

**LICENSING AGREEMENT FOR
CITY OF BELLEVUE FIBER AND CONDUIT**

THIS FIBER AND CONDUIT LICENSING AGREEMENT (the “Agreement”) made and effective as of this _____ day of _____, 2004, by and between the City of Bellevue, Washington, a municipal corporation (“City”) and Overlake Hospital Medical Center, a _____ corporation, with offices at 1035 116th Avenue NE, Bellevue, WA 98004 (“Overlake”).

RECITALS

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

WHEREAS, Overlake proposes to use City Dark Fiber and to install and maintain its own Fiber and associated equipment, as specified in Exhibit A, in the identified portion of the City’s Fiber and Conduit System to provide connectivity from its offices at 1035 116th Avenue NE, Bellevue, WA to **DESCRIBE HERE**

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, 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 where the Overlake is responsible for providing and attaching the telecommunications equipment and lasers to transmit the light to carry data via the fiber.

1.5 “Fiber” means optical fiber cable strands used to transmit light to carry data.

1.4 “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.

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

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

1.7 “Junction Box” means a box where cable splices and connections are made and accessed.

1.8 “Overlake Facilities” means all facilities, including but not limited to fiber optic cables, equipment and all associated hardware, owned and/or utilized by Overlake 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 its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of five (5) years at which time the parties agree to extend this Agreement, without modification, for an additional five (5) year period upon the written request of Overlake, provide such written request is received by the City not later than sixty (60) days prior to the termination of the initial five (5) year term. After the initial term and any extension thereof, this agreement may be extended for additional periods upon agreement as to terms, including fees and charges, for each additional extension period.

2.2 Subject to the provisions of this Agreement, the City agrees to issue to Overlake, for the purposes limited to those described herein, a revocable and nonexclusive license authorizing the use of certain strands of City owned Dark Fiber and the placement of Overlake’s Facilities in a portion of the City’s Fiber and Conduit System as identified and specified in Exhibit A.

2.3 No use of the City owned Dark Fiber or the City’s Fiber and Conduit System or payment of any fees or charges required under this Agreement shall create or vest in Overlake 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.

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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 contained in this Agreement should act as a limitation, restriction, or prohibition against the City with respect to any agreement which the City has heretofore entered into, or may in the future enter into with others regarding the Fiber and Conduit System, including the identified portion of the Fiber and Conduit System covered by this Agreement. Overlake acknowledges that such an Agreement with a third party may make rearrangement of Overlake's Facilities necessary. Overlake agrees that in such event, Overlake will cooperate in good faith with such rearrangement work; provided however, that the City shall give Overlake thirty (30) days written notification of such intent to rearrange Overlake'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 Overlake sixty (60) days written notification prior to making the proposed relocation, modification or alteration in order to provide Overlake a reasonable opportunity to rearrange, relocate or modify its existing Facilities. Overlake shall have no responsibility for costs and expenses relating to the relocation, modification or alteration of the Dark Fiber or the Fiber and Conduit System for the purpose of meeting the City's needs or the needs of any other joint-user. In all cases, Overlake shall bear the costs incurred in any rearrangement, relocation, modification or alteration its Facilities. The notification requirement of this section shall not apply to emergency situations.

2.8 In the event of an emergency, as soon as practicable thereafter and not later than seventy-two (72) hours after having taken such action, the City will advise Overlake in writing of the emergency work performed or the action taken with respect to any emergency modification or alteration of Overlake's Facilities.

2.9 Should the City determine a need to use the Dark Fiber or occupy all or part of the identified Fiber and Conduit System capacity occupied by Overlake's Facilities and, if the City reasonably determines that Overlake's Facilities can be accommodated otherwise in the City's Fiber and Conduit System, the City shall permit Overlake to rearrange it's Facilities in such manner that will minimize chances for service interruption to Overlake.

ARTICLE III FEES AND CHARGES

3.1 Upon execution of this Agreement, Overlake shall pay to the City a non-recurring Conduit Occupancy Rental Fee in the amount of twenty thousand (\$20,000) dollars for the use and occupancy of the identified portion of the City's Fiber and Conduit System, as set forth in Exhibits A, for the term of this Agreement, and any extension of this Agreement, as set forth in Article II, Section 2.1.

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3.2 Wherever this Agreement provides for Overlake 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, and the City's standard billing rates for having personnel on site shall apply.

3.3 Whenever Overlake is obligated by any terms of this Agreement to reimburse the City for costs, such costs will be determined by the City using the City's cost accounting systems used for recording capital and expense activities.

ARTICLE IV PRACTICES

4.1 The location of Overlake's Facilities in the Fiber and Conduit System will be designated by the City. Overlake's Facilities shall be installed and maintained in accordance with the requirements and specifications of the then current editions of the National Electrical Code (NEC), the National Electrical Safety Code (NESC), and the Washington State Electric Code, each of which are incorporated by reference in this Agreement, and the rules and regulations of the Occupational Safety and Health Act of 1970 (OSHA) and in compliance with any lawful rules or orders now in effect or that may hereafter be issued by the City or other authority having jurisdiction.

4.2 If Overlake's Facilities, or any part thereof are not maintained in accordance with conditions provided by this Agreement and Overlake has not corrected the violation within thirty (30) days from receipt of written notice thereof from the City, the City may at its own option correct said conditions at Overlake's expense. The City will notify Overlake in writing prior to performing such work whenever practicable. When the City reasonably believes, however, that such conditions pose an immediate threat to the safety of the City's employees or the public, interfere with the performance of the City's service obligations, or pose an immediate threat to the physical integrity of the City's Facilities, the City may perform such work and/or take such action at Overlake's expense that it deems necessary without first giving written notice to Overlake and the City shall be indemnified by Overlake for such work in accordance with Article VIII, Section 8.3 of this Agreement. As soon as practicable thereafter and not later than seventy-two (72) hours after having taken such action, the City will advise Overlake in writing of the work performed or the action taken and make all reasonable efforts to arrange for reaccommodation of Overlake's Facilities so affected. Overlake shall be responsible for paying the City for all reasonable costs incurred by the City in taking action under this subsection.

4.5 Overlake's Facilities placed in or connected to the City's Fiber and Conduit System must meet all of the following physical design specifications:

4.5.1 Construction splices in Overlake's cables shall be located in Manholes, Vaults, Handholes, Junction Boxes or Pedestals.

4.5.2 Overlake shall install ownership identification tags on all Overlake Fiber where such Fiber is present in any Manhole, Vault, Handhole, Junction Box or Pedestal.

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4.5.3 The maximum permissible diameter of any Overlake Fiber and the number of Overlake's Fiber cables to be placed in the City's Fiber and Conduit System shall be determined by the City.

4.5.4 Where Overlake constructs Conduit which is to be connected to any of the City's Manholes, Vaults or Junction Boxes, such Conduit shall be sealed against the entry of gases or liquids at the opening to the Manhole, Vaults or Junction Boxes, and where Overlake's Conduit enters any building it shall also be sealed where it enters the building.

**ARTICLE V
REMOVAL OF FACILITIES**

5.1 Overlake will remove its Facilities within thirty (30) days after termination of this Agreement. If Overlake fails to remove its Facilities within such thirty (30) day period, the City shall have the immediate right to remove Overlake's Facilities at Overlake's expense in accordance with Article III, Section 3.2 and 3.3 of this Agreement. Overlake shall indemnify the City for such work in accordance with Article VIII, Section 8.3 of this Agreement.

**ARTICLE VI
INSPECTION OF OVERLAKE'S FACILITIES**

6.1 The City reserves the right to make periodic inspections at any time of any part of Overlake's Facilities occupying the Fiber and Conduit System for the limited purpose of determining whether Overlake's Facilities are in compliance with the terms of this Agreement; provided that such inspections must be non-invasive and non-disruptive.

6.2 The City will give Overlake reasonable advance written notice of such inspections, and Overlake shall have the right to have a representative attend such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been forwarded to Overlake.

6.3 Such inspections shall be conducted at the City's expense unless the City reasonably determines that Overlake's Facilities occupying the Fiber and Conduit System are in not compliance with the terms of this Agreement. In such instance, Overlake shall be responsible for paying the City for all reasonable costs incurred by the City in making the inspection and Overlake shall indemnify the City for such work in accordance with Article VIII, Section 8.3 of this Agreement.

6.4 Overlake agrees that the making of periodic inspections or the failure to do so shall not operate to impose upon the City any liability of any kind whatsoever or relieve Overlake of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.

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**ARTICLE VII
UNAUTHORIZED OCCUPANCY**

7.1 If any of Overlake's Facilities are found occupying any portion of any of the Fiber and Conduit System other than as set forth in Exhibits A the City may, without prejudice to its other rights or remedies under this Agreement, require Overlake to remove the unauthorized occupancy within ten (10) days of receipt of notice from the City regarding Overlake's unauthorized use and the City may assess an unauthorized occupancy fee at the rate of \$500 dollars per day for each day of the unauthorized occupancy.

7.2 If at the end of such ten (10) day period, Overlake has not removed the unauthorized occupancy, the City may, at its sole option, remove Overlake's Facilities at Overlake's expense in accordance with Article III, Sections 3.2 and 3.3, and the City shall be indemnified by Overlake for such work in accordance with Article VIII, Section 8.3 of this Agreement.

7.3 No act or failure to act by the City with regard to said unlicensed use shall be deemed as ratification of the unlicensed use.

**ARTICLE VIII
LIABILITY AND DAMAGES**

8.1 The City shall exercise reasonable precaution to avoid damaging the facilities of Overlake and shall make an immediate report to Overlake of the occurrence of any such damage caused by its employees, agents or contractors. The City agrees to reimburse Overlake for all reasonable costs incurred by Overlake for the physical repair of such facilities damaged by the negligence of the City, however, the City shall not be liable to Overlake for any interruption of Overlake's service or for interference with the operation of Overlake's Facilities, or for any special, indirect, or consequential damages arising in any manner whatsoever out of Overlake's use of Fiber and Conduit Systems or the City's actions or omissions in regards thereto, including, but not limited to, as a result of the City's negligence, and Overlake 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 Overlake's use of Fiber and Conduit System. The foregoing shall not limit the City's liability for willful or intentional misconduct.

8.2 Overlake shall indemnify, defend and hold harmless the City, its officers, officials, boards, commissions, authorized agents and employees, from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees and expenses, which arise directly or indirectly from any casualty or accident to Person or property and all other damages in any way arising out of, or by reason of, any use, construction, excavation, operation, maintenance, reconstruction, or any other act done by or for Overlake, its authorized agents, or its employees, or by reason of any neglect or omission of Overlake, its authorized agents or its employees.

8.3 Overlake shall indemnify, defend and hold harmless the City, its officers, officials, boards, commissions, authorized agents and employees, from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees and expenses which arise directly or indirectly from any work performed by the City that was necessitated by the installation, maintenance, presence, use or removal of Overlake's Facilities or by the proximity to the facilities of all parties placed in the Fiber and Conduit System or any work this Agreement authorizes the City to perform.

8.4 Overlake shall indemnify, defend and hold harmless the City, its officers, officials, boards, commissions, authorized agents and employees, from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees and expenses, which arise directly or indirectly from the construction, use and/or operation of Overlake's 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, for unauthorized use of television or radio broadcast programs and other program material and from and against all claims, demands and costs including attorneys' fees for infringement of patents with respect to the manufacture, use and operation of Overlake's Facilities in combination with the City's Fiber and Conduit System or otherwise.

8.5 The City shall give Overlake 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 Overlake, which defense shall be at Overlake's expense. The City may participate in the defense of a claim and, in any event, Overlake 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 IX INSURANCE

9.1 Without limiting any obligations or liabilities of Overlake under this Agreement, Overlake shall provide and maintain for the term of this Agreement, at its own expense, without direct reimbursement, insurance coverages in forms and amounts that Overlake believes will adequately protect it but in no case less than:

9.1.1 Workers' Compensation Insurance in accordance with all applicable laws, including Employer's Liability Insurance in the amount of \$1,000,000 per accident. Policy shall be endorsed to include a waiver of subrogation in favor of the City.

9.1.2 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 in the amount of \$1,000,000 combined single limit for Bodily Injury and Property Damage and a \$2,000,000 occurrence aggregate.

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9.1.3 Commercial Automobile Liability Insurance including all owned, hired, leased, assigned, and non-owned vehicles, for Bodily Injury Liability and Property damage, a combined single limit of not less than \$1,000,000 and a \$2,000,000 occurrence aggregate.

9.1.4 Excess Liability Coverage to provide \$3,000,000 per occurrence in excess of the insurance listed in Sections 9.1.1 through 9.1.3 above.

9.2 Overlake's insurance policies required by Article IX, Sections 9.1.2 through 9.1.4 above, shall name the City as an additional insured. Overlake 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. Overlake's insurance policies required by Article IX, Sections 9.1.1 through 9.1.3 above shall be primary insurance. Overlake's insurance policies required by Article IX, Sections 9.1.1 through 9.1.4 shall be non-contributing with any other insurance maintained by the City.

9.3 Overlake shall provide the City with Certificates of Insurance evidencing coverage currently in effect upon execution 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.

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

**ARTICLE X
ASSIGNMENT OF RIGHTS AND LIABILITIES**

10.1 The rights and obligations of Overlake 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, Overlake shall provide the City: (1) written notice of the proposed assignment; and (2) adequate assurance of any propose 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 Overlake.

10.2 Notwithstanding Article X, Section 10.1, the City acknowledges and agrees that Overlake may assign or collaterally assign, all of its rights, interests and obligations hereunder to any of its affiliates, provided, however: (1) Overlake 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, Overlake 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 Overlake.

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10.3 Any attempt of an assignment by Overlake 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 X, Section 10.2 shall be void.

10.4 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 Overlake 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.

10.5 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.

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

**ARTICLE XI
TERMINATION OF AGREEMENT**

11.1 This Agreement and the license issued pursuant to this Agreement shall automatically cease and terminate whenever there is filed either by Overlake or against Overlake 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 Overlake's property, or whenever Overlake makes a general assignment for the benefit of creditors; provided, however, the City shall have the discretion to allow Overlake a reasonable period of time within which to settle, compromise, resolve or cure the circumstances leading to such termination.

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

11.2.1 If Overlake's Facilities are used or maintained in violation of law or in aid of any unlawful act or undertaking; or

11.2.2 If any authorization which is required of Overlake by any governmental or private authority for the construction, operation and maintenance of Overlake's Facilities is denied or revoked.

11.3 Notwithstanding the City's rights under Article VII, the City shall have the right to terminate this Agreement:

11.3.1 If Overlake is in default of any term of this Agreement; or

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

11.4 Even after the termination of this Agreement, Overlake's responsibility and indemnity obligations shall continue, as provided for in Article VIII of this Agreement, with respect to any claims or demands related to Overlake's Facilities.

**ARTICLE XII
MISCELLANEOUS**

12.1 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:

If to the City:

City of Bellevue
P. O. Box 90012
Bellevue WA 98009-90012
Attention: City Clerk

With a copy to:

City of Bellevue
P. O. Box 90012
Bellevue WA 98009-90012
Attention: Chief Information Office

If to Overlake:

Overlake Hospital Medical Center
1035 116th Avenue NE
Bellevue, WA 98004
Attn: _____

With a copy to:

Overlake Hospital Medical Center
1035 116th Avenue NE
Bellevue, WA 98004
Attn: _____

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12.2 Non-Waiver. Failure of the City or Overlake 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.

12.3 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.

12.4 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, except as set forth in Article III, Section 3.4 of this Agreement.

12.5 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.

12.6 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.

12.7 Venue and Governing Law. The venue for any dispute related to this Agreement shall be in the King County Superior Court in Bellevue, 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.

12.8 Costs of Enforcement. In the event of a default by Overlake, Overlake, 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.

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

OVERLAKE HOSPITAL
MEDICAL CENTER

CITY OF BELLEVUE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Approved as to form:

City Attorney

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EXHIBIT A

**THE IDENTIFIED PORTION OF THE CITY'S FIBER AND CONDUIT SYSTEM
AND DESCRIPTION OVERLAKE'S FACILITIES AND USE THEREOF**

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