

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2207

**AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON
GRANTING BLACK ROCK CABLE INC. A CABLE FRANCHISE**

WHEREAS, Grantee has applied to the City for a nonexclusive franchise to construct, maintain, operate, replace, and repair a Cable System in, on, across, over, along, under, or through Rights-of-Way within the Franchise Area; and

WHEREAS, the City has considered the financial, technical, and legal qualifications of Grantee, and has determined that Grantee's plans for constructing, operating, and maintaining its Open Video System are adequate, in a full public proceeding affording due process to all concerned; and

WHEREAS, the public has had adequate notice and opportunity to comment on Grantee's proposal to provide open video system service within the Franchise Area; and

WHEREAS, the City Council hereby finds that it would serve the public interest of the citizens of the City to grant a non-exclusive open video system franchise to the Grantee subject to the terms and conditions hereinafter set forth; and

WHEREAS, the City is authorized by applicable law to grant one or more nonexclusive franchises to construct, operate and maintain an open video system or systems within the boundaries of the City;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SNOHOMISH
DOES ORDAIN:**

SECTION 1. DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Access" means the availability for noncommercial use of various agencies, institutions, organizations, groups, and individuals in the community, including the City and its designees, of the Open Video System to acquire, create, receive, and distribute services and signals as permitted under applicable law including, but not limited to:

A. **"Public Access"** means Access where community-based, noncommercial organizations, groups, or individual members of the general public, on a nondiscriminatory basis, are the primary users.

B. **“Educational Access”** means Access where schools are the primary users having editorial control over programming and services.

C. **“Governmental Access”** means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 “Affiliate,” when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with Grantee.

1.4 “Bad Debt” means amounts lawfully owed by a Subscriber and accrued as revenues on the books of Grantee, but not collected after reasonable efforts by Grantee.

1.5 “Basic Service” means any service Tier that includes, at a minimum, the retransmission of local television Broadcast Signals and local Access programming.

1.6 “Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by an Open Video System by antenna, microwave, satellite dishes, or any other means.

1.7 “Cable Act” means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as they may be amended, and any future federal cable television laws, acts or regulations.

1.8 “Cable Internet Service” means any service offered by Grantee whereby Persons receive access to the Internet through the Cable System.

1.9 “Cable Operator” means any Person or groups of Persons who provides Cable Service over the Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System or who otherwise control(s) or is(are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.10 “Cable Service” means (a) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.11 “Channel” means a portion of the electromagnetic frequency spectrum which is used in the Open Video System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.12 “City” is the City of Snohomish, Washington, a municipal corporation, and all the area within its boundaries, as such may change from time to time.

1.13 “City Council” means the Snohomish City Council, or its successor, the governing body of the City of Snohomish.

1.14 “Connection,” with regard to connections to public buildings, means installation of fiber optic or coaxial cable or other System-related facilities through the outer wall of the building leaving adequate excess space to permit further connection to other facilities, plant, or cable within the building.

1.15 “Dark Fiber” is optical fiber infrastructure installed and maintained by Black Rock, that does not transmit light pulses for the transmission of information, but which is capable of such transmission upon installation of optronic equipment by either Black Rock or its subscribers.

1.16 “Expanded Basic Service” means the Tier of optional video programming services, which is the level of service received by most Subscribers above Basic Service, and does not include Premium Services.

1.17 “FCC” means the Federal Communications Commission.

1.18 “Franchise” means the document in which this definition appears, i.e., this ordinance contractual agreement, executed between the City and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements, and other related matters.

1.19 “Franchise Area” means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

1.20 “Franchise Authority” means any municipal entity with the legal authority to regulate the public rights-of-way.

1.21 “GAAP” means generally accepted accounting principles.

1.22 “Grantee” means Black Rock Cable, Inc., or its lawful successor, transferee, or assignee.

1.23 “Gross Revenues” means any and all revenue derived directly or indirectly by Grantee, or by Grantee’s Affiliates, from the operation of Grantee’s Open Video System to provide Open Video Services in the Franchise Area. In the case of revenue from a single user (“User”) located both within and without the Franchise area, the revenue from that user shall be divided between the City and other Franchising Authorities according to the portion of the cable used by the User within each Franchising Authority’s Franchise Area. In addition, gross revenues under this paragraph include any advertising revenues received by an open video system operator or its affiliates in connection with the provision of video programming, where such revenues are included in the calculation of the incumbent cable operator’s franchise fees. Gross revenues do not include revenues collected by unaffiliated programming providers, such as subscriber or advertising revenues. Any gross revenues fee that the open video system operator or its affiliate collects from video programming providers shall be excluded from gross revenues.

1.24 “Open Video System” or “System” means a system of facilities that is certified as an Open Video System by the FCC pursuant to 47 CFR 76.1500 et seq. and regularly provides Open Video System Services to subscribers of Black Rock’s System. This may include a set of transmission paths and associated signal generation, reception, and control equipment that may provide Cable Service, or a system of facilities that may provide Dark Fiber services (“Dark Fiber Service”).

1.25 “Open Video System Services” or “OVS Services” means such services as an Open Video System Operator may provide on or through a System as allowed or authorized by 47 U.S.C. §573 (1996).

1.26 “Operator” or “Open Video System Operator” means any person or group of persons who provide Cable Service over an Open Video System and directly or through one or more affiliates owns a significant interest in such Open Video System, or otherwise controls or is responsible for the management and operation of such Open Video System.

1.27 “Person” means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.28 “Premium Service” means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.29 “Right-of-Way” means each of the following which have been dedicated to the public or are hereafter dedicated to the public and are maintained under public authority or by others and located within the City: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, rights-of-way, and similar public property and areas.

1.30 “State” means the State of Washington.

1.31 “Subscriber” means any Person who or which elects to subscribe to, for any purpose, service provided by Grantee by means of or in connection with the Open Video System and whose premises are physically wired and lawfully activated to receive service from Grantee’s Open Video System.

1.32 “Telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. 153(43)).

1.33 “Telecommunications Service” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. 153(46)).

1.34 “Tier” means a group of Channels for which a single periodic subscription fee is charged.

1.35 “Video Programming Provider” means any person or group of persons who has the right under the copyright laws to select and contract for carriage of specific video programming on an open video system.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

A. The City hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the City to construct, operate, maintain, and reconstruct an Open Video System for the purpose of providing Open Video System Services and Dark Fiber Services subject to the terms and conditions set forth in this Franchise. In order to provide any other services over the facilities that constitute the Open Video System, the Grantee shall be required to obtain any additional governmental authorization(s) required by federal, State, or local law.

B. Each and every term, provision, or condition herein is subject to the provisions of State law, federal law, the Snohomish Municipal Code, and the ordinances and regulations enacted pursuant thereto.

C. This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Rights-of-Way, should Grantee provide service other than Open Video System Services or Dark Fiber Service.

D. No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

1. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

2. Any permit, agreement, or authorization required by the City for Right-of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

3. Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits, or in or on other structures.

E. This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

F. This Franchise does not authorize Grantee to provide Telecommunications Service. This Franchise is not a bar to imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different, or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide Telecommunications Services, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

2.2 Use of Rights-of-Way

A. Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of an Open Video System within the City.

B. Grantee must follow City-established requirements for placement of Open Video System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Open Video System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety, and welfare, the City may require that Open Video System facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place, or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements. With regard to its management of the Rights-of-Way, the City shall treat the Grantee and other users of the Rights-of-Way in a competitively neutral and nondiscriminatory manner.

2.3 Effective Date and Term of Franchise

This Franchise and the rights, privileges, and authority granted hereunder shall take effect thirty days after adoption by City Council (the "Effective Date"), and shall terminate ten years later on the tenth anniversary of the Effective Date, unless terminated sooner as hereinafter provided.

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, or licenses granted by the City to any Person to use any property, Right-of-Way, right, interest, or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Open Video Systems as the City deems appropriate.

2.5 Police Powers

A. Grantee's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power; provided that such ordinances shall be reasonable.

B. The City reserves the right to exercise its police powers, notwithstanding anything in this Franchise to the contrary, and any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2.6. Familiarity with Franchise

Grantee acknowledges and warrants by acceptance of the rights, privileges, and agreement granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms, and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered all requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time.

2.7 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise, subject to applicable law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

SECTION 3. FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Fee

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the City's Rights-of-Way, Grantee shall pay as a fee to the City, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues, provided that such percentage rate is subject to the provisions of 47 U.S.C. §573(c)(2)(B).

3.2 Payments

Grantee's fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after said dates.

3.3 Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Quarterly Fee Reports

Each payment shall be accompanied by a written report to the City, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Open Video System and shall be drafted in accordance with GAAP.

3.5 Annual Fee Reports

Grantee shall, within sixty (60) days after the end of each year, furnish to the City a statement stating the total amount of Gross Revenues for the year and all payments, deductions, and computations for the period.

3.6 Audits

On an annual basis, upon thirty (30) days prior written notice, the City shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with GAAP. If the audit shows that fee payments have been underpaid by three percent (3%) or more, Grantee shall pay the total cost of the audit.

3.7 Late Payments

In the event any payment due quarterly is not received within thirty (30) days from the end of the calendar quarter, Grantee shall pay interest on the amount due at the rate of one percent (1%) per month, compounded daily, calculated from the date the payment was originally due until the date the City receives the payment.

3.8 Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State, or the United States including, without limitation, sales, use, and other taxes, business license fees, or other payments. Payment of the fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax, or charge on the business, occupation, property, or income of Grantee that may be lawfully imposed by the City.

3.9 Additional Commitments Not Franchise Fees

No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional commitments herein are not Franchise Fees, nor are they to be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees to be passed through to subscribers.

3.10 Tax Liability

The Franchise Fees shall be in addition to any and all taxes and levies or assessments that are now or hereafter required to be paid by businesses in general by any law of the City, the State, or the United States including, without limitation, sales, use, and other taxes, business license fees, or other payments. Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax, or charge on the business, occupation, property, or income of Grantee that may be lawfully imposed by the City. Any other license fees, taxes, or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.11 Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in the irrevocable letter of credit or performance bond provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

A. The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under law to any agent in its sole discretion.

B. Nothing in this Franchise shall limit nor expand the City's right of eminent domain under State law.

C. The Grantee and the City shall be entitled to all rights and be bound by all changes in local, State, and federal law that occur subsequent to the effective date of this Franchise. The Grantee and the City acknowledge that their rights and obligations under this Franchise are explicitly subject to all such changes.

4.2 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

A. General Indemnification. Grantee shall indemnify, defend, and hold harmless the City, its officers, officials, boards, commissions, agents, and employees, from any action or claim for injury, damage, loss, liability, cost, or expense, including court and appeal costs and attorneys' fees or expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with the City while conducting its defense of the City.

B. Indemnification for Relocation. Grantee shall indemnify the City for any damages, claims, additional costs, or expenses assessed against, or payable by, the City arising out of, or resulting from, directly or indirectly, Grantee's failure to remove, adjust, or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by the City.

C. Procedures and Defense. The City shall give the Grantee timely written notice of any claim or of the commencement of any action, suit, or other proceeding covered by the indemnity in this Section. If a claim or action arises, the City or any other indemnified party shall then tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The City may participate in the defense of a claim, and in any event, Grantee may not agree to any settlement of claims financially affecting the City without the City's prior written approval, which approval shall not be unreasonably withheld.

D. Non-waiver. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

E. Expenses. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, Grantee shall pay expenses incurred by the City in defending itself with regard to any action, suit, or proceeding indemnified by Grantee. The City's expenses shall include all out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents.

5.2 Insurance

A. General Requirement. Grantee must have adequate insurance during the entire term of this Franchise to protect the City against claims for death or injuries to Persons or damages to property or equipment that in any way relate to, arise from, or are connected with this Franchise, or involve Grantee, its agents, representatives, contractors, subcontractors, and their employees.

B. Minimum Insurance Limits. Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

1. Commercial General Liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) excess liability.

2. Commercial Automobile Liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and two million dollars (\$2,000,000.00) excess liability with respect to each of Grantee's owned, hired, and non-owned vehicles assigned to or used in the operation of the Open Video System in the City.

3. Employer's Liability: One million dollars (\$1,000,000.00).

C. Each policy shall provide that the insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without forty-five (45) days' written notice first provided to the City, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

D. Self insurance is not permitted for this Franchise, unless approved in advance and in writing by the City's Risk Administrator.

5.3 Deductibles/Certificate of Insurance

Any deductible of the policies shall not in any way limit Grantee's liability to the City.

A. Endorsements.

1. All policies shall contain, or shall be endorsed so that:

a. The City, its officers, officials, boards, commissions, employees, and agents are to be covered as, and have the rights of, additional insureds with

respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or applicable law, or in the construction, operation or repair, or ownership of the Open Video System;

b. Grantee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees, and agents. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees, and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

c. Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

B. Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A-."

C. Verification of Coverage. The Grantee shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the City prior to the commencement of activities associated with this Franchise. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise and City laws.

5.4 Irrevocable Letter of Credit or Performance Bond

A. If requested by the City, no later than the Effective Date of this Franchise, Grantee shall establish and provide to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, an irrevocable letter of credit from a financial institution satisfactory to the City or a performance bond in the amount of ten thousand dollars (\$10,000.00).

B. The irrevocable letter of credit or performance bond may be drawn upon by the City for purposes including, but not limited to, the following:

1. Failure of Grantee to pay the City sums due under the terms of this Franchise;
2. Reimbursement of costs borne by the City to correct Franchise violations not corrected by Grantee; and
3. Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements.

C. The City shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the irrevocable letter of credit or performance bond to the amount required under this Franchise. Grantee's maintenance of the irrevocable letter of credit or performance bond shall not be construed to excuse unfaithful performance by Grantee or to limit the liability of Grantee to the amount of the irrevocable letter of credit or performance bond or otherwise to limit the City's recourse to any other remedy available at law or equity.

D. Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the irrevocable letter of credit or performance bond was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the irrevocable letter of credit or performance bond has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the irrevocable letter of credit or performance bond shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

SECTION 6. PRIVACY

6.1 Subscriber Privacy

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in federal, State, or local laws.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations, and affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the City access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, affiliate, or a third party. The City may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the City, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that the City inspect them at Grantee's office. If any books or records of Grantee are not kept in a local office and not made available as copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary or appropriate for the performance of any of the City's duties, administration, or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

7.2 Confidentiality

The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word “Confidential” on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee’s books and records marked confidential as set forth above to any person.

7.3 Records Required

A. Grantee shall at all times maintain, and shall furnish to the City upon request:

1. A complete set of maps showing the exact location of all Open Video System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee’s offices for inspection by the City’s authorized representative(s) or agent(s) and made available to such persons during the course of inspections as reasonably conducted by the City. These maps shall be certified as accurate by an appropriate representative of the Grantee;

2. A copy of all FCC filings on behalf of Grantee which relate to the operation of the Open Video System in the City; and

3. The number of Subscribers added or terminated, all construction activity, and total homes passed for the previous twelve (12) months.

7.4 Request for Documents

Upon written request, Grantee shall submit to the City copies of any applications, notifications, communications, and documents of any kind, submitted by Grantee or its Affiliates to any federal, State, or local courts, regulatory agencies, and other government bodies if such documents directly relate to the operations of Grantee’s System within the Franchise Area. Grantee shall submit such documents to the City no later than forty-five (45) days after receipt of the City’s request. Grantee shall not claim confidential, privileged, or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or state agency.

SECTION 8. PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS

If, as, and when Grantee provides Cable Services, Grantee shall promptly notify the City of that fact and the date it commenced providing Cable Services. This section shall apply to Grantee's Cable Services.

The Grantee shall ensure that all subscribers receive any public, educational, and governmental access channels within the subscribers' franchise area. If requested by the City, the Grantee shall satisfy its public, educational, and governmental access channel obligations by providing the same channel capacity for public, educational, and governmental access as the local cable operator(s) provides in the City in proportion to the size of Grantee's System as compared to the size of the local cable operator's system measured by number of subscribers. The channel capacity shall be rounded up to the nearest whole number. By way of example, if the proportion of Grantee's and local cable operator's subscribers is twenty-five hundredths, and if the local cable operator provides one government access channel and one educational access channel, then Grantee shall provide one government access channel and one educational access channel. The Grantee shall work in good faith with the local cable operator to connect its System with that of the local cable operator's system for the purpose of obtaining public, educational, and governmental access channel feeds. The Grantee will use its best efforts to accomplish these PEG access interconnection feeds at a location to be suggested by the City. The costs of connections to the local cable operator's public, educational, and governmental access channel feeds shall be borne by the Grantee. Such costs shall be counted towards the Grantee's PEG access capital fund support obligation, if any. Any additional PEG access matters not covered herein or which subsequently cannot be agreed to by the parties shall be governed by the provisions of 47 CFR 76.1505.

SECTION 9. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

9.1 Right to Construct

Subject to applicable laws, regulations, rules, resolutions, and ordinances of the City and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Open Video System.

9.2 Right-of-Way Meetings

All work authorized and required hereunder shall be done in a safe, thorough, and workmanlike manner. All installations of equipment shall be durable and installed in accordance with good engineering practices.

9.3 General Standard

All work authorized and required hereunder shall be done in a safe, thorough, and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.

9.4 Permits Required for Construction

Prior to doing any work in the Right-of Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the City. As part of the permitting process, the City may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite City permits received by Grantee.

9.5 Joint Trenching/Boring

Whenever it is possible and reasonably and financially practicable to joint trench or share bores or cuts, Grantee shall work with other providers (such as telecommunications, cable, gas, or electric companies), licensees, permittees, and franchisees so as to reduce so far as possible the number of Right-of-Way cuts within the Franchise Area.

9.6 Movement of Facilities During Emergencies

During emergencies, the City may move Grantee's facilities without prior notice.

9.7 Emergency Permits

In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs immediately, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

9.8 Compliance with Applicable Codes

A. City Construction Codes. Grantee shall comply with all applicable City construction codes, including, without limitation, all building codes and zoning codes and regulations.

B. Tower Specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and local codes or regulations.

C. Safety Codes. Grantee shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during construction, operation, and repair of its Open Video System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code, and Occupational Safety and Health Administration (OSHA) Standards.

D. One Call. Prior to placing any underground facilities, Grantee will join and maintain membership in good standing with the Utility Coordinating Council One Call Center or other similar or successor organization which is designated to coordinate underground equipment locations and installations. Grantee is familiar with Ch. 19.122 (Washington State's "Underground Utilities" statutes) and understands, will abide by, and adhere to local procedures, customs, and practices relating to the one call locator service program.

9.9 GIS Mapping

Grantee shall comply with any generally applicable ordinances, rules, regulations, and policies of the City regarding geographic information systems mapping for users of the Rights-of-Way, provided that all similarly situated users of the Rights-of-Way must also accordingly comply.

9.10 Minimal Interference

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Open Video System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, the City's authority. The Grantee's Open Video System shall be located, erected, and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation, or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the City may require the removal or relocation of Grantee's lines, cables, equipment, and other appurtenances from the property in question at Grantee's expense.

9.11 Safety

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the City's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change, and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

9.12 Underground Construction and Use of Poles

A. When required by general ordinances, resolutions, regulations, or rules of the City or applicable State or federal law, Grantee's Open Video System shall be placed underground at Grantee's expense. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

B. Where electric and telephone lines are installed underground at the time of Open Video System construction, or when all such wiring is subsequently placed underground, all Open Video System lines shall also be placed underground with other wireline service at no expense to the City or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Open Video System equipment, such as pedestals, must be placed in accordance with the City's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

C. The Grantee shall utilize existing poles and conduit wherever possible.

D. In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Rights-of-Way for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Open Video System. All poles of Grantee shall be located as designated by the proper City authorities and only upon written consent of the City.

E. This Franchise does not grant, give, or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person. Copies of agreements for the use of poles, conduits, or other utility facilities must be provided upon request by the City.

F. If the City requests, when Grantee is constructing, relocating, or placing ducts or conduits in public rights-of-way, that Grantee provide the City with additional duct or conduit and related structures necessary to access the conduit, then such request shall be governed by federal, State, and local law, such as RCW 35.99.070.

9.13 Electrical Bonding

Grantee shall ensure that all drops are properly bonded to the electrical power ground at the home, consistent with applicable code requirements. All non-conforming or non-performing drops shall be replaced by Grantee as necessary.

9.14 Repair and Restoration of Property

A. The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

B. Whenever Grantee disturbs or damages any Right-of-Way, other public property, or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

C. Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property for one (1) year. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials, and equipment, the Grantee shall pay the City.

D. Private Property. Upon completion of the work that caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use its best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed.

9.15 Discontinuing Use/Abandonment of Open Video System Facilities

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit for the City's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the City permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the City may require Grantee to remove the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The City may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City. Until such time as Grantee removes or modifies the facility as directed by the City, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, the City may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes.

9.16 Movement of Open Video System Facilities For City Purposes

The City shall have the right to require Grantee to relocate, remove, replace, modify, or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the City in the event of an emergency or when reasonable public convenience requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas, or water pipes, or any other types of structures or improvements by the City for public purposes). Such work shall be performed at the Grantee's expense. Except during an emergency, the City shall provide reasonable notice to Grantee, not to be less than five (5) business days, and allow Grantee the opportunity to perform such action. In the event of any capital improvement project exceeding \$500,000 in expenditures by the City which requires the removal, replacement, modification, or disconnection of Grantee's facilities or equipment, the City shall provide at least sixty (60) days' written notice to Grantee. Following notice by the City, Grantee shall relocate, remove, replace, modify, or disconnect any

of its facilities or equipment within any Right-of-Way, or on any other property of the City. If the City requires Grantee to relocate its facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds.

If the Grantee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to the Grantee, including all costs and expenses incurred by the City due to Grantee's delay. In such event, the City shall not be liable for any damage to any portion of Grantee's Open Video System. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the City.

9.17 Movement of Open Video System Facilities for Other Franchise Holders

If any removal, replacement, modification, or disconnection of the Open Video System is required to accommodate the construction, operation, or repair of the facilities or equipment of another City franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the costs associated with the removal, replacement, modification, disconnection, or relocation be paid by the benefited party.

9.18 Temporary Changes for Other Permittees

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower, or remove its wires as necessary to permit the moving of a building, vehicle, equipment, or other item. The permit holder must bear the expense of such temporary changes, and Grantee may require a reasonable deposit of the estimated payment in advance.

9.19 Reservation of City Use of Right-of-Way

Nothing in this Franchise shall prevent the City or public utilities owned, maintained, or operated by public entities other than the City from constructing sewers; grading, paving, repairing, or altering any Right-of-Way; laying down, repairing, or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure, or prevent the use and operation of Grantee's Open Video System.

9.20 Tree Trimming

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the City's Rights-of-Way which interferes with Grantee's Open Video System. Grantee shall comply with any general ordinance or regulations of the City regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until two (2) weeks written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. Upon written request of the

property owner, Grantee shall allow for review by a certified arborist prior to undertaking the pruning. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this two (2) week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

9.21 Inspection of Construction and Facilities

The City may inspect any of Grantee's facilities, equipment, or construction at any time upon at least twenty-four (24) hours notice, or, in case of emergency, upon demand without prior notice. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to correct, inspect, administer, and repair the unsafe condition if Grantee fails to do so, and to charge Grantee therefor.

9.22 Stop Work

A. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City.

B. The stop work order shall:

1. Be in writing;
2. Be given to the Person doing the work or posted on the work site;
3. Be sent to Grantee by overnight delivery at the address given herein;
4. Indicate the nature of the alleged violation or unsafe condition; and
5. Establish conditions under which work may be resumed.

9.23 Work of Contractors and Subcontractors

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations, and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other applicable law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors, or other

Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them.

9.24 Construction Bond

A. Prior to commencing any construction work exceeding One Hundred Thousand Dollars (\$100,000), Grantee shall, at the request of the City, provide a construction bond to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including, by way of example and not limitation, its obligations to restore City Streets and other property. The amount of the construction bond shall be twenty-five percent of the construction cost. The construction bond shall be in a form and with a surety acceptable to the City's Risk Manager and City Attorney. Grantee shall pay all premiums or costs associated with maintaining the construction bond, and shall keep the same in full force and effect until the construction of the Open Video System shall have been completed and all restoration of public and private property shall have occurred regarding thereto. Thereafter, the construction bond shall be released, subject to the mutual written agreement of the parties.

B. The construction bond may be drawn upon by the City for any proper purpose under this Franchise or as otherwise provided by applicable law.

C. The City shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the construction bond to the amount required under this Franchise. Grantee's maintenance of the construction bond shall not be construed to excuse unfaithful performance by Grantee or to limit the liability of Grantee to the amount of the construction bond or otherwise to limit the City's recourse to any other remedy available at law or equity.

D. Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the construction bond was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the construction bond has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the construction bond shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

SECTION 10. EMERGENCY ALERT SYSTEM AND TECHNICAL STANDARDS

10.1 Emergency Alert Capability

If, as and when Grantee provides Cable Services,

A. If required by federal law or regulation, Grantee shall provide the City an operating Emergency Alert System ("EAS") so that the City may use the Open Video System to transmit an emergency alert signal.

B. The City shall permit only appropriately trained and authorized persons to operate the EAS equipment provided pursuant to this subsection.

C. Grantee shall ensure that the EAS is functioning properly at all times. It will test the EAS periodically, in a manner consistent with sound operational practices for emergency systems. Grantee will advise the City of the testing schedule and the City may be present for the tests.

10.2 Technical Performance

The technical performance of the Open Video System shall meet or exceed all applicable federal (including, but not limited to, the FCC) and State technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

SECTION 11. SERVICE TO CERTAIN LOCATIONS

Regardless of whether or not the Grantee provides Cable Services, Grantee shall connect City Hall (116 Union Avenue) to Public Works City Shop (1801 First Street) with two (2) pairs of fiber at no cost to the City. Grantee shall have access to existing City conduit that goes approximately from Avenue F to 1801 First Street. Grantee shall also have access to this conduit for non-City business.

If, as, and when Grantee provides Cable Services, Grantee shall promptly notify the City of that fact and the date it commenced providing Cable Services. This section shall apply to Grantee's Cable Services. Grantee shall, at no cost to the City or other entity, provide one outlet of Basic Service and Expanded Basic Service to all City owned and occupied buildings, schools, and public libraries. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. In addition, Grantee shall provide, at no cost to the City or other entity, one outlet of Basic and Expanded Basic Service to future owned or leased and occupied City buildings, schools, and libraries upon request if the drop line from the feeder cable to such building does not exceed one hundred fifty feet (150') or if the City or other entity agrees to pay the incremental cost of such drop line in excess of one hundred fifty feet (150'), including the cost of such excess labor and materials.

Such obligation to provide free Cable Service shall not extend to areas of City buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (e.g., golf courses). Outlets of Basic and Expanded Basic Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Open Video System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes.

SECTION 12. FRANCHISE VIOLATIONS

12.1 Procedure for Remediating Franchise Violations

A. If the City believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the City shall notify Grantee in writing,

stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

1. Respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below; or
2. Cure the default; or
3. Notify the City that Grantee cannot cure the default within the thirty (30) days because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

B. If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting.

C. If, after the meeting, the City determines that a default exists, the City shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time period as the City shall determine. In the event Grantee does not cure within such time frame to the City's reasonable satisfaction, the City may:

1. Withdraw an amount from the irrevocable letter of credit or performance bond as monetary damages;
2. Recommend the revocation of this Franchise pursuant to the procedures in subsection 12.2; or
3. Recommend any other legal or equitable remedy available under this Franchise or any applicable law.

D. The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the City, provided that any such final determination may be subject to appeal to the City Council or review by a court of competent jurisdiction under applicable law.

12.2 Revocation

A. In addition to revocation in accordance with other provisions of this Franchise, the City may revoke this Franchise and rescind all rights and privileges associated with this

Franchise in the following circumstances, each of which represents a material breach of this Franchise:

1. If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance, or document regarding the City and Grantee;
2. If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers;
3. If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors; or
4. If Grantee fails to comply with all provisions of federal law pertaining to Open Video System Operators, including, but not necessarily limited to, 47 U.S.C. 573 and 47 CFR 76.1500 et seq.

B. Prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance. Grantee shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection and provide any explanation. In the event the City has not received a satisfactory response from Grantee, it may then seek a termination of the Franchise by the City Council in accordance with this subsection.

C. Any proceeding under the paragraph above shall be conducted by the City Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

1. At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The City Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

2. Within ninety (90) days after the hearing, the City Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the irrevocable letter of credit or performance bond forfeited; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City Council determines are reasonable under the circumstances. If the City Council determines that the Franchise is to be revoked, the City Council shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the City Council's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

3. Grantee shall be entitled to such relief as the court may deem appropriate.

4. The City Council may at its sole discretion take any lawful action which it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

12.3 Procedures in the Event of Termination or Revocation

A. If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may order the removal of the above-ground Open Video System facilities and such underground facilities from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its plant, structures, and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places, and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone wires or attachments. The indemnification and insurance provisions and the irrevocable letter of credit or performance bond, as applicable, shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefor.

B. If Grantee fails to complete any removal required by this subsection to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the City may recover the costs through the irrevocable letter of credit or performance bond, as applicable, provided by Grantee.

12.4 Purchase of Open Video System

A. If at any time this Franchise is lawfully revoked, terminated, or not renewed (in accordance with federal law), the City shall have the option to purchase the Cable System.

B. The City may, at any time after Franchise revocation, termination, or non-renewal, offer in writing to purchase Grantee's System. In any case where the City elects to purchase the System, the purchase shall be closed within one hundred twenty (120) days of the date of the City's audit of a balance sheet and current profit and loss statement of Grantee's System. The City shall, as applicable, pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

C. For the purposes of this subsection, the price for the System shall be determined as follows:

1. In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's System valued as a going concern, but with no value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee that the City may assume.

2. In the case of revocation for cause, the equitable price of Grantee's Cable System.

3. In any case, the connection from City Hall (116 Union Avenue) to Public Works City Shop (1801 First Street) with two (2) pairs of fiber at no cost to the City shall become the property of the City at no cost.

12.5 Receivership and Foreclosure

A. At the option of the City, subject to applicable law, this Franchise may be revoked after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless:

1. The receivership or trusteeship is timely vacated; or

2. The receivers or trustees have timely and fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustee assume and agree to be bound by each and every term, provision, and limitation of this Franchise.

B. If there is a foreclosure or other involuntary sale of the whole or any part of the plant property and equipment of Grantee, the City may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

1. The City has approved the transfer of the Franchise, in accordance with the procedure set forth in this Franchise and as provided by law; and

2. The purchaser has covenanted and agreed with the City to assume and be bound by all the terms and conditions of this Franchise.

12.6 Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement, or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

12.7 Assessment of Monetary Damages

The City and Grantee recognize the delays, expense, and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the City as a result of Grantee's breach of certain provisions of this Franchise. Accordingly, instead of requiring such proof, the City and Grantee agree that Grantee shall pay to the City the sums set forth below for each day or part thereof that Grantee shall be in breach of specific provisions of this Franchise. Such amounts are

agreed to by both parties as a reasonable estimate of the actual damages the City would suffer in the event of Grantee's breach of such provisions of this Franchise.

Subject to the City's giving written notice to the Grantee and thirty (30) day right to cure period, the City may assess against Grantee monetary damages up to two hundred fifty dollars (\$250) per day for material departure from the FCC technical performance standards; one hundred dollars (\$100) per day for failure to provide the Access Channels or any equipment related thereto that is required hereunder; one hundred dollars (\$100) per day for each material violation of the Customer Service Standards; fifty (\$50) per day for failure to provide reports or notices as required by this Franchise; and up to one hundred dollars (\$100) per day for any other material breaches or defaults required under the Franchise.

SECTION 13. FRANCHISE TRANSFER

A. This Franchise as an asset of the Open Video System shall not be sold, assigned, transferred, leased, or disposed of, either by involuntary sale or by voluntary sale, merger, or consolidation; nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any Person or entity without the prior written consent of the City, which consent shall be by the City Council, acting by ordinance.

B. The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the City shall have consented in writing thereto.

C. The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer and furnish all information required by law and the City.

D. The City shall act by ordinance on the request within one hundred twenty (120) days of the request, provided it has received all requested information. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

E. Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City, Grantee shall file with the City a copy of the deed, agreement, lease, or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law.

F. In reviewing a request for sale or transfer, the City may inquire into the qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the qualifications of the prospective controlling party or transferee and to the

resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Grantee. Additionally, the prospective transferee or assignee must have been certified by the FCC to operate as an Open Video System Operator in the City.

G. Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment, or transfer of the Franchise or Open Video System to an entity controlling, controlled by, or under the same common control as Grantee. The proposed assignee or transferee must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Open Video System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 14. SEVERABILITY

If any Section, subsection, paragraph, or provision of this Franchise is determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

SECTION 15. MISCELLANEOUS PROVISIONS

15.1 Notices

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent postage prepaid to such respective address and such notices shall be effective upon the date of mailing. The City or the Grantee may change these addresses by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:
Black Rock Cable, Inc.
1512 Fairview Street
Bellingham, WA 98229

The City's address shall be:
City of Snohomish
Torchie Corey, City Clerk
116 Union Avenue
Snohomish, WA 98290

With a copy to:
City of Snohomish
Grant Weed, City Attorney
21 Avenue A
Snohomish, WA 98290

15.2 Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

15.3 Costs and Expenses to be Borne by Grantee

The costs and expenses associated with the renewal of this franchise will be borne by the Grantee, including but not limited to Franchise renewal-related costs and expenses and all costs and expenses of publication of this Franchise and any Ordinance related hereto.

15.4 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors, and assigns.

15.5 Authority to Amend

This Franchise may be amended at any time by written agreement between the parties.

15.6 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner that would indicate any such relationship with the other.

15.7 Waiver

The failure of the City at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

15.8 Venue

Venue for any judicial proceeding regarding this Franchise shall be in Snohomish County.

15.9 Governing Law

Applicable local, State, and federal law (including, but not limited to, the Cable Act and all rules, regulations, rulemakings, and orders of the FCC) shall govern this Franchise.

15.10 Entire Agreement

This Franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written negotiations between the parties.

15.11 Acceptance

After the passage and approval of this Ordinance and within thirty days after such approval, this Franchise shall be accepted by Black Rock by filing with the City Clerk an unconditional, acknowledged written acceptance of all terms and conditions of this Franchise. Failure of Black Rock to file such an acceptance within thirty days of approval shall be deemed a rejection by Black Rock, and the rights and privileges herein granted shall cease after expiration of the thirty day period after approval, unless the thirty day period is extended by ordinance duly passed for that purpose.

ADOPTED by the City Council and **APPROVED** by the Mayor this 1st day of March, 2011.

CITY OF SNOHOMISH

By _____
Karen Guzak, Mayor

ATTEST:

APPROVED AS TO FORM:

By _____
Torchie Corey, City Clerk

By _____
Grant Weed, City Attorney

Date of Publication: _____

Effective Date: _____

Accepted and agreed to this ____ day of _____, 2011

BLACK ROCK CABLE INC.

By: _____

Its: _____

Attest: