installation and placement of the mounting poles and warning alarms within the right-of-ways. It is understood that the mounting poles 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 shall design the mounting poles so that they do not create an unsafe condition or an attractive nuisance to children or adults, and so that they cannot be climbed.

3. It is understood that each of the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarms is a unit which weighs approximately 500 pounds. The County will securely mount the units on the mounting poles approximately fifty feet above the ground.
4. The County agrees that in carrying out the installation of the poles and the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarms, the County shall work cooperatively with, and follow the direction of, City officials in order to minimize the adverse impact of the installation efforts upon the normal public use of the right-of-way.
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 Alarms, including without limitation any engineering or design costs, equipment costs, construction costs, and cleanup costs. The County specifically agrees that upon completion of the installation of the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarms, 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. 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 Alarms, unless otherwise agreed upon.
7. The County warrants that, prior to commencement of the installation of the mounting poles or the alarm units, 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 Alarms, 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 locations.
9. The County and City agree not to test the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarms unless both have been notified and mutual arrangements are made.
10. The County agrees to indemnify, defend, and hold City harmless from and against any and all claims, demands, actions, fines, penalties, liabilities of any kind and lawsuits, and shall pay all costs and attorney's fees incurred by the City in the defense thereof, including alleging any injury to persons or property damage, including nuisance, and including without limitation claims of students, parents, employees, contractors, subcontractors, neighbors, etc., allegedly arising resulting in any way from the installation, operation, testing, maintenance of, or in any other manner related to the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarms. If the claim, suit or action involves claims of negligence by City, this indemnification and hold harmless agreement shall be applicable and in full force and effect, except as to any adjudicated damages for gross negligence by the City. For purposes of this indemnification and hold harmless provision, City includes past, present, and future employees, officers, board members, agents, and representatives.

The foregoing indemnity is specifically and expressly intended to constitute a waiver of the County's immunity under industrial insurance, Title 51 RCW, as respects the City only, and only to the extent necessary to provide the City with a full and complete indemnity of claims made by the County's employees. This waiver has been mutually negotiated.

The County shall provide insurance coverage, or self-insurance, for the acts and omissions of its officers, employees and agents in providing the services and carrying out the obligations of this Agreement, to the same extent and in the same amount as is provided generally by the County for its officers, employees and agents. The County shall provide proof of its insurance coverage or self-insurance at the request of the City.

The provisions of this section shall survive the termination of this Agreement.

11. The term of this agreement shall be a minimum of ten (10) years, commencing May 1, 2019. The term shall automatically extend for five (5) renewal periods of three (3) years each unless either party provides written notice to the other of its election not to renew the term, at least ninety (90) days prior to the end of the current term.

12. Notwithstanding any other provision of this Agreement, City may, once the initial ten (10) year term has expired, give notice that it desires to have the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarms (including the mounting poles) dismantled and removed and/or relocated from City right-of-ways. Upon receipt of such notice, the County shall have ninety (90) days to accomplish the dismantling and removal and/or relocation of the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarms. All costs of such dismantling and removal shall be the responsibility of the County. Upon dismantling and removal and/or relocation of the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarms, including the mounting poles, the County shall be responsible for promptly restoring City premises to the condition in which such premises were found prior to the installation of the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarms.

In the event of an emergency, or where the mounting poles or warning alarms units create or contribute to an imminent danger to health, safety, or property, City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the alarm units without prior notice, and charge the County for costs incurred.

13. Notwithstanding any other provision of this Agreement, the County may, on its own initiative and at its own cost, dismantle and remove the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarms from the grounds at the Property, and promptly restore the City's Property to the condition in which such Property were found prior to the installation of the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarms. The County shall provide City with written notice of its intent to dismantle and remove the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarms, and agrees that in scheduling and carrying out the dismantling and removal of the poles and the Mount Rainier Volcanic Emergency Early Outdoor Warning Alarms, 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 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. Pierce County shall be the venue of any arbitration or lawsuit arising out of this Agreement.

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 Postal Service, 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:

Pierce County DEM  
Office of the Director  
2501 S 35<sup>th</sup> St, Suite D  
Tacoma, WA 98409

City of Orting  
Mayor Joshua Penner  
110 Train St. SE  
PO BOX 489  
Orting, WA 98360


18. If one or more of the clauses of this Agreement is found to be unenforceable, illegal or contrary to public policy, the Agreement will remain in full force and effect except for the clauses that are unenforceable, illegal or contrary to public policy.

19. 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 Alarms. 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 10th day of July, 2019.

**PIERCE COUNTY**


Attest:

By  Date 7/29/19  
Prosecuting Attorney  
(as to form only)

**City of Orting**

Approved:

By  Date 7/15/19  
Joshua Penner, Mayor


By  Date 8/11/19  
Finance

Attest:  
By  Date 7-16-19

Approved:

Attest:

By  Date 7/24/19  
Jody Ferguson, Director

By  Date 7/10/19  
Name \_\_\_\_\_  
Attorney (as to form only)

## EXHIBIT "A"

### City Early Outdoor Warning Alarm Site Locations:

Orting, Unit 1 - Well Site #1  
18711 SR 162  
Orting, WA 98360

Orting, Unit 2 - Orting City Hall  
110 Train St.  
Orting, WA 98360

Orting, Unit 3 - Ptarmigan Ridge School  
805 Old Pioneer Way NW  
Orting, WA 98360

Orting, Unit 4 - WA State Soldiers Home  
1301 Orting Kapowsin Hwy E  
Orting, WA 98360

Orting, Unit 25 - Village Green  
524 Williams Blvd. NW  
Orting, WA 98360

Orting, Unit 26 - City Shop  
600 Calistoga St. W  
Orting, WA 98360