CONTRACT 6494

FACILITIES LEASE FOR EMERGENCY COMMUNICATIONS FACILITIES

This lease is entered into by and between the **City of Redmond**, Washington ("City"), and **North East King County Regional Public Safety Communications Agency (NORCOM)** ("Lessee"), for mutual benefits to be derived. The parties hereby agree as follows:

Section 1. Location and Use of Facilities. Lessee is hereby authorized to install, operate and maintain the emergency communications facilities described in Section 2 of this Lease on the water tank depicted on Exhibit "A" ("Water Tank"), which water tank is located on City property legally described on Exhibit "B" and located at approximately 17100 NE 104th Street, Redmond, Washington ("Property"). Exhibits "A" and "B" are attached hereto and made a part hereof.

Section 2. Authority Granted. Lessee is authorized to install, operate and maintain on the Water Tank and the Property the emergency communications facilities depicted on Exhibit "A" and described on Exhibit "C", which is attached hereto and made a part hereof, together with all necessary supporting improvements, structures and equipment ("Facilities"). This Lease is for the purpose of operating public safety emergency communications facilities and equipment that serves the City of Redmond Fire Department and other fire departments in the region. Lessee shall be responsible for making applications and obtaining development permits and authorizations from the City, if required. Subject to minor, non-substantive changes resulting from the City's development permits and authorizations, the Facilities shall be substantially in compliance with the depiction of the Facilities in Exhibit "A" and the description of the Facilities in Exhibit "C". No substantive expansions, additions to or modifications of the Facilities shall be permitted without first having received prior written authorization from the City, which authorization shall not be unreasonably withheld or delayed. The Facilities may not be used for cable television, cable internet or wireline telephone services.

Section 3. Rights Granted. Nothing contained within this Lease shall infringe upon the City's right to use the Water Tank and Property upon which Lessee's equipment and improvements are installed for any purposes the City shall so desire, further, nothing contained herein shall convey any right, privilege, title, or interest in the Water Tank and the Property. This Lease merely authorizes Lessee to use and occupy the Water Tank and the Property for limited purposes stated herein. This lease shall not be deemed to constitute any warranty of title.

Section 4. Installation and Removal of Property. All buildings, landscaping and other affixed improvements installed by Lessee ("Fixtures"), excluding transmission and telecommunications equipment, shall become the property of the City upon expiration or

termination of the Lease. If transmission and telecommunications equipment are left upon the Water Tank or the Property after expiration or termination of this Lease, they shall become the property of the City if not removed by Lessee. Lessee shall within ten (10) days of written request, execute any documents to further confirm conveyance of title if so requested by the City. In the event the City requires Lessee to remove the Fixtures, Lessee shall remove the Fixtures within ninety (90) days after notice from the City to Lessee of the requirement of removal. Removal of Fixtures and transmission and telecommunications equipment shall be at the sole cost and expense of Lessee. During installation and removal of the Facilities, Lessee shall comply with all noise suppression requirements of the City, recognizing that the Facilities may be adjacent to a residential area. Prior to the commencement of installation or removal of the Facilities, Lessee will obtain approval of its landscaping and construction plans from the City, and, if necessary, obtain a Right-of-Way Use Permit, which approval should not be unreasonably withheld or delayed.

Section 5. Access. Lessee shall have at all times the right of ingress and egress to and from the Facilities, over and across the Water Tank and the Property; provided, that such right will not in any manner interfere with the City's primary use of the Water Tank and Property, and this right of ingress and egress shall terminate concurrently with the termination of this Lease. However, with the exception of emergency repairs, Lessee shall give forty eight (48) hours advance written notice to the City prior to commencement of any maintenance or repair of the Facilities, except as specified in Section 6.

The City shall, upon request of Lessee, provide a list of emergency telephone numbers known to the City of the other lessees at the Property.

Section 6. Emergency Work. In the event of any emergency at the Property, and/or due to an emergency at the Facilities which could endanger property, life, health or safety of individuals at or near the Property, the City shall have the right to deactivate the Facilities only after coordination with the Redmond Fire Department. The Redmond Police or Fire Department will coordinate deactivation with Lessee. The Redmond Police Department Communications Center maintains twenty four (24) - hour emergency contact information for Lessee. The City will endeavor to notify Lessee as soon as possible of any emergency situation that requires deactivation of the Facilities.

If damage to or breakage of the Facilities causes an emergency or if Lessee's activities at the Property will endanger the property, life, health, or safety of any individual, Lessee shall immediately take proper emergency measures to repair the Facilities or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals, without first applying for and obtaining any permit or other authorization as required by this Lease. However, this obligation shall not relieve Lessee from any requirement to notify the City of the emergency work and obtain any permits necessary for this purpose after the emergency work. Lessee shall notify

the City by telephone immediately upon learning of the emergency and shall apply for all required permits no later than the second succeeding day during which the Redmond City Hall is open for business.

Section 7. Dangerous Conditions, Authority for City to Abate. Whenever construction, installation, or excavation of the Facilities has caused or contributed to a condition that appears to substantially impair the lateral support of or endanger the Water Tank, the Property, or the adjoining public way or street or utilities therein, the City Public Works Director, or his or her designee, may direct Lessee, at Lessee's own expense, to take reasonable action to protect the Water Tank, the Property or the adjoining public way, street or utilities therein, which action may include compliance within a prescribed time.

In the event that Lessee fails or refuses to promptly take the actions directed by the City Public Works Director, or his or her designee, or fails to fully comply with such directions, or if emergency conditions require immediate action, the City may take such actions as are reasonably necessary to protect the Water Tank, the Property or the adjoining public way, street or utilities therein and to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and Lessee shall be liable to the City for the costs thereof. The provisions of this Section shall survive the expiration, revocation, or termination by other means of this Lease.

Section 8. Consideration. The first year's annual consideration for Facilities to be located on the Property and Water Tank shall be **One Thousand Dollars ($1,000).** Annual rent shall be paid within thirty (30) days after the effective date of the Lease. Annual rent for each year after the first shall be paid each year within thirty (30) days of the anniversary of the effective date of the Lease. The effective date will be the date when the City issued a building permit or the date when Lessee executes this Lease, as evidenced by the date under its signature below, whichever came later. Any annual rent payment received more than thirty (30) days after the effective date or the anniversary thereof, shall include a late payment penalty at the lesser of 2% per month or the highest rate permitted by law.

After the first year, the annual rent shall be increased according to the following formula: Rent will be calculated as being the rent in effect adjusted by three percent (3%) or the Consumer Price Index [Seattle-Tacoma-Bremerton, WA – All Urban Consumers, Base 1982-84=100 (Index)] increase for the previous year as published by the United States Department of Labor, Bureau of Statistics, whichever is greater.

The previous year's Index change shall be calculated by determining the Index for the calendar month which is the most recently released information being at least three (3) months prior to the month in which the renewal commences compared with the Index for the same calendar month for the subsequent year.

The rent for Lessee's use and installation of the Facilities also gives consideration to enhanced public safety radio communications for the City. The City supports emergency services and fire and emergency medical service ("EMS") response from the City's Fire Department, which is the primary agency responding to fire and EMS activities and other public safety emergencies occurring at the Facilities and other City public utility sites.

Section 9. Licenses, Fees, Deposits, Bonds and Taxes. Prior to constructing the Facilities, Lessee shall make application for and obtain all required and necessary permits and licenses, and submit deposits or bonds, including those for as-built drawings, to assure complete installation of the approved Facilities. Further, Lessee shall pay promptly, and before they become delinquent, all applicable taxes on the Facilities, and all public utility charges related to the conduct of Lessee's business on the Property.

Section 10. Reimbursement of City Expenses. Lessee shall be subject to all applications, reviews, inspections and permit fees associated with activities undertaken through the authority granted in this Lease or under the laws of the City.

These fees are associated with reasonably incurred costs and expenses of the City in connection with the preparation of this Lease with Lessee, including but not limited to attorneys, consultants, City Staff and the City Attorney's Office and for review, inspection, or supervision of activities undertaken through the authority granted in this Lease or any ordinances relating to the subject for which a permit fee is not established. Lessee shall reimburse the City directly for any and all reasonable costs after receiving an invoice documenting said costs and expenses in sufficient detail to demonstrate that they were reasonably necessary to perform the aforementioned actions.

In addition to the above, Lessee shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving the Facilities.

Lessee shall, within 30 days after written demand, reimburse the City upon submittal by the City of an itemized billing by project of costs associated with Lessee's actual, identified expenses reasonably incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Lessee's Facilities, unless otherwise addressed by application or user fees. Such costs and expenses shall include but not be limited to Lessee's proportionate cost of City personnel assigned to oversee or engage in any work as the result of the presence of the Facilities on City-owned property. Such costs and expenses shall also include Lessee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Lessee's Facilities or the routing or rerouting of any utilities so as not to interfere with Lessee's Facilities.

The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. City shall provide Lessee with the City's itemization of costs reflected in the billing at the conclusion of each project. Lessee shall be entitled to a credit for amounts paid with its application(s).

Section 11. Utilities. Lessee shall provide its own utility services, either by agreement between Lessee and existing user or users, or by obtaining a separate meter for electricity or other utilities to be placed in Lessee's name.

The City agrees to grant Lessee, or a service provider, a utility easement on the Property to serve the Facilities, if such an easement is necessary. However, the location of any such utility easement shall require the City's written approval and consent, which shall not be unreasonably withheld or delayed.

Section 12. Term. This Lease shall have a term of five (5) years from the date set forth below.

Section 13. Renewal. Unless the City gives written notice to Lessee that a renewal application will be required or that this Lease will not be renewed or extended by the City, such notice being received at least one hundred twenty (120) days prior to the end of this Lease's then relevant term, this Lease shall automatically renew for an additional five (5) year term without action by either party.

If at least one hundred twenty (120) days prior to the expiration of this Lease, the City gives written notice to Lessee that a renewal application will be required, Lessee shall file an application for renewal at least ninety (90) days before expiration of this Lease. The application shall be the *Telecommunications Facilities Siting on City Property* form existing at that time.

Recognizing that the City is under no obligation to grant a renewal of this Lease, the City shall consider and take action on the renewal application within sixty (60) days after receiving a complete application. When such action is taken, the City shall issue a written determination granting, granting with conditions, denying or establishing other such criteria as the City Council may choose to apply to a new lease. If the City takes no action on an application for renewal within sixty (60) days after receiving a complete application for such renewal, renewal will be deemed to have occurred automatically. This Lease may not be renewed by the City if there has been an uncured breach of this Lease during the preceding term and shall not be renewed until

any ongoing violations or defaults in Lessee's performance of this Lease and any other lawful applicable regulations relating to the use and management of City property, have been cured, or a plan detailing the corrective action to be taken by the Lessee has been approved by the City.

Section 14. Joint Use. To the extent technology and space permits, the Facilities shall be available for joint use by the City. For security reasons, Lessee and the Redmond Police Department shall approve use of the Facilities by non-City users.

Section 15. Business Purpose. Lessee shall conduct and carry on in the Facilities only the business for which the Facilities are leased, and shall not use the Facilities for any additional or illegal purposes. Lessee agrees that no stock of goods will be carried or anything done in or about the Facilities which will increase the City's rate of insurance on the effective date of this Lease.

Section 16. Alterations. Except as provided in Section 2 hereof and except for routine maintenance, Lessee shall not make any substantive expansions, alterations, additions, relocations, modifications or improvements to the Facilities without the prior review and written consent of the City. Written consent to Facilities changes may also require an amendment to this Lease. Lessee shall submit to the City a written request for any change and any supplemental materials as may be requested for the City's evaluation and approval. The City shall endeavor to respond to the request within sixty (60) days after receipt of all requested materials.

Section 17. Lights, Signs and Symbols. All lights, signs or symbols placed on the Facilities by Lessee shall be subject to the prior approval of the City. In the event Lessee shall place lights, signs or symbols on the Facilities where they are visible from the street and not acceptable to the City, the City may demand the immediate removal of such lights, signs or symbols, and the refusal of Lessee to comply with such demand within a period of twenty four (24) hours will constitute a breach of this Lease, thereby entitling the City to exercise any available legal remedy and to remove the lights, signs or symbols. Any lights, signs or symbols placed upon the Facilities shall be so placed upon the understanding and agreement that Lessee will remove the same at the termination of this Lease and repair any resulting damage or injury to the Facilities. If such lights, signs or symbols are not so removed upon termination by Lessee, then the City shall remove the same at Lessee's expense.

Section 18. Compliance with All Applicable Laws. Lessee agrees to comply with all present and future federal, state and local laws, ordinances, rules and regulations in connection with Lessee's construction and installation of the Facilities, operation, maintenance and use of the Facilities, and performance of any and all work upon the Facilities. This Lease is subject to ordinances of general applicability enacted pursuant to the City's police powers. Lessee further agrees to save and hold the City harmless from damage, loss or expense arising out of the said use or work caused by Lessee's negligence, and to remove all liens or encumbrances arising as a result

of said use or work. Lessee shall, at its own expense, maintain the Facilities in a safe condition, in good repair and in a manner suitable to the City. Additionally, Lessee shall keep the Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services and City use of the Water Tank and Property. Lessee shall have sole responsibility for the maintenance, repair and security of the Facilities and shall keep the same in good repair and condition during the Lease term.

Section 19. Permits and Licenses. This Lease is contingent upon Lessee's obtaining all required governmental permits, approvals and licenses relating to the Facilities. Lessee shall not commence installation and construction of the Facilities until commencement of this Lease and issuance of all necessary governmental permits, licenses and approvals. Lessee accepts the Water Tank and Property in the condition existing as of the commencement date of this Lease. The City makes no representation or warranty with respect to the condition of the Water Tank and the Property and the City shall not be liable for any latent or patent defect in the Water Tank or the Property.

Section 20. Cancellation. In the event that Lessee determines that the Water Tank and the Property are unsuitable for Lessee's intended purpose, Lessee reserves the right to cancel this Lease upon one hundred twenty (120) days written notice to the City. In such event, no consideration for activities shall be refunded or reimbursed and Lessee's rights and obligations, except for restoration as specified in Section 38, indemnification as specified in Section 24, maintenance of insurance as specified in Section 23, and removal of all liens and encumbrances as specified in Section 18, shall cease.

Section 21. Interference. Lessee's Facilities shall be subordinate to all existing City, Eastside Public Safety Communications Agency (EPSCA), and other communication and telecommunication facilities existing on the Water Tank and Property at the time this Lease is executed. Lessee acknowledges that the City is leasing the Water Tank and the Property for the purposes of transmitting and receiving emergency communication signals from the Facilities. Consistent with Section 14, the City has the right to grant rights to others for use of other communications/telecommunications facilities on the Water Tank and the Property, and the City agrees that it will use reasonable efforts to protect Lessee from interference from subsequent users of the Water Tank and Property through appropriate lease terms. The City, however, is not in any way responsible or liable for any interference which may be caused by the use and operation of City-operated electronics equipment, even if caused by new technology. In the event that any other lessee's activities interfere or cause electronic interference with Lessee's communications transmissions, the City and Lessee shall be available and cooperate with each other and with other lessees to identify causes and work towards the resolution of any electronic interference problem. In addition, Lessee agrees to eliminate any interference caused to City facilities or to radio or television equipment or surrounding residences in the vicinity of the

Property by the Facilities at Lessee's own expense and without imposition of extra filters on City equipment.

Section 22. Relocation of Facilities. Within thirty (30) days following written notice from the City, Lessee shall, at its own expense, temporarily remove, relocate, change or alter the position of the Facilities whenever the City Public Works Director, or his or her designee, determines that such removal, relocation, change or alteration is reasonably necessary for construction, alteration, repair, maintenance, installation, or improvement of any City or other improvement in or upon the Water Tank or the Property or for the operations of the City or other governmental entity in or upon the Property. When such a notice is given by the City, the City shall grant a lease amendment without further application. In the event that a suitable alternative location for the Facilities cannot be located upon the Property, Lessee shall have the right to terminate this Lease upon thirty (30) days written notice to the City.

Section 23. Insurance. Lessee shall procure and maintain for the duration of this Lease, insurance against claims for injuries to persons, death, or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to Lessee, its agents, representatives or employees. Lessee shall make available, if requested, an insurance certificate, together with an endorsement copy, listing the City, its officers, elected officials, agents, employees, representatives, engineers, consultants and volunteers as additional insureds, under the Commercial General Liability, Automobile Liability and Comprehensive Form policies and shall provide the same to the City for its inspection prior to the commencement of any work or installation of the Facilities pursuant to this Lease. Such insurance certificate which shall evidence:

A. Comprehensive general liability insurance, written on an occurrence basis with limits not less than:

(1) $2,000,000.00 for bodily injury or death to each person;

(2) $2,000,000.00 for property damage resulting from any one accident; and

(3) $2,000,000.00 for all other types of liability

B. Automobile liability for owned, non-owned and hired vehicles with a limit of $2,000,000.00 for each person and $2,000,000.00 for each accident;

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than $1,000,000.00; and

D. Comprehensive Form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than $2,000,000.00.

The liability insurance policies required by this Section shall be maintained by Lessee throughout the term of this Lease, and such other period of time during which Lessee is operating without a Facilities Lease, or Lessee is engaged in the removal of the Facilities. Failure to maintain such insurance shall be grounds for Lease cancellation. Any deductibles or self-insured retentions shall be the sole responsibility of Lessee and must be declared to and approved by the City. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Lessee's insurance shall be primary insurance with respect to the City, its elected and appointed officers, officials, employees, agents, representatives, engineers, consultants, and volunteers. Any insurance maintained by the City, its elected and appointed officers, officials, employees, consultants, agents, representatives, engineers and volunteers shall be in excess of Lessee's insurance and shall not contribute with Lessee's insurance.

Section 24. Indemnification and Waiver.

A. Lessee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected and appointed officers, officials, employees, agents, engineers, consultants, volunteers and representatives from any and all claims, costs, judgments, awards or liability to any person arising from injury, sickness, or death of any person or damage to property:

1. For of which the negligent acts or omissions of Lessee, its agents, servants, officers or employees in performing the activities authorized by this Lease are the proximate cause; or

2. By virtue of Lessee's exercise of the rights granted herein; or

3. By virtue of the City's permitting Lessee's use of the City's adjacent public ways or other adjacent public property; or

4. Based upon the City's inspection or lack of inspection of work performed by Lessee, its agents and servants, officers or employees in connection with the Facilities pursuant to this Lease or pursuant to any other permit or approval issued in connection with this Lease; or

5. Arising as a result of the negligent acts or omissions of Lessee, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work upon the Facilities, in any public way,

or other public place in performance of work or services permitted under this Lease; or

6. Based upon radio frequency emissions or radiation emitted from the Facilities, regardless of whether the Facilities comply with applicable federal statutes and/or FCC regulations related thereto.

B. Lessee's indemnification obligations pursuant to Subsection A of this Section shall include assuming potential liability for actions brought by Lessee's own employees and the employees of Lessee's agents, representatives, contractors, and subcontractors even though Lessee might be immune under Title 51 RCW from direct suit brought by such an employee. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is with respect to claims against the City arising by virtue of Lessee's exercise of the rights set forth in this Lease. The obligations of Lessee under this Subsection B have been mutually negotiated by the parties hereto, and Lessee acknowledges that the City would not enter into this Lease without Lessee's waiver thereof. To the extent required to provide this indemnification and this indemnification only, Lessee waives its immunity under Title 51 RCW as provided in RCW 4.24.115.

C. Inspection or acceptance by the City of any work performed by Lessee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided that Lessee has been given prompt written notice by the City of any such claim, said indemnification obligations shall also extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. In the event any action or proceeding shall be brought against the City resulting from Lessee's operations hereunder, Lessee shall, at Lessee's sole cost and expense, resist and defend the same provided, however, that Lessee shall not admit liability in any such matter on behalf of the City without the written consent of the City. Nothing herein shall be deemed to prevent City from cooperating with Lessee and participating in the defense of any litigation with City's own counsel. Lessee shall pay all reasonable expenses incurred by City in response to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorneys' fees and shall also include the reasonable value of any services rendered by the City Attorney's office, and the actual expenses of City's agents, employees, consultants and expert witnesses and disbursements and liabilities incurred by City in connection with such suits, actions or proceedings. The City has the right to defend or participate in the defense of any such claim, and has the right to approve any settlement or other compromise of any such claim.

D. In the event that Lessee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to this Section, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter),

to have been a wrongful refusal on the part of Lessee, then Lessee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees, reasonable attorneys' fees, the reasonable costs of the City, and reasonable attorneys' fees of recovering under this Subsection.

E. The provisions of this Section shall survive the expiration, revocation, or termination of this Lease.

Section 25. Covenant Not to Bring Suit. The rents, fees and other in-kind compensation, if any, provided for in this Lease are a result of mutual negotiations between the parties. Lessee acknowledges and covenants not to bring suit with respect to the amount of said rents, fees or in-kind compensation seeking to recover all or any portion of the same, and hereby waives any and all such claims against the City and its elected or appointed officials and releases the City and its elected or appointed officials from any and all claims related to payment of rents, fees and/or in-kind services provided for under this Lease.

Section 26. Holdover. At such time as this Lease expires, or is revoked or terminated for any cause, Lessee shall immediately remove the Facilities from the leased premises. If Lessee shall, with the written consent of the City, holdover after the expiration of the term of this Lease, the holdover tenancy shall be on a month-to-month basis, which tenancy may be terminated by the provision of thirty (30) days advance written notice by the party seeking termination of the tenancy to the other party. During such tenancy, Lessee agrees to be bound by all of the terms, covenants, agreements and conditions as herein specified, so far as applicable.

Section 27. Revocation, Forfeiture, and Termination. The rights granted under this Lease may be revoked, forfeited, or hereafter be amended if Lessee is in violation or non-compliance of the provisions or terms of this Lease. Provided that the City may elect in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling the Lessee to comply with the provisions of this Lease and to recover reasonable damages, rent, attorney and collection fees, court costs, attorney's fees upon appeal of any judgment or ruling, and other costs and expenses incurred by the City by reason of the Lessee's failure to comply. No re-entry and taking of possession of the Facilities by the City shall be construed as an election on City's part to terminate this Lease, regardless of the extent of renovations and alterations by the City, unless a written notice of such intention is given to Lessee by the City. Notwithstanding any re-letting without termination, the City may at any time thereafter elect to terminate this Lease for such previous breach.

Section 28. Non-Release of Obligations upon Termination. No termination, default, forfeiture, or cancellation of this Lease shall release Lessee from any liability or obligation with respect to any matter occurring prior to such termination, default, forfeiture or cancellation, nor

shall termination, default, forfeiture or cancellation release Lessee from its obligation and liability as described in Section 4 herein to remove the Facilities and restore the Water Tank and the Property to their original condition ordinary wear and tear excepted.

Section 29. City's Removal of Lessee's Property. In the event that this Lease is revoked, forfeited, or otherwise terminated and Lessee fails to remove the Facilities from the leased premises, the City shall have the right, but not the obligation, after giving thirty (30) days notice to Lessee, to remove therefrom all of Lessee's Facilities, and may store the same in any place selected by the City, including, but not limited to, a public warehouse at the expense and risk of Lessee. If the City removes Lessee's property as provided under this Section, it shall immediately provide Lessee written notice of such removal, and notice of Lessee's right to redeem the property after payment of any sums due the City, including the City's costs of removal and storage. If within thirty (30) days of such written notice Lessee does not redeem the property, the City shall have the right to sell such stored property. If such property is sold as provided herein, the proceeds of such sale shall be applied first to the cost of the sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Lessee to the City under any terms hereof. The balance, if any, shall be paid to Lessee.

Section 30. Fire and Other Casualty. In the event the Facility is destroyed or damaged by fire, earthquake or other casualty to such an extent as to render the same untenable by Lessee in whole or in a substantial part, Lessee shall have the option to terminate the Lease immediately without further liability for rents due hereunder. If Lessee chooses to terminate this Lease as provided in this Section, Lessee shall be entitled to a refund of any prepaid rent for the applicable Lease term, less the portion of the rent, prorated on a daily basis, that represents the amount of the term that has expired prior to termination of the Lease by Lessee. The City shall have no obligation to repair any damage to any portion of the Facility.

Section 31. Condemnation. In the event of the taking of the Facilities by condemnation or otherwise by any governmental, state or local authority, this Lease shall be deemed cancelled as of the time of taking possession by said authority. Lessee shall have no claim to nor shall it be entitled to any portion of any condemnation or other award for damages to the Facility. However, Lessee shall have the right to pursue its own separate award from the condemning authority.

Section 32. Modification, Waiver. No waiver, alteration, amendment or modification of any of the provisions of this Lease shall be binding unless in writing and signed by duly authorized representatives of both parties. It is agreed that amendments to this Lease may be executed by the Mayor on behalf of the City.

Section 33. Assignment. This Lease shall run with the property and shall be binding on and inure to the benefit of the named parties, personal representatives and permitted assigns. Lessee

will not assign or transfer this Lease, including to any party controlling, controlled by or under common control with Lessee or to any party which acquires substantially all of the stock or assets of Lessee, or sublet all or any portion of the leased premises, without prior written consent from the City. Consent will not be unreasonably be withheld, delayed, or conditioned; provided, however, the City may inquire into the qualifications and financial stability of a potential assignee or sublessee and reasonably request any information related to such inquiry and may also condition such approval upon the financial, legal and technical expertise of a proposed assignee or sublessee and upon the resolution of any compliance obligation under the Lease.

Section 34. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements of this Lease, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenant, agreement or option, or any other covenant, agreement or option.

Section 35. Cancellation of Prior Leases and Agreements. This Lease supersedes all previous leases and agreements between the parties with respect to the subject matter hereof, and any such agreements are hereby cancelled.

Section 36. Notice. Any notice or information required or permitted to be given to the parties under this Lease may be sent to the below addresses, unless otherwise specified. If notice is required to be in writing, the notice will be effective on the earlier of personal delivery, or five (5) days after being mailed, postage prepaid, to the following, unless otherwise specified herein:

If to the City:

If mailed:	City of Redmond MS: 4NPW Attn: Real Property Manager PO Box 97010 Redmond, WA 98073-9710	If delivered:	City of Redmond Public Works Administration 4th Floor Attn: Real Property Manager 15670 NE 85th Street Redmond, WA 98052

With a copy to:

If mailed:	City of Redmond MS: 4NEX Attn: City Attorney PO Box 97010 Redmond, WA 98073-9710	If delivered:	City of Redmond 4th Floor Attn: City Attorney 15670 NE 85th Street Redmond, WA 98052

And with copy to:

If mailed:	City of Redmond MS: 2NPW Attn: Manager Water/Wastewater PO Box 97010 Redmond, WA 98073-9710	If delivered:	City of Redmond 2nd Floor Attn: Manager Water/Wastewater 15670 NE 85th Street Redmond, WA 98052

If to Lessee:

If mailed:	North East King County Regional Public Safety Communications Agency Attn: Technology Manager P O Box 50911 Bellevue, WA 98015-0911 425-577-5700	If delivered:	North East King County Regional Public Safety Communications Agency Attn: Technology Manager 450 110th Ave NE, 7th Fl Bellevue, WA 98004

With a copy to:

If mailed:	North East King County Regional Public Safety Communications Agency Attn: Finance Manager P O Box 50911 Bellevue, WA 98015-0911 425-577-5700	If delivered:	North East King County Regional Public Safety Communications Agency Attn: Finance Manager 450 110th Ave NE, 7th Fl Bellevue, WA 98004

Section 37. Attorneys' Fees. If a suit or other action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the court may judge reasonable for attorneys' fees, costs, expenses, and attorney's fees upon appeal of any judgment or ruling.

Section 38. Restoration of Property. Lessee shall, after installation, construction, relocation, maintenance, removal, or repair of the Facilities, restore the Water Tank and the Property to at least the same condition immediately prior to any such installation, construction, relocation, maintenance, removal or repair, reasonable wear and tear excepted. The City Public Works Director, or his or her designee, shall have final approval of the condition of the Water Tank and the Property after restoration. All survey monuments which are to be disturbed or displaced by such work shall be referenced, replaced and restored, as per WAC 332-120, as the same now exists or may hereafter be amended, and per all pertinent federal, state and local standards and specifications, including, but not limited to, the City of Redmond Benchmark System's second order, first class specifications. The provisions of this Section shall survive the expiration, revocation, or termination by other means of this Lease. All work by Lessee pursuant to this Section shall be performed in accord with City of Redmond Public Works Construction standards and warranted for a period of one (1) year.

Section 39. Non-Severability. Each term and condition of this Lease is an integral part of the consideration given by each party and as such, the terms and conditions of this Lease are not severable. If any section, sentence, clause or phrase of this Lease should be held to be invalid or unconstitutional by a court of competent jurisdiction, this Lease shall terminate unless suitable replacement terms can be agreed to by the parties.

Section 40. Merger. Except for the terms and conditions of applicable and future laws, ordinances, rules, regulations and other City land use approvals, authorizations or permits or related communications, this Lease constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Lease.

Section 41. Hazardous Substances. The City represents that it has no actual knowledge of any substance, chemical, or waste (collectively, "Hazardous Substance") on the leased premises that is identified as hazardous, toxic, or dangerous in any federal, state, or local environmental or safety law or regulation. Lessee shall not introduce or use any such substance on the leased premises in violation of any applicable law or regulation, nor shall Lessee allow any of its agents, contractors or any other person under its control to do the same.

Lessee will be solely responsible for and will defend, indemnify, and hold the City, its agents, and employees harmless from and against any and all direct claims, costs, and liabilities including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the Water Tank and the Property associated with Lessee's use, storage, or disposal of Hazardous Substances or the use, storage, or disposal of such substances by Lessee's agents, contractors, or other persons acting under Lessee's control.

The City will be solely responsible for and will defend, indemnify, and hold Lessee, its officers, agents, and employees harmless from and against any and all direct claims, costs, and liabilities, including reasonable attorneys' fees and costs arising out of or in connection with the removal, cleanup, or restoration of the Water Tank and the Property associated with the City's use of Hazardous Substances.

Section 42. Miscellaneous.

A. City and Lessee respectively represent that its signatory is duly authorized and has full right, power and authority to execute this Lease.

B. This Lease shall be construed in accordance with the laws of the State of Washington.

C. Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

D. Where the context so requires, the singular shall include the plural and the plural includes the singular.

E. If the methods of taxation in effect at the commencement date of the Lease are altered so that in lieu of or as a substitute for or in addition to any portion of the property taxes and special assessments, if any, now imposed on equipment, there is imposed a tax upon or against the rentals payable by Lessee to City, Lessee shall also pay those amounts.

F. Lessee shall be responsible for obtaining all other necessary approvals, authorizations and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty or covenant whether any of the foregoing approvals, authorizations or agreements are required or have been obtained by Lessee from any person or entity.

G. This Lease may be enforced at both law and equity.

H. This Lease may be executed in duplicate counterparts, each of which shall be deemed an original.

I. Lessee acknowledges that it, and not the City, shall be responsible for the premises and the Facilities' compliance with all marking and lighting requirements of the FAA and the FCC. Lessee shall indemnify and hold the City harmless from any fines or other liabilities caused by

Lessee's failure to comply with such requirements. Should the Lessee or the City be cited by either the FCC or FAA because the premises or the Facilities is not in compliance, and should Lessee fail to cure the conditions or noncompliance within the timeframe allowed by the citing agency, the City may either terminate this Lease immediately on notice to Lessee or proceed to cure the conditions of noncompliance at Lessee's expense.

DATED this 22 day of February, 2011.

CITY OF REDMOND

John Marchione, MAYOR

NORTH EAST KING COUNTY REGIONAL PUBLIC SAFETY COMMUNICATIONS

Chris Fischer, Executive Director

ATTEST/AUTHENTICATED:

Michelle M. McGehee, City Clerk

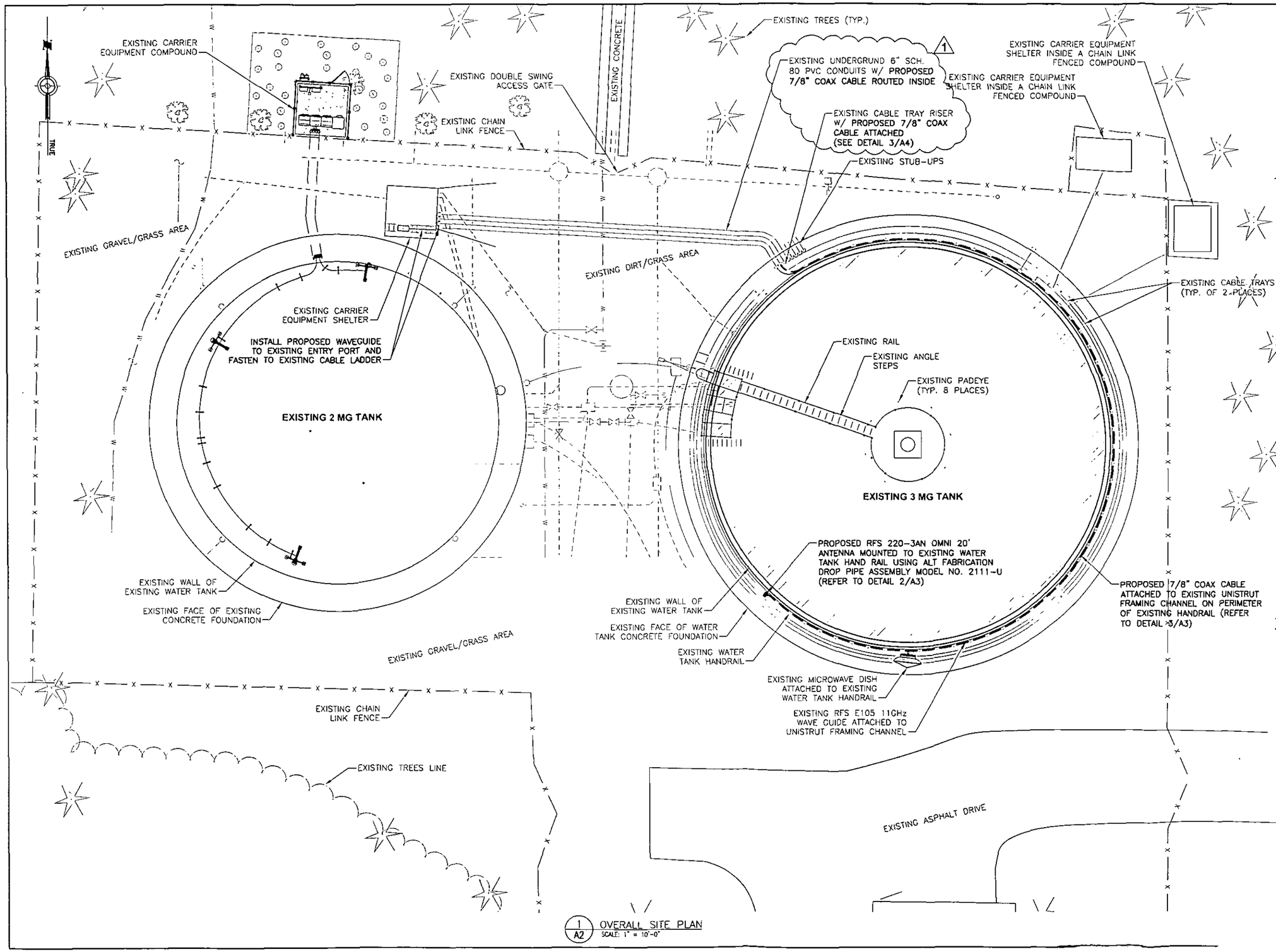
APPROVED AS TO FORM:

James E. Haney, City Attorney

APPROVED AS TO FORM:

(for)

Rod Kaseguma, Attorney



1 / A2 OVERALL SITE PLAN
SCALE: 1" = 10'-0"

Exhibit A
To
Facilities Lease for
Emergency Communications Facilities
City of Redmond
NORCOM

PROJ. NO.:	T10-236-3776
DRAWN BY:	R.J.S.
CHECKED BY:	S.W.

SUBMITTALS

1	11/11/10	REVISED FOR ZONING
0	10/12/10	ISSUED FOR ZONING
B	09/29/10	ISSUED FOR ZONING REVIEW
A	09/09/10	ISSUED FOR ZONING REVIEW

THE INFORMATION CONTAINED IN THIS SET OF DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH PERTAINS TO CLIENT NAMED HEREIN IS PROHIBITED.

11/15/10

STEVEN WILLIAMS
STATE OF WASHINGTON
39304
REGISTERED
PROFESSIONAL ENGINEER

EXPIRES 7/18/2011

EDUCATION HILL RESERVOIR

10365 172ND AVENUE NE
REDMOND, WA 98052

SHEET TITLE:
OVERALL SITE PLAN

SHEET NUMBER:
A-2

EXHIBIT "B"
TO
FACILITIES LEASE FOR
EMERGENCY COMMUNICATIONS FACILITIES

Legal Description of Property

The east half of the northeast quarter of the southeast quarter of the southwest quarter of Section 36, Township 26 North, Range 5 East, W.M., EXCEPT the north 30 feet thereof for road as conveyed to the City of Redmond by deed recorded under Auditor's File No. 5446197.

EXHIBIT "C"
TO
FACILITIES LEASE FOR
EMERGENCY COMMUNICATIONS FACILITIES

Description of Facilities

Emergency services communication transmission system including whip antenna(s) mounted on water reservoir's hand rail system, and related ground level electronic facilities and equipment within shed structure.

ADDENDUM #1
TO
FACILITIES LEASE FOR
EMERGENCY COMMUNICATIONS FACILITIES

1. At anytime the City determines that the Water Tank and the Property must be entered to perform short duration work and the work to be performed is in an area near or adjacent to the Facilities, upon request by the City, Lessee shall shut down its transmitting equipment and any connected power that are in close proximity to the City's work for the duration that personnel will be performing work near or adjacent to such equipment. The shutdown will occur after coordination with and concurrence of NORCOM's Technology Manager. The City will endeavor to contact Lessee at least five (5) working days in advance of any scheduled work which will require a shut down request. The parties will use good faith efforts to coordinate their schedules, to minimize the down time for the transmitting equipment, and to schedule the down time outside of Lessee's customers' peak periods of usage if it is reasonable to do so under the circumstances.

CITY OF REDMOND

John Marchione, MAYOR

Date: 2/22/11

NORTH EAST KING COUNTY REGIONAL PUBLIC SAFETY COMMUNICATIONS AGENCY

Chris Fischer, Executive Director

Date: 3/11/11