

**LEASE
of
TEMPORARY FIRE STATION**

THIS LEASE OF TEMPORARY FIRE STATION AGREEMENT (“Agreement” or “Lease”) is made this _____ day of _____, 20__ by and between the **CITY OF LYNDEN**, a Washington municipal corporation (“City” or “Lessee”), and **E & R DEJONG, L.L.C.**, a Washington limited liability company (“DeJong” or “Lessor”). City and DeJong may be referred to herein individually as “Party” or collectively as “Parties.”

WHEREAS, the Lynden Fire Department’s (“LFD”) primary fire station (“Home Station”) is expected to undergo renovation beginning late 2020 and continuing through late 2021; and

WHEREAS, LFD will not be able to operate out of the Home Station during the renovation period and requires an alternate base of operations until the fire station becomes habitable again; and

WHEREAS, DeJong owns a parcel of real property located at 1205 East Badger Road, Lynden, Washington (“Lot”) upon which stands a two-story structure (“Facility”) consisting of four areas, namely apparatus bays, a front office, an upstairs three-bedroom apartment and a storage area/garage; and

WHEREAS, that portion of the Facility consisting of the apparatus bays, a front office and an upstairs three-bedroom apartment totaling more than 7,000 square feet (which three areas together shall be hereinafter referred to as the “Premises”) are together suitable to function as a temporary fire station for LFD; and

WHEREAS, City desires to lease the Premises from DeJong for the purpose of utilizing the Premises as a temporary fire station out of which LFD will operate while renovations on the Home Station are completed; and

WHEREAS, the foregoing recitals are a material part of this Agreement;

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

1. **DESCRIPTION**. Lessor, for and in consideration of the covenants contained herein, hereby demises, lets and leases unto Lessee for operation as a temporary fire station the Premises, which represents a portion of the Facility located on the Lot owned by Lessor and legally described as:

LOT 1, DEJONG SHORT PLAT, ACCORDING TO THE PLAT THEREOF, RECORDED AUGUST 3, 2007, UNDER WHATCOM COUNTY AUDITOR’S FILE NO. 2070800513. SITUATE IN WHATCOM COUNTY, WASHINGTON.

TERM.

- 2.1 Primary Term. The primary term of the Lease shall be for a period of twelve (12) months, commencing on November 17, 2020 and ending on November 16, 2021.
 - 2.2 Lease Renewal. Upon expiration of the primary term, unless the Parties have agreed otherwise in a mutually-executed written instrument or as otherwise provided herein, the Lease shall automatically renew on the same terms on a month-to-month Net Lease basis, until terminated as provided herein.
3. RENT. Annual rent for the Net Lease during the primary term shall be Sixty-Two Thousand Six Hundred Twenty Dollars (\$62,620.00), payable in equal installments every six (6) months, beginning on November 17, 2020. Upon Lease renewal, following expiration of the primary term, Lessee rent shall be payable on the fifteenth day of each month in the amount of Five Thousand Two Hundred Twenty Dollars (\$5,220.00). Net Lease includes property tax portion, which is subject to change based on 2021 valuation.
4. TERMINATION. Lessor may terminate this Lease only due to a material breach by Lessee by providing twenty (20) days prior written notice of such material breach to Lessee; provided that, Lessee shall have an opportunity to cure said material breach within fourteen (14) days following receipt of such notice and in the event said breach is timely cured, Lessor's notice of termination shall not take effect.
5. SHARED ACCESS. Lessee and Lessor shall have shared access to the Premises.
6. NON-EXCLUSIVE ACCESS. Lessee shall have non-exclusive access to the storage area/garage portion of the Facility beyond the Premises ("Storage Area") as reasonably required to ensure that critical operations of the Premises as a temporary fire station are not interrupted and that Lessee is able to fulfill its obligations under this Lease. Notwithstanding the foregoing, Lessee will not use the Storage Area for storage of Lessee's personal property. Lessee shall also have non-exclusive access over and across that portion of the Lot connecting the Premises to the primary Lot entrance from the public right-of-way ("Access Point Corridor") for the purposes of ingress and egress from the Premises to the public right-of-way. At present, the primary Lot entrance is from East Badger Road. The Parties anticipate that, during the term of the Lease, Lessor will shift the primary Lot entrance to Aaron Drive. In order to maintain continuity and unhindered operations, a possible interim access may be necessary and the location determined by mutual agreement of both parties.
7. LESSOR ACCESS. Lessor shall have the right to enter the Premises at all reasonable times for the purpose of inspection or of performing repairs and maintenance. Unless an emergency situation exists, all access by Lessor to the Premises shall require no

less than twenty-four (24) hours' prior written notice. Lessor shall have the right to enter and use the Lot and Storage Area at any time, with or without notice to Lessee, provided that Lessor's entry and use of the same will not interfere with Lessee's use of the Premises as a temporary fire station or with Lessee's ability to rapidly ingress and egress from the Premises via the Access Point Corridor.

8. UTILITIES and FEES. Lessee shall be solely responsible for all charges for light, heat, water, telephone, cable, sanitary services and other utilities which shall be charged against the Premises during the full term of this Lease.
9. REPAIRS, MAINTENANCE and IMPROVEMENTS. Lessee shall, at its own expense and at all times, keep the Premises neat, clean and in a sanitary condition, and keep and use the Premises in accordance with applicable laws, ordinances, rules, regulations and requirements of governmental authorities. Lessee shall permit no waste, damage or injury to the Premises; all waste and junk shall be removed promptly. No hazardous materials of any kind shall be brought onto the Property by Lessee, other than those reasonably required as part of LFD's operations. Lessee shall maintain the Premises in as good condition as it now is, reasonable use and wear excepted, and damage by fire, flood, earthquake, and other casualty excepted. A list of Identified improvements, agreed upon by both parties following a walkthrough of the Premises, will be paid for by the Lessee. Lessor shall be responsible for maintaining and repairing the Storage Area and the Access Point Corridor and may make improvements to the same provided such improvements do not interfere with Lessee's reasonable use and enjoyment of the Premises or ability to rapidly ingress/egress from the Premises via the Access Point Corridor. Any repair or improvement work undertaken by Lessor must be accomplished in such a manner so as to assure Lessee rapid unimpeded 24-hour, 7 day per week, ingress egress access by fire trucks and all emergency vehicles. In the event that the condition of the Access Point Corridor is such that critical operations of LFD are impeded or may imminently be impeded, Lessee shall have the right, without the need to give prior notice to Lessor, to make all necessary repairs and access adjustments.
10. ENJOYMENT OF PREMISES. Lessee's use and enjoyment of the Premises throughout the term of this Lease shall not be disturbed. Lessor understands that Lessee will be utilizing the Premises as a temporary fire station which may result in noise, dust, glare, odors and traffic, including heavy vehicle traffic. Lessor shall take no action to interfere with or delay Lessee's use of the Premises for these purposes. Any such action taken by Lessor shall be a material breach of this Lease.
11. SUBLETTING or ASSIGNMENT. Lessee shall not sublet, or through any other process, transfer to any other person rental of the Premises, or any other right or privilege, without written permission of Lessor.
12. DEFAULT. Material breaches of this Lease by Lessee shall constitute default and be grounds for termination of the Lease. In the event of a default by Lessee, Lessor may

terminate this Lease and seek removal of Lessee from the Premises pursuant to Section 4 hereof.

13. ACCIDENTS. Lessee agrees that Lessor shall not be liable for loss arising out of damage to or destruction of personal property stored on the Premises from any defect in the Premises, latent defects excepted.

14. DESTRUCTION. In the event that any damage or destruction to the Premises or a portion of the Premises at any time during the term of this Lease renders the Premises unfit for its intended use by Lessee, the rent obligation of Lessee shall be abated to the extent any such damage or destruction prevents Lessee's intended use.

15. ABANDONED PROPERTY. Upon termination of the Lease and surrendering possession of the Premises to Lessor by Lessee, or at the completion of the rental term, any property remaining in or about the Premises shall be assumed by Lessor to be abandoned property and may be disposed of in accordance with the laws of the State of Washington.

16. INDEMNIFICATION AND HOLD HARMLESS.

16.1 Lessee Obligation. Lessee shall indemnify, defend and hold harmless Lessor from any and all claims, suits, actions, damage awards, fee awards, fines or penalties, whether to person or property, or expense of any type or nature which may occur to Lessor, including reasonable attorney's fees, expert's fees and other costs, based upon the intentional or negligent acts or omissions of Lessee, its agents and/or employees in the performance of this Agreement; provided, however, that Lessee's indemnification and hold harmless obligation shall be proportionally reduced to the extent caused by Lessor's intentional or negligent acts or omissions.

16.2 Lessor Obligation. Lessor shall indemnify, defend and hold harmless Lessee from any and all claims, suits, actions, damage awards, fee awards, fines or penalties, whether to person or property, or expense of any type or nature which may occur to Lessee, including reasonable attorney's fees, expert's fees and other costs, based upon the intentional or negligent acts or omissions of Lessor, its agents and/or employees in the performance of this Agreement; provided, however, that Lessor's indemnification and hold harmless obligation shall be proportionally reduced to the extent caused by Lessee's intentional or negligent acts or omissions.

16.3 RCW Title 51 Waiver. For the purposes of carrying out their respective indemnification and hold harmless obligations, the Parties expressly waive any immunity a Party may otherwise have pursuant to RCW Title 51. Further, the Parties recognize and confirm that this waiver was specifically

entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.

17. NOTICE and RENT PAYMENT. Any rent, notice, declaration, demand or communication to be given by a Party to this Agreement to the other shall be in writing and transmitted to the other Party by personal service or U.S. Certified Mail, postage prepaid, addressed as follows:

Lessee:

Fire Chief Mark Billmire
Lynden Fire Department
215 4th Street
Lynden, WA 98264

Lessor:

Eldon & Ranae DeJong
E & R DeJong L.L.C.
1205 E Badger Rd.
Lynden, WA 98264

Notice shall be considered given, delivered and effective two (2) business days following the deposit thereof in the U.S. mail, irrespective of the date of actual receipt of such notice by the addressee. Either Party may, by notice, change its address for notice.

18. RECORDING. Either Party may choose to record this Lease or a memorandum of this Lease with the Whatcom County Auditor's Office. The recording Party shall be responsible for the costs of recording and shall provide the other Party with a copy of the recorded Agreement.

19. ATTORNEY'S FEES and EXPENSES. In the event any unlawful detainer action, lawsuit, or other legal proceeding is commenced pertaining to this Lease, the prevailing party shall be entitled to recover all of its reasonable attorney's fees, costs and expenses against the non-prevailing party.

20. DISPUTE RESOLUTION. In the event of a dispute arising under or related to this Agreement, the Parties agree to submit first to mediation through JAMS (Judicial Arbitration and Mediation Services, Inc.) or a substantially similar mediation service. In the event that, after participation in mediation the dispute remains unresolved, the dispute shall be resolved exclusively in binding arbitration through JAMS or such other arbitrator or arbitration service agreed upon by the Parties, and pursuant to RCW 7.04A. The arbitration award may be confirmed as a judgment. The prevailing party in any such dispute shall be entitled to an award of actual attorney's fees, costs and expenses against the non-prevailing party.

21. SEVERABILITY. Should any provision of this Agreement be found to be void or otherwise unenforceable, all other provisions shall remain enforceable and binding.

22. NONWAIVER of BREACH. Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such Party's right to enforce such

provision. Waiver of any breach of any provision of this Agreement does not constitute waiver of any succeeding breach of such provision or a waiver of such provision itself.

23. NO THIRD-PARTY BENEFICIARY. No right, privilege or immunity of any Party under this Agreement shall inure to the benefit of any third party, nor shall any third party be a beneficiary of any of the provisions of this Agreement, except as may be specifically provided herein.
24. MODIFICATION. This Agreement may not be modified or amended except by the mutually-executed written instrument of the Parties.
25. GOVERNING LAW and VENUE. This Agreement shall be construed under the laws of the State of Washington. The venue of any legal action brought under the terms of this Agreement shall be in the Superior Court for Whatcom County, State of Washington.
26. NUMBER, GENDER and HEADINGS. As used herein, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All paragraph headings and/or captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.
27. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties as to the matters contained herein. No oral or written statements made by either Party prior to or following entry of this Agreement shall be considered a part of this Agreement unless expressly incorporated herein in writing.
28. COUNTERPARTS. This Agreement may be executed in counterparts and each shall be deemed an original, but all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date above written.

LESSEE: CITY OF LYNDEN

By:

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

Notary Public in and for the State of Washington
Residing at: _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this ____ day of _____, 20__, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, the _____ of **E & R DEJONG, L.L.C.**, a Washington limited liability company, who acknowledged said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned and stated on oath that he/she was authorized to execute this instrument on behalf of said company.

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

Notary Public in and for the State of Washington
Residing at: _____
My commission expires: _____