LICENSING AGREEMENT FOR
CITY OF BELLEVUE FIBER AND CONDUIT

THIS FIBER AND CONDUIT LICENSING AGREEMENT (the "Agreement") made and effective as of this 15th day of January, 2009, by and between the City of Bellevue, Washington, a municipal corporation ("City") and North East King County Regional Public Safety Communications Agency (NORCOM), a Washington not for profit corporation and instrumentality of its member governments ("Lessee").

RECITALS

WHEREAS, the City is the owner of a Dark Fiber and a Fiber and Conduit System; and

WHEREAS, Lessee proposes to use the City Dark Fiber and Conduit to provide connectivity from Room MEC-02 at 450 110th Avenue NE, Bellevue, Washington to the Pedestal at NE 40th Street and 156th Avenue NE, Redmond, Washington;

NOW, THEREFORE, in consideration of the promises, the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows.

ARTICLE I
DEFINITIONS

For the purpose of this Agreement, the following terms when used herein shall have the following meanings.

1.1 "City Facilities" means all facilities, including but not limited to fiber optic cables, equipment and all associated hardware, that are owned, controlled and/or utilized by the City.

1.2 "Conduit" means a structure for supporting Fiber or other cables, usually underground, which may contain, among other things, one or more Innerducts.

1.3 "Dark Fiber" means unlit optical fiber cable strands, with connectivity from end-to-end and meeting generally accepted industry loss and performance standards, where the Lessee is responsible for providing and attaching the telecommunications equipment and lasers to transmit the light to carry data via the fiber.

1.4 "Fiber" means optical fiber cable strands used to transmit light to carry data from end-to-end and meeting generally accepted industry loss and performance standards.

1.5 "Fiber and Fiber and Conduit System" means any combination of Fiber, Innerducts, Conduits, Manholes, Vaults, Handholes, Junction Boxes and Pedestals joined to form an integrated whole, which is owned, in whole or in part, by the City.

1.6 "Handhole" means a buried box with a lid that is even with the surface of the ground and that is used to store, terminate, splice or transfer fiber optic cable.

1.7 "Innerduct" means a single enclosed raceway/channel within a single Conduit in which the fiber optic cable will be placed.

1.8 "Junction Box" means a box where cable splices and connections are made and accessed.
1.8 "Lessee Facilities" means all facilities, including but not limited to fiber optic cables, equipment and all associated hardware, owned and/or utilized by Lessee that occupy and use the identified portion of the Fiber and Conduit System.

1.9 "Manhole" means a subsurface enclosure which qualified personnel may enter and use for the purpose of installing, operating and maintaining facilities.

1.10 "Pedestal" means an above ground structure used to store, terminate, splice or transfer fiber optic cable.

1.11 "Vault" means an underground structure used to store, terminate, splice or transfer fiber optic cable.

**ARTICLE II**

**SCOPE OF AGREEMENT**

2.1 This Agreement shall become effective upon the effective date stated above and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect until June 30, 2016, at which time the parties agree to extend this Agreement, without modification, for additional one (1) year periods upon the written request of Lessee, provided that such written request is received by the City not later than sixty (60) days prior to the termination of the initial term or any one-year extension.

2.2 Subject to this Agreement, the City agrees to issue to Lessee, for the purposes limited to those described herein, a revocable and nonexclusive license authorizing the use of two (2) single mode Fiber of City-owned Dark Fiber from Room MEC-02 at 450 110th Avenue NE, Bellevue, Washington to the Pedestal at NE 40th Street and 156th Avenue NE, Redmond, Washington. Lessee shall use the Fiber to support operation of its back-up emergency communications center. By issuing this license, the City shall provide reliable service, restore service rapidly, and plan and coordinate interruptions of service with Lessee.

2.3 No use of the City-owned Dark Fiber or the City Fiber and Conduit System, or payment of any fees or charges under this Agreement shall create or vest in Lessee any easements or any other ownership or property rights of any nature in the Dark Fiber or the Fiber and Conduit System. Neither this Agreement, nor the license granted hereunder, shall constitute an assignment of any of the City's rights to use the Dark Fiber, the Fiber and Conduit System or the public or private property in which the Fiber and Conduit System is located.

2.4 The parties agree that this Agreement shall not be construed as limiting or interfering with the City's right to manage, control, construct, locate, maintain and/or use its Fiber and Conduit System; City Facilities; the public right of way; and/or any public or private property in which the Fiber and Conduit System or the City's Facilities are located.

2.5 The parties intend that nothing in this Agreement shall be a limitation, restriction, or prohibition against the City with respect to any other existing or future City agreement regarding the Fiber and Conduit System, including the identified portion of the Fiber and Conduit System covered by this Agreement. Lessee acknowledges that a future City agreement with a third party may make rearrangement of Lessee's Facilities necessary. Lessee agrees that in such event, Lessee will cooperate in good faith with such rearrangement work; provided that the City shall give Lessee thirty (30) days written notification of such intent to rearrange Lessee's Facilities.

2.6 If the City determines that it is necessary to relocate, modify or alter the Dark Fiber and/or the Fiber and Conduit System, the City shall provide Lessee sixty (60) days written notification prior to making the proposed relocation, modification or alteration in order to provide Lessee a reasonable opportunity to
2.8 In the event of an emergency, as soon as practicable thereafter and not later than seventy-two (72) hours after having taken action, the City shall advise Lessee in writing of the emergency work performed or the action taken with respect to any emergency modification or alteration of Lessee’s Facilities.

ARTICLE III
FEES AND CHARGES

3.1 Commencing on the effective date of this Agreement, Lessee shall pay to the City a monthly recurring Fiber Usage Rental Fee in the amount of $477.00 for the use of the identified portion of the City’s Fiber and Conduit.

3.2 Wherever this Agreement provides for Lessee to pay for work done by the City, the charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overheads. The City’s standard billing rates for having personnel on site shall apply, and the City’s cost accounting systems used for recording capital and expense activities shall be used.

ARTICLE IV
LIABILITY AND DAMAGES

4.1 The City, its officers, employees, agents and contractors, shall exercise reasonable precaution to avoid damaging the Lessee Facilities and shall make an immediate report to Lessee of any damage to the Lessee Facilities caused by the City’s officers, employees, agents or contractors. The City shall reimburse Lessee for all reasonable costs incurred by Lessee for repairing damage to the Lessee Facilities caused by the City, its officers, employees, agents and contractors; provided, that the City shall not be liable to Lessee for any interruption of Lessee’s service or for interference with the operation of the Lessee Facilities. The City shall not be liable for any special, indirect, or consequential damages arising in any manner whatsoever out of Lessee’s use of the Fiber and Conduit System or the actions or omissions of the City, its officers, employees, agents and contractors in regards thereto, including, but not limited to, as a result of the City’s negligence. Lessee shall indemnify and hold harmless the City, its employees, agents and contractors from and against any and all claims, demands, causes of action, costs, and attorneys’ fees of whatever kind resulting in any manner whatsoever out of Lessee’s use of the Fiber and Conduit System. The foregoing shall not limit the City’s liability for willful or intentional misconduct.

4.2 Lessee shall indemnify, defend and hold harmless the City, its officers, employees, agents and contractors, from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys’ fees and expenses, arising from the acts, errors or omissions of NORCOM, its officers, employees, agents and contractors in the performance of its obligations under this Agreement, and arising from NORCOM’s use and operation of the Lessee Facilities, including but not limited to taxes, special charges by others, claims and demands for damage or loss from intellectual property infringement, for libel and slander, for trespass, and for unauthorized use of television or radio broadcast programs and other program material.

4.3 The City shall give Lessee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by this Article. If a claim or action arises, the City shall tender the defense of the claim or action to Lessee, which defense shall be at Lessee’s expense. The City may
participate in the defense of a claim and, in any event, Lessee may not agree to any settlement of claims financially affecting the City without the City's written approval, which shall not be unreasonably withheld.

ARTICLE V
INSURANCE

5.1 Without limiting any obligations or liabilities of Lessee under this Agreement, Lessee shall procure and maintain for the term of this Agreement, at its own expense, without direct reimbursement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the license granted by this Agreement, which insurance shall meet or exceed the following unless otherwise approved by the City:

Commercial General Liability Insurance, including Contractual Liability Coverage, covering liability assumed under this Agreement; Products/Completed Operations Coverage; Broad Form Property Liability Coverage, and Personal Injury Coverage, all in the amount of $1,000,000 per occurrence and $2,000,000 aggregate.

5.2 Lessee's insurance policy required by Article V, Section 5.1 above, (1) shall name the City as an additional insured. Lessee hereby waives all rights of recourse, including any right to which another may be subrogated, against the City for personal injury, including death, and property damage, (2) shall be primary insurance and (3) shall be non-contributing with any other insurance maintained by the City.

5.3 Lessee shall provide the City with Certificates of Insurance evidencing coverage currently in effect upon the effective date of and for the duration of this Agreement. All policies are to provide the City with thirty (30) days prior written notice of cancellation or any material adverse change in conditions.

5.4 Lessee shall be fully responsible for any self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

ARTICLE VI
ASSIGNMENT OF RIGHTS AND LIABILITIES

6.1 The rights and obligations of Lessee under this Agreement shall not be assigned, transferred or sublicensed in whole or in part without the prior written consent of the City, which consent shall not be unreasonably withheld. No less than sixty (60) days prior to any proposed assignment, Lessee shall provide to the City (1) written notice of the proposed assignment and (2) adequate assurance of any proposed assignee's financial responsibility, the adequacy of which is to be determined by the City. Under any assignment the assignee must agree to assume all liabilities and obligations of Lessee.

6.2 Notwithstanding Article VI, Section 6.1, the City acknowledges and agrees that Lessee may assign or collaterally assign, all of its rights, interests and obligations hereunder to any of its affiliates, provided, however (1) Lessee gives the City written notice no less than sixty (60) days prior to any such assignment; (2) no less than sixty (60) days prior to any assignment, Lessee provides the City with adequate assurance of the proposed assignee's financial responsibility, the adequacy of which is to be determined by the City; and (3) the assignee agrees to assume all liabilities and obligations of Lessee.

6.3 Any attempt of an assignment by Lessee to a non-affiliated party, without the prior written consent of the City shall be void. Any attempt of an assignment to an affiliated party which does not meet the criteria set forth in Article VI, Section 6.2 shall be void.

6.4 The City shall have the right to assign this Agreement and to assign its rights and delegate its obligations and liabilities under this Agreement in either whole or in part. The City shall provide notice to
Lessee of any assignment which shall state the effective date thereof. Upon the effective date and to the extent of the assignment, the City shall be released and discharged from all obligations and liabilities under this Agreement.

6.5 Neither this Agreement nor any term or provision hereof, nor any inclusion by reference, shall be construed as being for the benefit of any person or entity not a signatory hereto.

6.6 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

ARTICLE VII
TERMINATION OF AGREEMENT

7.1 This Agreement and the license issued pursuant to this Agreement shall automatically cease and terminate whenever there is filed either by Lessee or against Lessee in any court pursuant to any statute, either of the United States or any state, a petition in bankruptcy or insolvency, or for reorganization, or for the appointment of a receiver or a trustee of all or substantially all of Lessee’s property, or whenever Lessee makes a general assignment for the benefit of creditors; provided that the City shall have the discretion to allow Lessee a reasonable period of time within which to settle, compromise, resolve or cure the circumstances leading to such termination.

7.2 This Agreement and the license issued pursuant to this Agreement shall automatically terminate:

7.2.1 If Lessee’s Facilities are used or maintained in violation of law or in aid of any unlawful act or undertaking; or

7.2.2 If any authorization which is required of Lessee by any governmental or private authority for the construction, operation and maintenance of Lessee’s Facilities is denied or revoked; or

7.2.3 If Lessee no longer has the right to operate its back-up emergency communications facility which is served by Lessee’s Facilities.

7.3 The City shall have the right to terminate this Agreement:

7.3.1 If Lessee is in default of any term of this Agreement; or

7.3.2 If Lessee’s insurance carrier shall at any time notify the City or Lessee that the policy or policies of insurance, required under Article V hereof, have been or will be canceled or changed and if the requirements of Article V are not satisfied upon the effective date of such cancellation or change.

7.4 Even after the termination of this Agreement, Lessee’s responsibility and indemnity obligations shall continue, as provided for in Article IV of this Agreement, with respect to any claims or demands related to Lessee’s Facilities.

ARTICLE VIII
MISCELLANEOUS

8.1 Notices. Wherever in this Agreement notice is required to be given by either party to the other, that notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail, return receipt requested, with postage prepaid and properly addressed as follows, or to such other address as either party may, from time to time, give the other party in writing.
8.2 Non-Waiver. Failure of the City or Lessee to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege, but the same shall be and remain at all times in full force and effect.

8.3 Force Majeure. Neither party shall be responsible for delays or failures in performance of any part of this Agreement (other than an obligation to make money payments) resulting from any acts or occurrences due to fire, flood, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages or other cause beyond its control.

8.4 Entire Agreement. The terms contained in this Agreement and any Exhibits referred to herein, which are incorporated into this Agreement by reference, constitutes the entire Agreement between the parties with respect to the subject matter hereof, superseding all prior agreements, understandings, proposals and other communications, oral or written. Neither party shall be bound by any terms additional to or different from those in this Agreement. No representations, understandings, agreements or warranties, expressed or implied, have been made or relied upon in the making of this Agreement other than those specifically set forth. The terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.

8.5 Severability. In the event that any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired, invalid, illegal or unenforceable provisions shall be replaced by a mutually acceptable
provision, which being valid, legal and enforceable, comes closest to the intentions of the parties underlying the invalid, illegal or unenforceable provision.

8.6 Headings. All headings contained in this Agreement are for convenience only and are not intended to affect the meaning or interpretation of any part of this Agreement.

8.7 Venue and Governing Law. The venue for any dispute related to this Agreement shall be in the King County Superior Court in Washington. This Agreement and the rights and obligations contained in it shall be construed in accordance with and governed by the laws of the State of Washington.

8.8 Costs of Enforcement. In the event of a default by Lessee, Lessee, its successors and assigns, agree to pay all of the City’s costs of enforcing its rights under this Agreement, including all reasonable attorneys’ fees and other costs which the City may incur with regard to collection of any amounts owed under this Agreement or with respect to the enforcement of any other rights of the City under this Agreement.

IN WITNESS WHEREOF, the City of Bellevue and Lessee have caused this Fiber and Conduit Licensing Agreement to be duly executed and effective as of the date first set forth above.

LESSEE
By: [Signature]
Name: Chris Fischer
Title: Executive Director

CITY OF BELLEVUE
By: [Signature]
Name: [Signature]
Title: CTO

Approved as to form:
Rod Kaeguma
NORCOM Attorney

Approved as to form:
[Signature]
City Attorney
ACORD CERTIFICATE OF LIABILITY INSURANCE

PRODUCER (360) 886-8928 FAX: (866) 322-2627
MacIlvinnie Associates, Inc.
P.O. Box 8629

Covington WA 98042

INSURED NORCOM

DBA: North East King County Regional Public Safety Communications Agency, Inc.
123 5th Ave.

Kirkland WA 98033

INSURERS AFFORDING COVERAGE
INSURER A American Alternative Ins
INSURER B
INSURER C
INSURER D
INSURER E

COVERAGE

The policies of insurance listed below have been issued to the Insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Aggregate limits shown may have been reduced by paid claims.

<table>
<thead>
<tr>
<th>INSURER</th>
<th>LIMIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>

DESCRIPTION OF OPERATIONS/Locations/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENTS/SPECIAL PROVISIONS

The City of Bellevue, its elected officials, officers, employees, insurers & agents are included as Additional Insured per policy form VGL101 (08/03) and CUI000S (04/95) on a primary & non-contributory basis as respects the agreement between NORCOM & The City of Bellevue.

***This replaces the certificate issued on 1/5/09.

CERTIFICATE HOLDER

City of Bellevue
PO Box 90012
Bellevue, WA 98009

CANCELLATION

Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail 45 days written notice to the certificate holder named to the left, but failure to do so shall not result in obligation or liability of any kind upon the insurer, its agents or representatives.

Authorized Representative

Darlene

ACORD 25 (2001/03)
INSO25 (0106) 0.0a

© ACORD CORPORATION 1988
IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.
City of Bellevue  
Finance Department - Contracting Services  
450 110th Ave. NE. Bellevue, WA 98004

Contract Routing Form

Current Contract Information:
Contract Title: Fiber & Conduit Licensing Agreement  
Contract Description: Fiber & Conduit Licensing agreement b/w COB & NORCOM  
Total Contract Value:  
This Amendment Value: N/A  
Department: Information Technology - 558  
Contract Manager: Jim Rawley  
Contract Type: Other  
Contract Form: Standard COB document with no changes  
Budget Expenditure: Revenue

Vendor Information:
Is this a new vendor? Yes  
Vendor Name: NORCOM  
JDE Vendor Number: 604754  
Is this vendor an independent contractor? Yes  
Tax ID #: N/A  
COB License #: N/A  
UBI #: N/A  
Contractor's License #: N/A

Contract Terms:
Original Effective Date: 05/21/2009  
End Date: 06/30/2016  
Subject To: No Renewal

Related Contract Information:
Is this an amendment/change order/renewal? No

Council Approval:
Does this contract require council approval? No

Route:
Contracting Services:  
Information Technology:  
Legal:  
Insurance Reviewed By:  
Department Director:  
Contracting Services:  
Return To:  
City Clerk's Office:  

In  
5/21/09  
5/27/09  
5/29/09  
6/1/09  
6/2/09  
5/21/09  
5/27/09  
5/29/09  
6/1/09  
6/2/09  
6/03/09  
6/04/09  

Out  
5/21/09  
5/27/09  
5/29/09  
6/1/09  
6/2/09  
5/21/09  
5/27/09  
5/29/09  
6/1/09  
6/2/09  
6/03/09  
6/04/09  

CHANGEN
Selection Method:

- Selection Method:
- Roster Service: -
- Solicitation Issue Date: - Solicitation Due Date: -
- Length Bid/Proposal is valid for: -
- Bid/RFP/RFQ #: -
- Bid/RFP/RFQ/ITQ Title: -
- Grant Money involved in contract?

<table>
<thead>
<tr>
<th>Quote #</th>
<th>Vendor Name</th>
<th>MWDBE</th>
<th>Fee/Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Budget Information:

<table>
<thead>
<tr>
<th>Line #</th>
<th>Description</th>
<th>GL Date</th>
<th>Account #</th>
<th>Subtotal</th>
<th>Tax</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Additional Comments:

This is a revenue agreement.