

**City of Bellevue
And
City of Kirkland**

COLOCATION AGREEMENT

THIS AGREEMENT is effective the 1st day of March, 2010 by and between The City of Bellevue, a municipal corporation (hereinafter referred to as "Bellevue") and City of Kirkland (hereinafter referred to as "Customer").

The purpose of this Agreement is to set forth a long-term arrangement under which Bellevue will provide Colocation Space in its Premises and related services to Customer.

Definitions

"Colocation Space" shall mean the physical space that the Customer Equipment occupies.

"Premises" shall mean the physical structure or dwelling in which the Colocation Space exists.

"Equipment" shall mean all Customer owned powered servers, non-powered servers, or related equipment including printers that will reside in the Colocation Space within the Premises under this Agreement.

"Connectivity" shall mean a connection between point of entry into the Premises and the Switch.

"Data" shall mean all information, graphics, email, files, or any other objects, existing now or in the future that can be transmitted to, through, or from Server Equipment.

"Unscheduled or Emergency Maintenance" shall mean all repairs, upgrades, maintenance, or tests that are not scheduled or about which Customer has not received prior notification.

Agreements

In consideration of the mutual covenants set forth in this Agreement, Customer and Bellevue hereby agree as follows:

1. Colocation Services.

Subject to the terms and conditions of this Agreement, Bellevue will provide colocation services for Customer subject to the following terms:

a) Length of Service.

Customer hereby agrees to twelve (12) month contractual term of service ("Term") commencing on the Effective Date of this Agreement.

b) Service start date and end date.

For powered Equipment, the service start date shall be the first day Bellevue supplies power to the Equipment or upon a mutually agreed upon alternate date. For storage of Equipment, the service start date shall be the first day the Equipment arrives on the Premises.

Customer shall provide Bellevue with at least sixty (60) days prior notice by email or telephone of any change of quantity of Equipment and the footprint of such Equipment. In the event Customer requests an increase, Bellevue has the right to refuse the increase until one day prior to Equipment delivery. In the event Customer requests a decrease, the service will end on the date the Equipment is removed from the Premises.

c) Provisioning of Services and Colocation Space.

Bellevue shall provide all accommodations relating to the operation of the Equipment, including but not limited to access to the Premises, Premises security, standard server racks, electricity, connectivity between the Premises and Customer's switch, redundant power back-up, environmental control, 24/7 fire and emergency alarm monitoring, and basic "remote hands" assistance. Bellevue shall also provide storage in the Premises of certain Customer-owned equipment.

Customer shall obtain and maintain the Equipment, the network infrastructure to the Premises, non-standard server racks and iso-mounts, and the connection between the Customer switch and the Server Equipment.

d) Access to Colocation Space and Support Services.

Customer shall have access to the Premises, Colocation Space and other services 24 hours a day, 7 days a week as provided in Attachment A, attached hereto and hereby incorporated by reference into this Agreement as if fully set forth. All Customer access will be escorted. Unescorted persons shall not be allowed access or entry to the Colocation space at any time. Bellevue shall retain appropriate insurance and liability waivers on file. Customer shall bear sole responsibility for any and all actions of Customer's employees, contractors, customers, authorized vendors and/or representatives.

Customer may choose to have its key employees acquire facility badges to access the collocation space unescorted. Badged access requires the appropriate background check (e.g., criminal records and electronic finger print checks) to be performed per City of Bellevue policy.

2. Pricing and Terms of Payment.

Customer shall pay Bellevue the pricing and compensation as outlined on Attachment A, attached hereto and hereby incorporated by reference as if fully set forth. Bellevue shall invoice Customer quarterly. Each invoice will be sent to Customer on or around the last day of the traditional quarter. Customer shall pay within 30 days of the receipt of the

invoice. Pricing will change annually to reflect an inflationary adjustment as measured by the Seattle Tacoma & Bremerton area CPI-U, published in June of each year. This change will become effective at the beginning of each contract period following the June CPI-U publication, which occurs in July.

3. Termination.

If Customer chooses to terminate this Agreement prior to the end of the contracted term, Customer will be responsible for a termination charge equal to the one-half the monthly rack rate or storage rate multiplied by the number of months remaining in the contracted term.

Bellevue may terminate this Agreement at its sole discretion upon the occurrence of one or more of the following events:

- 1) failure to comply with any provision of the Agreement upon receipt of written notice from Bellevue of said failure,
- 2) failure to pay any invoice that is not the subject of a bona fide dispute within thirty (60) business days of the due date, and Bellevue has provided Customer with written notice thereof and given an additional (30) days to cure any such default.
- 3) mutual agreement in writing by Customer and Bellevue.

4. Censorship of Data.

Bellevue will exercise no control whatsoever over the content of the information or Data passing through the system or data center.

5. Warranties.

Bellevue makes no warranties or representations of any kind, whether expressed or implied, for the services it is providing. Bellevue also disclaims any warranty of merchantability or fitness for any particular purpose and will not be responsible for any damages that may be suffered by Customer, including loss of data resulting from delays, non-deliveries, or service interruptions. Bellevue expressly limits its damages to Customer for any non-accessibility time or other down time to the pro-rata monthly rack rate and storage rate during the system unavailability. Bellevue specifically denies any responsibilities for any damages arising as a consequence of such unavailability.

Customer hereby covenants and warrants to keep the Equipment in good order, repair and condition throughout the Term and to promptly and completely repair all damage to the Premises and/or Colocation Space caused by Customer; to comply with federal, state and municipal laws, orders, rules and regulations applicable to its activities and the Equipment; to pay its monthly colocation fee when due and to provide written notice to Bellevue if such payment is disputed, and to not disrupt, adversely affect or interfere with other users or providers of services in the Premises or with any occupant's use and enjoyment of its leased premises or the common areas of the Premises.

6. Maintenance.

Bellevue may, from time to time, conduct routine repair, upgrades, maintenance, tests or other activities on systems or services connected to Customer's Equipment located at Colocation Space. Bellevue shall notify Customer of all scheduled activities in advance via

email or phone. In the event of unscheduled or emergency activity, Bellevue shall make every effort to minimize the impact on Customer's Equipment.

7. Insurance.

Throughout the term of this Agreement, and any subsequent renewals, Customer shall meet or exceed the Bellevue's insurance requirements. Customer's insurance information demonstrating compliance with Bellevue's requirements is provided in the attached Attachment B, which is hereby incorporated by reference into this Agreement as if fully set forth. Customer shall also be responsible for insuring all Customer Equipment. *Customer will also carry Employee Dishonesty coverage with limits not less than \$100,000*

8. Transfer. *per occurrence and as an annual aggregate.*

Customer may not assign or transfer this Agreement, in whole or in part, without the prior written consent of Bellevue.

9. Indemnification.

A. Customer shall protect, defend, indemnify, and save harmless Bellevue, its officers, agents and employees acting in their official capacity or course of employment, from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the Customer, its officers, employers and/or agents pursuant to this Agreement. Customer agrees that its obligations under this subparagraph extends to any claim, demand and/or cause of action brought by or on behalf of any of its employees or agents. For this purpose, Customer by mutual negotiation, hereby waives, as respects Bellevue only, any immunity that would otherwise be available against such claims under the Industrial Insurance Provisions of Title 51 RCW. In the event Bellevue incurs any judgment, award and/or cost arising therefrom, including reasonable attorney's fees, to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from Customer.

B. Bellevue shall protect, defend, indemnify and save harmless Customer, its officers, employees, and agents acting in their official capacity or course of employment, from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of Bellevue, its officers, employees, and/or agents pursuant to this Agreement. Bellevue agrees that its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by or on behalf of one of its employees or agents. For this purpose, Bellevue, by mutual negotiation, hereby waives, as respects Customer only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event Customer incurs any judgment, award and/or cost arising therefrom, including reasonable attorney's fees, to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from Bellevue.

10. General.

If any provision of this Agreement is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired thereby.

This Agreement and any disputes arising hereunder shall be governed by the laws of Washington State shall be subject to the jurisdiction of the Superior Court for King County, Washington.

A failure by any party to exercise or delay exercising a right or power conferred upon it in this Agreement shall not operate as a waiver of any such right or power.

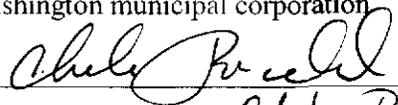
The parties represent and warrant that they are authorized to enter into this Agreement in its entirety, and duly bind their respective principals by their signatures below.

CUSTOMER

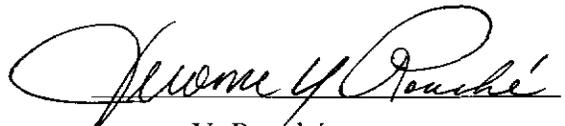
By: 
Name: BRENNA COOPER
Title: CIO
Date: 3/9/10

THE CITY OF BELLEVUE

a Washington municipal corporation

By: 
Name: Toni Cramer Chelo Picardal
Title: Chief Information Officer CTO
Date: 3/9/10

Approved as to form:


Jerome Y. Roaché

Assistant City Attorney, City of Bellevue

Attachment A

Colocation Charges

Standard Powered Full Rack (40RU)	
Per Month Charge	\$650.00 per rack
Initial Set Up Charge	\$350.00 per rack
Non-Standard Powered/Equipment in Data Center	
Per Month Charge	\$28.00 per square foot
Initial Set Up Charge	no charge
Power Change	variable as negotiated
Storage of Equipment in non-Data Center Space	
Per Month Charge	\$23.00 per square foot
Initial Set Up Charge	no charge

Services and Other Charges

Basic "Remote Hands" Support (includes up to two incidents within 7 a.m. and 5 p.m. on business days of button pushing and/or power cycling in any 45-day period.)	no charge
Additional "Remote Hands" Support	\$48 per half hour (1/2 hour minimum)
Non-Emergency Business Hours Scheduled Access (Escorted; if access exceeds business hours, there will be no charge for the after hours time)	no charge
Non-Emergency After-Hours Access (Escorted; must be scheduled 72 hours in advance)	\$79 per hour (2 hour minimum)
Emergency Business Hours Access (Escorted access available within 30 minutes)	no charge
Emergency After-Hours Access - Escorted	\$79 per hour (2 hour minimum) plus \$159 per emergency

Bellevue contact number for business hours and after hours access: 206-340-5159

ATTACHMENT "B"

INSURANCE REQUIREMENTS

The Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be paid by the Contractor. Insurance shall meet or exceed the following unless otherwise approved by the City.

A. Minimum Insurance

1. Commercial General Liability coverage with limits not less than \$1,000,000 per occurrence / \$2,000,000 annual aggregate,
2. Stop Gap/Employers Liability coverage with limits not less than \$1,000,000 per accident/disease,
3. Business Automobile Liability coverage with limits not less than \$1,000,000 per accident for any auto,
4. Workers' Compensation coverage as required by the Industrial Insurance Laws of the State of Washington.

B. Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City.

C. Other Provisions

Commercial General Liability policies shall be endorsed to:

1. Include the City, its officials, employees and volunteers as additional insureds,
2. Provide that such insurance shall be primary as respects any insurance or self-insurance maintained by the City.
3. Each insurance policy shall provide that coverage shall not be canceled except after thirty (30) days' written notice has been given to the City.

D. Acceptability of Insurers

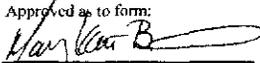
Insurance shall be placed with insurers with a rating acceptable to the City.

E. Verification of Coverage

Contractor shall furnish the City with certificates of insurance required by this clause. The certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

F. Subcontractors

Contractor shall require subcontractors to provide coverage which complies with the requirements stated herein.

Approved as to form:

Deputy City Attorney

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WA

cities

Insurance Authority

P.O. Box 88030

Tukwila, WA 98138

Phone: 206-575-6046

Fax: 206-575-7426

25-Jun-08

Cert#: 5697

City of Bellevue

Attn: Chelo Picardal, IT Department

450 110th Avenue NE

Bellevue, WA 98004

RE: City of Kirkland

Data Center Colocation Agreement

Evidence of Coverage

The above captioned entity is a member of the Washington Cities Insurance Authority (WCIA), which is a self insured pool of over 123 municipal corporations in the State of Washington.

WCIA has at least \$1 million per occurrence combined single limit of liability coverage in its self insured layer that may be applicable in the event an incident occurs that is deemed to be attributed to the negligence of the member.

WCIA is an Interlocal Agreement among municipalities and liability is completely self funded by the membership. As there is no insurance policy involved and WCIA is not an insurance company, your organization cannot be named as an "additional insured".

Sincerely,



Eric B. Larson

Deputy Director

cc: Kathy Joyner

IT Department, City of Kirkland

cletter

CR# 45940 Date: 4-8-10 Loc: Accl → PO #: 1010187-000



City of Bellevue
Finance Department - Contracting Services
450 110th Ave. NE. Bellevue, WA 98004

Contract Routing Form

Current Contract Information:

Contract Title:

City of Kirkland Colocation

Contract Description:

Provide Data Center colocation services to the City of Kirkland

Total Contract Value: \$31,200.00

This Amendment Value: N/A

Department: Information Technology - 558

Contract Manager: Chelo Picardal

Contract Type: Other

Contract Form:

Custom contract document

Budget Expenditure:

Revenue

Maximo User: No

Vendor Information:

Is this a new vendor? No

Vendor Name: City of Kirkland

JDE Vendor Number: 34625

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: 03/01/2010 **End Date:** 02/28/2011

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:

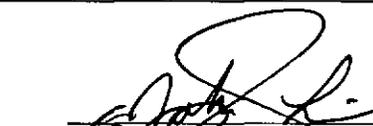
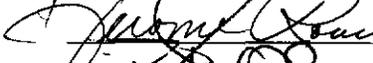
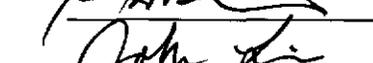
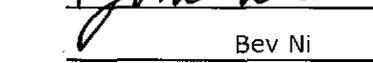
Insurance Reviewed By:

Department Director:

Contracting Services:

Return To:

City Clerk's Office:

	In	Out
	<u>2/23/10</u>	<u>03/01/10</u>
	<u>2/23/10</u>	<u>2/23/10</u>
	<u>3/3/10</u>	<u>3/10/10</u>
	<u>3/10/10</u>	<u>4/6/10</u>
		
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	<u>04.07.10</u>	<u>4-8-10</u>