

CITY OF LYNNWOOD

ORDINANCE NO. 2963

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON;
GRANTING A NON-EXCLUSIVE FRANCHISE TO BLACK ROCK CABLE,
INC. FOR THE CONSTRUCTION AND OPERATION OF AN OPEN-
VIDEO SYSTEM WITHIN THE CITY OF LYNNWOOD.

WHEREAS, Black Rock Cable, Inc. (hereinafter referred to as "Black Rock" or "Franchisee") has a franchise with the City of Lynnwood under Ordinance No. 2306 to operate an Open Video System within the City right-of-way ("Franchise");

WHEREAS, the Franchise term ended on December 31, 2006, but Black Rock has been allowed to continue to operate under the Franchise in the City with the City's knowledge and consent; provided, that Black Rock has continued to comply with the Franchise terms and the City has and continues to grant all necessary operational permits requested by Black Rock; and

WHEREAS, the City and Black Rock agree that the Franchise shall be renewed on the terms and conditions stated in this ordinance, and Franchisee shall be allowed in the City of Lynnwood (hereinafter referred to as "City") to construct, maintain and operate an Open-Video System within the City; and

WHEREAS, pursuant to RCW 35A.47.040, the City is authorized to grant one or more non-exclusive franchises for the use of public streets, bridges and other public ways, structures or places above or below the surface of the ground, for poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for the transmission and distribution of electrical energy, signals and other methods of communication, including open video systems; and

WHEREAS, upon completion of informal negotiations with the Franchisee and having analyzed the financial, legal, and technical ability of the Franchisee, the City has determined that it is in the best interests of the City to renew this non-exclusive franchise to the Franchisee; and

WHEREAS, the City has afforded the public adequate notice and opportunity for comment, and now desires to renew this Franchise with Franchisee for the construction, maintenance and operation of an Open-Video System as provided herein;

NOW THEREFORE, the City Council of the City of Lynnwood does ordain as follows:

SECTION 1. DEFINITIONS

For purposes of this Ordinance, the following words, terms and phrases shall have the meaning stated in this section. 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. The word "shall" is always mandatory and not merely directory.

1.1 "Act" means the Cable Communications Policy Act of 1984 as modified by the Cable Television and Consumer Protection Act of 1992 and the Telecommunications Act of 1996.

1.2 "Access Channel" or "Public Educational or Government Access (PEG) Channel" means any channel or portion of a channel utilized for programming, whether by Franchisee or in cooperation with, by or through the City, where any resident of the City or any non-commercial organization whose members reside in the City may be a programmer, either without charge or in a non-profit manner, on a non-discriminatory basis. The term "programming" as used in this Section shall include video, voice, and data transmission.

1.3 "Affiliate" means any entity, corporate or individual, having ownership of 5% or more of the equity ownership, (either voting, control or value) of either entity. In addition, any entity having actual working control, in whatever manner exercised, will also be deemed an affiliate. Both the entity owned or controlled, and the entity owning or controlling, shall be considered affiliates of each other.

1.4 "Basic Cable Service" means any tier of service, in the event that Franchisee begins provision of such, provided to subscribers of Franchisee's System that would include, but is not specifically limited to, the retransmission of local broadcast television signals and the cablecasting of public, educational, or governmental access channels through Franchisee's System. Nothing in this definition shall be deemed to limit the rights of Franchisee or the City with respect to the regulation of rates and charges as permitted by applicable law.

1.5 "Cable Service" means (1) the one-way transmission to subscribers of (a) video programming, or (b) other programming services, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.6 "Cable System" means any facilities consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area. The phrase "Cable System" shall also include Open Video System, OVS system and OVS.

1.7 "City" means the City of Lynnwood of the State of Washington and all the territory within its present and future boundaries and including any area over which the City exercises jurisdiction.

1.8 "Facilities" means any facilities, including dark fiber, installed by Franchisee under this Agreement.

1.9 "Franchise" means the non-exclusive right or authority to construct, operate and maintain an OVS within the City by way of City owned Rights of Way, easements or other publicly owned properties.

1.10 "Franchisee" means Black Rock Cable, Inc. DBA Black Rock Cable, a Washington Corporation, its agents and assignees.

1.11 "Franchise Fee" means consideration paid by the Franchisee for the privilege granted under this Franchise for the use of streets and Rights of Way and the privilege to construct and/or operate an OVS in the City. Franchise fee does not include any tax, fee or assessment of general applicability, fees associated with construction permit approval, capital costs which are required by the Franchisee for Public, Educational or Governmental Access facilities (including, without limitation the support required in Sections 5.5 herein), requirements or charges incidental to the awarding or enforcing of the Franchise, or any fee required by federal, state or local law.

1.12 "Gross Revenues" means any and all gross revenues derived directly or indirectly by the Franchisee and/or its Affiliates from the operation of its Dark Fiber, Cable or OVS system within the City, "Gross Revenues" shall not include any tax, fee or assessment of general applicability collected by the Franchisee from Subscribers as a pass-through to a government agency. Gross revenue shall not include amounts which cannot be collected and are identified as bad debt: provided, that amounts previously identified as bad debt which are eventually collected shall be reported for the period in which that occurs. Notwithstanding any other provision herein, the Franchisee shall be obliged to pay in full any applicable City utility tax and any agreed upon reimbursements to the City set forth in this agreement without credit against Franchise Fees. For the purpose of this Section, the twelve (12) month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year, unless otherwise agreed to in writing by the City and Franchisee. Gross Revenues shall include Cable Modem Type Services (and related equipment, installations, service calls and the like) if the FCC, Federal legislation or the courts permit local governments to effectively include revenues from Cable Modem Type Services in Cable Gross Revenues for the purpose of computing cable Franchise Fees. Nothing in this definition shall be deemed to limit the rights of Franchisee or the City with respect to the regulation of rates and charges as permitted by applicable law.

1.13 "Open Video System", or "System," shall have the meaning specified for "Open Video System" in 47 C.F.R. 76.1500(a) and also includes the provision of Dark Fiber (as defined herein) services. It excludes cable service as defined herein. Unless otherwise specified, the foregoing terms shall, in this document, refer to the open_video system/fiber optic transmission system

constructed and operated (whether transmissions are generated by Franchisee or its subscribers) in the City of Lynnwood under this Franchise. "Dark Fiber" is optical fiber infrastructure installed and maintained by Franchisee, which does not transmit light pulses for the transmission of information, but which is capable of such transmission upon installation of optronic equipment by either Franchisee or its subscriber.

1.14 "Person" means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

1.15 "Right of Way" means land previously acquired or dedicated to the public or the City or hereafter acquired or dedicated to the public or the City and maintained under public authority or by others, including but not limited to public streets, roads, highways, avenues, lanes, alleys, bridges, sidewalks, easements and similar public property located within the City.

1.16 "Service Area" means the present boundaries of the City and shall include any additions thereto by annexation or other legal means.

1.17 "Standard Installation" means an arterial installation 125 feet from the nearest tap to the Subscriber's terminal.

1.18 "Street" means the surface of and the space above and below the Right of Way of any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway, or driveway now or hereafter existing as such within all incorporated areas of the City of Lynnwood.

1.19 "Subscriber" means any person who legally receives any one or more of the services provided by the Open Video System.

1.20 "Video Programming" means programming provided by, or generally considered comparable to, programming provided by a television broadcast station. (see 47 U.S.C. Sec. 522(20)).

1.21 "Wireless Services" means any extension or other part of the System that employs through air transmission and the use of transmitters, relays and repeaters, or similar transmission technology.

SECTION 2. GRANT

2.1 Grant of a Non-Exclusive Franchise.

2.1.1 The City hereby grants to the Franchisee a NON-EXCLUSIVE authorization to make reasonable and lawful use of the City's Right of Way within the City to construct, maintain, repair and operate therein an Open-Video System ("OVS") for the purpose of providing Open Video System service and Dark Fiber Services, as those terms are defined above, subject to the

terms and conditions of this ordinance. In order to provide any other services over the facilities that constitute the OVS, the Franchisee shall be required to obtain any additional governmental authorizations required by law.

2.1.2 The Franchisee is granted the right to operate its OVS using the City Right of Way in compliance with all lawfully enacted City Codes, ordinances, standards, procedures and regulations, provided that in the event of conflict, the provisions of this Franchise shall control. The express provisions of this Franchise are a contract between the parties, except that the City may unilaterally alter the terms and conditions through the lawful exercise of its police powers upon reasonable notice to Franchisee. In accepting this Franchise, the Franchisee acknowledges that its rights hereunder are subject to the police power of the City to adopt and enforce, from time to time and in the manner it deems reasonable, general ordinances necessary for the safety, health and welfare of the public. This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Right-of-Way, should Franchisee provide service other than Open Video System Service or Dark Fiber Service. Franchisee agrees to comply with all applicable laws that are now or may in the future be enacted by the City pursuant to such police power.

2.1.3 No rights shall pass to the Franchisee by implication. Without limitation of the foregoing, this Franchise shall not include or be a substitute for:

- a. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City; or
- b. Any permit, agreement, or authorization that may be required by the City for Right-of-Way users in connection with operations on or in the Right-of-Way or public property, such as street cut permits.

2.1.4 This Franchise only conveys limited rights and interests as to those Rights of Way in which the City has an actual interest. It is not a warranty of title or interest, nor does it provide the Franchisee with any representation as to any location of a City Right of Way or the nature of the City's interest in any Right of Way. No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right of Way, or upon private property without the owner's consent, or upon any public or privately owned utility poles or conduits is granted herein.

2.1.5 Nothing herein is a bar to the imposition of any lawful condition with respect to the Franchisee's delivery of any other type of service, nor does this Franchise relieve the Franchisee from obtaining authorization from the City for providing any other such services.

2.1.6 This Franchise shall not be construed as to deprive the City of any rights or privileges which it now has or may hereafter have to regulate the use and control of the Rights of Way, and public property. Nothing in this Franchise shall limit nor expand the City's right of eminent domain under State law.

2.1.7 The City specifically reserves the right to grant, at any time, such additional franchises for other similar systems as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Franchisee. The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation, or termination of rights previously granted to Franchisee

2.1.8 Subject to Section 2.1.7, and only to the extent permitted by law, the City agrees to grant additional franchises upon terms and conditions which, in its sole discretion, it in good faith believes will enhance OVS service and not grant an unfair competitive advantage to one franchisee over another.

2.1.9 This Franchise does not establish any priority for the use of the Rights of Way by Black Rock Cable or by any present or future franchisees or other permit holders. In the event of any dispute as to the priority of use of the Rights of Way, the first priority shall be to the public generally, the second priority to the City in the performance of its various functions, and thereafter, as between franchisees and other permit holders, as determined by the City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Washington.

2.1.10 To the extent that any of the Rights-of-Way within the Franchise Area are a part of the State highway system ("State Highways") and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation regulations, Franchisee shall comply with said requirements in addition to local ordinances and other applicable regulations.

2.2 Term of Franchise.

The Franchise granted pursuant to this Ordinance shall expire at midnight, July 1, 2022.

2.3 Non-Exclusive.

This Franchise shall be non-exclusive, and subject to all prior rights, interests, easements or licenses granted by the City or its predecessors to any Person to use any property, Right of Way, easement, right interest, or license. The City may at any time grant authorization to use the Right of Way for any purpose not incompatible with the Franchisee's authority under this Franchise and for such additional franchises for other cable companies and/or cable systems as the City deems appropriate.

2.4 Effect of Acceptance.

By accepting this Franchise, the Franchisee acknowledges and accepts the City's legal right to issue and enforce the Franchise; accepts and agrees to comply with each and every provision of this Franchise; and agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law.

Section 3. GENERAL RIGHT OF WAY USE AND CONSTRUCTION

3.1 Use of Streets.

Franchisee shall not erect, install, construct, repair, replace or maintain its Cable System in such a fashion as to unduly burden the present or future use of the Rights of Way. If the City in its reasonable judgment determines that any portion of the Cable System is an undue burden, Franchisee at its expense shall modify its System or take such other actions as the City may determine are in the public interest to remove or alleviate the burden, and Franchisee shall do so within the time period established by the City. Franchisee may, subject to the terms of this Franchise, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the streets or Rights of Way within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of an Open Video System within the City.

3.2 Construction or Alteration.

Franchisee shall in all cases comply with all lawful City laws, resolutions and regulations regarding the acquisition of permits and/or such other items as may be reasonably required in order to construct, alter or maintain the Open Video System. All work authorized and required under this Franchise shall be accomplished in a safe, thorough and workmanlike manner. All installations of equipment shall be durable and installed in accordance with good engineering practices.

3.3 Non-Interference.

Franchisee shall exert its best efforts to construct and maintain an Open Video System so as not to interfere with other use of streets. Franchisee shall, where possible, in the case of above ground lines, make use of existing poles and other facilities available to Franchisee. When residents receiving service or who will be receiving service will be affected by proposed construction or alteration, Franchisee shall provide at least two weeks' advance notice of the same to such affected residents.

3.4 Consistency with Designated Use.

Notwithstanding any other provision of this Franchise, no street or Right of Way shall be used by the Franchisee if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such street or Right of Way was created or dedicated, or presently used under City, State or local laws.

3.5 Undergrounding.

Franchisee shall place underground, at Franchisee's expense unless stated otherwise, all of its transmission lines which are located or are to be located above or within the streets of the City in the following cases:

(a) All other existing utilities are required to be placed underground by statute, resolution, policy or other regulation;

(b) Franchisee is unable to get pole clearance;

(c) Underground easements are obtained from developers of new residential areas; or

(d) Utilities are overhead but residents prefer underground (service provided at cost);

or

(e) When required by ordinances, resolutions, regulations or rules of the City or applicable State or federal law.

3.5.1 If an ordinance is passed creating a local improvement district which involves placing underground certain utilities including Franchisee's facilities which are then located overhead, Franchisee shall participate in such underground project and shall remove poles, cables and overhead wires within such district if requested to do so and place facilities underground. If such undergrounding of Franchisee facilities is part of such a project, the costs thereof shall be included in such local improvement district.

3.5.2 If those areas and portions of the City where the transmission or distribution facilities of both the public utility providing telephone service and those of the utility providing electric service are underground or hereafter may be placed underground, then the Franchisee shall likewise construct, operate and maintain all of its transmission and distribution facilities underground. Amplifiers and connectors in Franchisee's transmission and distribution lines may be in appropriate housing upon or above the surface of the ground in locations approved by the City. Upon sufficient notice, work shall be done at the same time as other facilities that are placed underground and all work shall be done consistent with City regulations and to minimize impact on streets and neighborhoods.

3.5.3 Franchisee shall use conduit or its functional equivalent to the greatest extent possible for under-grounding, except for drops from pedestals to subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from environmental factors. Franchisee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

3.6 Construction in Right-of-Way.

In cases where undergrounding is not required, the Franchisee shall utilize existing poles and conduit wherever possible. In the event that Franchisee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then Franchisee may make all needed excavations in the Right-of-Way for the purposes authorized in this Franchise. Whenever it is possible and reasonably and financially practicable to joint trench or share bores and cuts, Grantee shall work with other providers (such as telecommunications, cable, gas, or electric companies), licenses, permittees, and franchisees so as to reduce as far as possible the number of Right-of-Way cuts within the Franchise Area.

3.7 Maintenance and Restoration.

(a) Restoration. In case of disturbance of any street, public way, paved area or public improvement, Franchisee shall, at its own cost and expense and in accordance with the requirements of the City, restore such street, public way, paved area or public improvement to substantially the same condition as existed before the work involving such disturbance took place. Franchisee will comply with City standard plans, including but not limited to, Std 3-18, Std 3-18A, and Std 3-18B. All requirements of this Section pertaining to public property shall also apply to the restoration of private easements and other private property. Franchisee shall perform all restoration work promptly. If Franchisee fails, neglects or refuses to make restorations as required under this Section, then the City may (but is not required to) do such work or cause it to be done, and Franchisee shall pay the cost thereof to the City within thirty (30) days of the City providing an itemized list of the costs and expenses incurred in performing such work. If Franchisee causes any damage to private property in the process of restoring facilities, Franchisee shall repair such damage. Franchisee shall warrant any restoration work performed under this Franchise for one (1) year.

(b) Maintenance. Franchisee shall maintain all above ground improvements that it places on City Right of Way pursuant to this Franchise. In order to avoid interference with the City's ability to maintain the Right of Way, Franchisee shall provide a clear zone of five feet on all sides of such improvements. If Franchisee fails to comply with this provision, and by its failure, property is damaged, then Franchisee shall be responsible for all damages caused thereby.

(c) Disputes. In any dispute over the adequacy of restoration or maintenance relative to this Section, final determination shall be the prerogative of the City of Lynnwood Department of Public Works.

3.8 Relocation.

3.8.1 City Property. If during the term of the Franchise the City or any government entity elects or requires a third party, or if the City or other governmental entity determines that it is necessary, to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street, public way or other public property; or to construct, maintain or repair any

public improvement; or to replace, repair install, maintain, or otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding structure, or other facility, including a facility used for the provision of utility or other services or transportation of drainage, sewage or other liquids, Franchisee shall, upon request, except as otherwise hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduits, vaults, pedestals, manholes and any other facilities which it has installed.

3.8.2 Utilities and Other Franchisees. If during the term of the Franchise another entity which holds a franchise or any utility requests Franchisee to remove or relocate such facilities to accommodate the construction, maintenance or repair of the requesting party's facilities, or their more efficient use, or to "make ready" the requesting party's facilities for use by others, or because Franchisee is using a facility which the requesting party has a right or duty to remove, Franchisee shall do so. The companies involved may decide among themselves who is to bear the cost of removal or relocation, provided that the City shall not be liable for such costs.

3.8.3 Notice to remove or relocate. Any utility, other franchisee, or City request to Franchisee to remove or relocate its facilities shall give Franchisee no less than fifteen (15) days' advance written notice to Franchisee advising Franchisee of the date or dates removal or relocation is to be undertaken; provided, that no advance written notice shall be required in emergencies or in cases where public health and safety or property is endangered.

3.8.4 Failure by Franchisee to remove or relocate. If Franchisee fails, neglects or refuses to remove or relocate its facilities as directed by the City; or in emergencies or where public health and safety or property is endangered, the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Franchisee. If Franchisee fails, neglects or refuses to remove or relocate its facilities as directed by another franchisee or utility, that franchisee or utility may do such work or cause it to be done, and if Franchisee would have been liable for the cost of performing such work, the cost thereof to the party performing the work or having the work performed shall be paid by Franchisee.

3.8.5 If in the sole opinion of the City Public Works Director, damage to the public Right of Way resulting from damage or disturbance during the construction, operation or maintenance of the OVS requires immediate repair, the City may commence such repairs after the expiration of notice to remove or relocate pursuant to Section 3.7.3 and the failure of Franchisee prior to the commencement of the repairs at the cost of the Franchisee. In such event, the City will endeavor to notify the Franchisee of the immediate repairs needed. The Franchisee shall pay to the City the City's costs, including administrative costs related to such repairs within thirty (30) days of the date of the written notice of the costs that is delivered to the Franchisee. If the Franchisee fails to comply with the time frames herein, this Franchise shall terminate without further action required.

3.8.6 Procedure for removal of cable. Franchisee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed, except as hereinafter provided. Franchisee may remove any underground

cable from the streets which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. Subject to applicable law, Franchisee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition. Underground cable and conduit in the streets that is not removed shall be deemed abandoned and title thereto shall vest in the City at no cost to the City.

3.9 Movement of Buildings.

Franchisee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of such building. Franchisee shall be entitled to ten (10) business days; notice to arrange the raising or lowering of the wires. Franchisee may charge a reasonable fee no greater than its actual costs incurred in raising or lowering its wires, for this service to the person or entity holding a building permit and may request that the costs be paid in advance.

3.10 City Right to Inspect and Cost recovery.

The City shall have the right to inspect all work performed by Franchisee in, on or above City streets or Right of Way, whether during the performance of such work or after completion so long as such inspection does not disrupt Franchisee's system operation. To the extent that the City is required to perform any inspections, maintenance or repairs to City streets, Right of Way or other City property due to Franchisee's use thereof, the City shall be entitled to recover the costs and expenses incurred therefore from Franchisee and such costs and expenses shall be payable on demand. In the event that the City incurs any costs or expenses for planning, designing, installing, repairing or altering any City facilities that would not have occurred but for Franchisee's exercise of the rights granted under this Franchise agreement, the City may bill Franchisee for reimbursement of such costs and expenses and such shall be immediately due and payable to the City. Any such recovery of City costs or reimbursements of such costs shall not be an off-set or credit against Gross Revenues or the Franchise Fee to be paid to the City by the Franchisee.

3.11 Construction Standards.

3.11.1 All work authorized or required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be durable and installed in accordance with sound professional engineering practices. Prior to commencement of construction or any work being performed in any Right of Way, all of such work shall be conducted pursuant to engineering plans submitted by the Franchisee to the City for review and approval, which may be conditional approval, by the City of Lynnwood Public Works Department. Franchisee will take prompt corrective action if it or the City finds that any facilities or equipment on its Cable System are not operating as expected, or if it or the City

finds that facilities and equipment do not comply with the requirements of this Franchise or applicable law, the Lynnwood Municipal Code or any permit requirements.

3.11.2 Franchisee shall comply with all applicable City construction and other codes, ordinances and regulations, including without limitation, all building and zoning codes.

3.11.3 Any erection of poles, antennae, wires, cables, and other installations, upon the poles of the Franchisee or upon the poles of others, shall be done only in accordance with a plan or maps first to be submitted and approved by the City or other person designated by the City, and shall be subject to any separate pole attachment agreement as required by the City Public Works Department. Said pole attachment agreement shall be subject to a separate approval, which may be denied by the City as provided for in any City adopted policies or regulations. 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. Any repair work or replacement work shall be done under the supervision of the City and only after permission from the City is received.

3.11.4 Prior to placing any underground facilities, Franchisee shall 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. Franchisee represents that it is familiar with Chapter 19.122 RCW (Washington State's "Underground Utilities" statute), and understands and will comply with local procedures and practices relating to the one call locator service program.

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

3.12 Notice of Construction.

The City may establish requirements for advance notification to residents adjacent to the proposed construction areas to be provided by the Franchisee.

3.13 Safety Requirements.

The Franchisee shall, at all times, employ professional care and shall install and maintain and use commonly accepted methods for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment and connection in, over, under, and upon the streets, sidewalks, alleys and public ways or places of the Franchise area, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee 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 the construction, operation, maintenance, upgrade, repair or removal of its Cable System. By way of illustration and not limitation, Franchisee shall also comply with the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards.

If an unsafe condition is found to exist, the City agrees to give Franchisee notice of such condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations, within the time frame specified in Section 7 herein, then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee. The Franchisee shall pay to the City all of the City's costs, including administrative costs, incurred as a result of circumstances herein within thirty (30) days of the date of the written notice of the costs that is delivered to the Franchisee. Any such recovery of City costs or reimbursements of such costs shall not be an off-set or credit against Gross Revenues or the Franchise Fee to be paid to the City by the Franchisee. If the Franchisee fails to comply with the time frames herein, this Franchise shall terminate without further action required.

3.14 Permits Required for Construction.

3.14.1 Prior to doing any work in the City, Franchisee 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 Rights of Way, the proper restoration of Rights of Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic, or as may be required by law, ordinance, codes or regulations. Such conditions may also include requiring the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right of Way. Franchisee shall pay all applicable fees for the requisite City permits, reviews and/or approvals required of or received by Franchisee. In the event that emergency repairs are necessary, Franchisee shall immediately notify the City of the need for such repairs. Franchisee shall apply for appropriate permits within two (2) working days after discovery of the emergency. During emergencies, the City may move Franchisee's facilities without prior notice.

3.14.2 Prior to commencing any construction work exceeding Ten Thousand Dollars (\$10,000.00) in cost, Franchisee shall, if requested by the City, provide a construction bond to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including without limitation, its duty to restore City streets and other property. The amount of the construction bond shall be at least one hundred twenty-five percent (125%) of the project cost. The bond shall be in a form and with a surety acceptable to the City. Franchisee shall pay all premiums and costs associated with obtaining the bond, and shall keep the bond in full force and effect until the completion of the construction project, including all restoration of public and private property.

3.15 Tree Trimming.

In cases of emergency, the Franchisee shall notify the City of its intent to trim trees or other natural growth necessary to access and maintain its Cable System immediately upon determining that such an emergency exists and prior to engaging in such activity. Upon receipt of such notice, the City may inspect such circumstance prior to the removal of the emergency condition. In non-emergency conditions, Franchisee may, at its own expense, trim trees or other natural growth overhanging any of its installed OVS Facilities to prevent branches from coming in contact with the Franchisee's wires, cables, or other equipment upon twenty (20) day notice of the actual trees and other natural growth that is intended to be affected in non-emergency situations, and upon approval of the City Public Works Department, which shall not be unreasonably withheld. Nothing herein grants the Franchisee any authority to act on behalf of the City or to enter upon any private property, or to trim any tree or natural growth not owned by the City. The Franchisee shall be solely responsible and liable for any damage to any third parties trees or natural growth, and in addition to the terms and conditions of Section 7, the Franchisee shall indemnify, defend and hold harmless the City from claims of any nature arising any act or negligence of the Franchisee with regard to tree and or natural growth trimming, damage and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by such trimming, damage or removal. The Franchisee, may, at their own discretion, but in a manner and of a style approved by the City or property owner provide replacement of any trees or shrubbery damaged as a result of actions taken by the Franchisee in lieu of compensation.

3.16 Temporary Disconnection.

The City may direct the Franchisee to temporarily disconnect, relocate, or bypass any equipment of the Franchisee in order to complete street construction or modification, install and remove underground utilities, or for other reasons of public safety and efficient operation of the City. Such removal, relocation or other requirement shall be at the sole expense of the Franchisee.

3.17 Access to Open Trenches.

The Franchisee shall be entitled to reasonable access to open utility trenches, provided that such access does not interfere with the City's placement of utilities or increase the cost to the City thereby. The Franchisee shall pay to the City the actual cost to the City resulting from providing the Franchisee access to an open trench, including without limitation the pro rata share of the costs of access to an open trench and any costs associated with the delay of the completion of a public works project.

Further, the City agrees as follows: to exercise reasonable efforts to include the Franchisee in any platting process within the City, to exercise reasonable efforts to include as a condition of issuing a permit for open trenching to any utility or developer that (a) the utility or developer give the Franchisee at least ten (10) days advance written notice of the availability of the open trench and (b) that the utility or developer provide the Franchisee with reasonable access to

the open trench. Any such recovery of City costs or reimbursements of such costs shall not be an off-set or credit against Gross Revenues or the Franchise Fee to be paid to the City by the Franchisee. The City's non-compliance with this Section shall not be a breach or default by the City of this Franchise.

3.18 Reservation of Rights.

Nothing in this ordinance shall limit, waive, release or terminate any rights or interests of the City in its property and/or Right of Way, including but not limited to the City retaining all right to sewer, plank, pave, grade, alter, repair, vacate, and improve and/or work upon, under, or above any public Rights of Way, and, further the City shall retain its right to grant Franchise rights or similar rights to others, and the City shall not be liable for damage resulting to the Franchisee by reason of or as a result of the performance of such work or by the exercise of such rights by the City.

SECTION 4. FRANCHISE FEE/PAYMENTS/FINANCIAL CONTROLS

4.1 Franchise Fee.

As compensation for the use of the City's Rights of Way, the Franchisee shall pay the City a Franchise Fee to the City throughout the duration of this Franchise, an amount equal to five percent (5%) of the Franchisee's Gross Revenues. Accrual of such Franchise Fee shall commence on the effective date of this Franchise.

4.2 Maximum Franchise Fee.

The parties acknowledge that present applicable federal law limits the City to collection of a Franchise Fee of five percent (5%) of Gross Revenues in any twelve (12) month period. In the event that any time during the term of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues in any twelve (12) month period, it may do so with sixty (60) days of written notice to the Franchisee, provided that all other franchised cable companies are treated in an equivalent manner.

4.3 Payments.

The twelve (12) month period applicable for computation of the Franchise Fee shall be the calendar year. The Franchise Fee payment shall be due at the close of each calendar quarter (March 31, June 30, September 30, and December 31) and shall be paid in full within thirty (30) days after the close of each such calendar quarter.

4.4 Acceptance of Payment.

No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any

claim which the City may have for further or additional sums payable under the provisions of this Section. The costs of such verification shall be borne solely by the Franchisee.

4.5 Quarterly and Annual Franchisee Fee Reports.

4.5.1 Each payment shall be accompanied by a brief report prepared by a representative of the Franchisee showing the basis for the computation, and verified by the Franchisee's certified public accountant and/or officer of Franchisee, which identifies in detail and in summarized form the sources and amounts of Gross Revenues earned by the Franchisee during the period for which payment is made.

4.5.2 Franchisee shall, within sixty (60) days after the end of each calendar year, furnish to the City a report stating the total amount of Gross Revenue for the year, and all payments, deductions, and computations for the period.

4.6 Audits.

The City may conduct an independent audit of the Franchisee's books and records to verify the accuracy of Franchise Fees paid to the City. Any additional amount due to the City shall be paid within fourteen (14) calendar days of the City submitting an invoice for such sum, and if such sum shall exceed three percent (3%) of the total Franchise Fee which the audit determines should have been paid for any calendar year, the Franchisee shall pay the City's cost of auditing that and the subsequent calendar year as well.

In addition to the forgoing, the City, upon thirty (30) days written notice to the Franchisee, shall have the right to inspect, upon reasonable notice, the books and records of the Franchisee for the purpose of determining the accuracy and completeness of the financial reports. Other records that may be required by the City include, but are not limited to, annual financial statements and customer data. Any such examination shall be done in a professional manner during reasonable business hours.

4.7 Interest and Penalties on Late Payments.

In the event that any Franchise Fee payment is not received by the City by the date due, (1) interest shall be charged from such date at the rate of twelve percent (12%) per annum, and (2) in addition, Franchisee shall pay the City an amount equal to five percent (5%) of the Franchise Fee amount not paid by the date due.

4.8 Additional Commitments Not Franchise Fees.

No term or condition in this Franchise shall in any way modify or affect the Franchisee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional obligations set forth in this Franchise may total more than five percent (5%) of the Franchisee's Gross Revenues in any twelve (12) month period, the Franchisee agrees that the additional commitments are excluded from the Franchise Fees herein and are not Franchise

Fees. Such additional commitments shall not be offset, deducted, or credited against any Franchise Fee due to the City, no do they represent any increase in Franchise Fees to be passed through to Subscribers pursuant to any Federal Law. No deduction, off-set or credit shall be allowed against Gross Revenues, unless such off-set, credit or deduction is specifically authorized herein.

4.9 Taxes and Assessments.

4.9.1 Franchisee and City specifically agree that in the event Franchisee begins providing Cable Services within the City, Franchisee shall be subject to taxes of general applicability including the City utility tax and that it will pay said tax as a cable provider pursuant to said utility tax ordinance and any applicable successor ordinance. Said utility tax payment shall be made by Franchisee without credit or offset against any Gross Revenues or Franchise Fee payments or other payments made to City. Franchisee does not waive the right to contest the applicability of the City utility tax should the nature of the Franchisee's business operations change, or if a change in applicable state of federal law occurs.

4.9.2 The Franchise Fees required in this Franchise shall be in addition to any and all taxes, levies or other assessments which are now or hereafter required to be paid by businesses or utilities by any law of the City, the State or the federal government, including, without limitation, sales, use, utilities and business and occupation taxes, business license fees or other payments. Nothing stated herein shall limit Franchisee's obligation to pay lawful and applicable local, state or federal taxes, and payment of fees under this Franchise shall not exempt Franchisee from payment of any other lawfully imposed license fee, permit fee, tax, or other charge on the business, occupation, property or income of Franchisee.

4.10 Payment on Termination.

If this Franchise terminates for any reason, the Franchisee shall file with the City within one hundred and twenty (120) calendar days of the date of termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Franchisee since the end of the previous fiscal year. Within forty-five (45) days of the filing of such certified statement with the City, the Franchisee shall pay any unpaid amounts as indicated.

4.11 Discounted Rates.

If Franchisee's Subscribers are offered what is, in effect, a discount if they obtain both Cable Service and some other, non-cable goods or service, then for Cable Gross Revenue computation purposes, the discount shall be applied proportionately to cable and non-cable goods and services, in accordance with the following example:

4.11.1 Assume a Subscriber's charge for a given month for Cable Service alone would be \$40, for local telephone service alone would be \$30, and for long-distance service alone would be \$30, for a total of \$100. In fact the three services are offered in effect at a combined rate

where the Subscriber receives what amounts to a twenty percent (20%) discount from the rates that would apply to a service if purchased individually. The discount (here, \$20) for Franchise Fee computation purposes would be applied pro rata so that for such purposes Cable Gross Revenues would be deemed to be \$32 (\$40 less 20% of \$40). The result would be the same if the Subscriber received a \$20 discount for telephone service on the condition that he or she also subscribes for Cable Service at standard rates.

4.11.2 The existence and amount of a discount shall be determined on the basis of the sum of the lowest generally available stand alone rates for each of the goods and services which are offered at the combined rate.

4.12 Publications.

Franchisee shall pay the City's cost of newspaper publication, mailing or other form of public notice associated with adoption of this Franchise, and to reimburse the City for actual attorney's fees and costs in connection herewith. It is agreed such costs hereunder shall not be a deduction, off-set or credit allowed against Gross Revenues.

SECTION 5. SERVICE EXTENSION; CUSTOMER SERVICE AND PROGRAMMING; THESE APPLY ONLY IF FRANCHISEE BEGINS TO PROVIDE CABLE SERVICE

If at any time during the term of this Franchise, or any extended Franchise term, Franchisee provides Cable Services to customers within the Franchise Area, then the provisions of this Section 5 shall apply. Franchisee shall notify the City of its intent to provide Cable Services within the Franchise Area, prior to the commencement of such service.

5.1 Required Extensions of the Cable System.

In the event Franchisee begins providing Cable Services within the City and receives a request for Cable Service from a Subscriber in a contiguous unserved area where there are at least fifteen (15) residences within 1320 cable-bearing strand feet from the portion of Franchisee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard/non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, the Franchisee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Franchisee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

5.2 Subscriber Charges for Extensions of the Cable System.

In the event Franchisee begins providing Cable Services within the City, no Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of

Section 5.1 above, the Franchisee shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Cable System. Specifically, the Franchisee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the number of potential residences as is available for development under the applicable zoning code per 1320 cable-bearing strand feet from Franchisee's trunk or distribution cable, and whose denominator equals 15. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a *pro rata* basis. The Franchisee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

5.3 Cable Service to Public Buildings.

In the event Franchisee begins providing Cable Service within the City, the Franchisee, upon request, shall provide without charge, a Standard Installation and one outlet of Basic Cable to those administrative buildings owned and occupied by the City, fire station(s), police station(s), libraries, visitor information centers, and accredited K-12 public school(s) that are passed by its Cable System. The Cable Service provided under this section shall not be used for commercial purposes. As to any portion of the Cable system extended to any administrative buildings owned and occupied by the City, the City shall take reasonable precautions to prevent any use of the Franchisee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The City shall hold the Franchisee harmless from any and all liability or claims arising out of the provision and use of Cable Service by the City required by this Section, except for those claims or liability arising out of the acts, omission and/or negligence of the Franchisee. The Franchisee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the City or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

5.4 Emergency Use.

If the Franchisee provides an Emergency Alert System ("EAS"), then the City shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Franchisee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the City shall hold the Franchisee, its employees, officers and assigns harmless from any claims arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

5.5 Public, Education and Government (PEG) Access Channels.

In the event Franchisee begins providing Cable Services within the City, the Franchisee shall provide, upon one-hundred twenty (120) days prior written notice from the City, one (1) PEG channel for non-commercial local government programming and one (1) PEG channel for non-commercial education programming pursuant to the provisions of the Cable Act, Section 611 (47 USC §531), to be promoted and administered by the City or its designee.

5.6 Capital Contribution.

In the event Franchisee begins providing Cable Services within the City, in support of PEG Access, Franchisee shall, upon ninety (90) days written request from the City, begin to collect and pay to the City an amount equal to \$0.31 per month per Residential Subscriber for Access capital (the "Capital Contribution") for a period of three (3) years. Subsequent to the three year Capital Contribution period, the City shall evaluate the use of its PEG channels and determine whether additional Capital Contributions are necessary to support the PEG channels. If the City determines that additional Capital Contributions are required to support PEG needs, the City shall submit its written request to Franchisee. Such request shall include supporting documentation relative to the need of the additional Capital Contributions. If necessary to meet community needs, the City may request the collection and payment of Capital Contributions in any amount up to a maximum of \$0.50 per month per Residential Subscriber for any period of time not to exceed the term of the Franchise

Each payment shall be due and payable on the same schedule as Franchise Fees and shall be itemized on Subscriber's monthly bills in accordance with applicable law. The City shall have discretion to allocate the Capital Contribution for Access equipment and facilities in accordance with applicable law. Upon the delivery of a written request prior to the end of a fiscal year, the City shall develop and provide a report to the Franchisee on the use of the Capital Contribution for the prior fiscal year. The costs of the preparation of such report shall be paid for by the Franchisee. Said report shall be prepared if the request is properly made within one hundred twenty (120) days of the close of the City's fiscal year.

5.7 Rates and Charges.

In the event Franchisee begins providing Cable Services within the City, the City may regulate rates for the provision of Basic Cable and equipment, except as expressly prohibited by federal or state law.

5.8 Customer Service.

The Franchisee shall meet or exceed Federal Communication Commission ("FCC") customer service standards (47 CFR §76.309) as such standards exist on the effective date of the Franchise.

5.9 Low Income Senior/Disabled Subscriber Discount.

In the event Franchisee begins providing Cable Services within the City, the Franchisee may offer a discount of thirty percent (30%) from its published rate-card rate to Subscribers for Basic Cable service who are aged sixty-five (65) or older, and/or disabled, provided that such person(s) are the legal owner or lessee/tenant of their residence and that their combined disposable income from all sources does not exceed the Housing and Urban Development low income standards for the Seattle-Everett area for the current and preceding calendar year. The City shall be responsible for certifying to the Franchisee that discount applicants conform to the specified criteria.

5.10 Obscenity.

In the event Franchisee begins providing Cable Services within the City, the Franchisee shall not transmit, or permit to be transmitted over any channel subject to control, any programming which is determined by the Lynnwood City Council following a public hearing to be obscene under, or violates any provision of, applicable law relating to obscenity, and which is not protected by the Constitution of the United States. Franchisee shall comply with all relevant provisions of federal law relating to obscenity.

5.11 Parental Control Device.

In the event Franchisee begins providing Cable Services within the City, upon request by any Subscriber, Franchisee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all channels. Franchisee shall thereafter inform its Subscribers of the availability of the lockout device at the time of their initial subscription and with each billing or invoice sent to the subscriber, and in separate periodic advisory notices. Any device offered shall be at a rate, if any, in compliance with applicable law.

5.12 Cable Bill Inserts.

In the event Franchisee begins providing Cable Services within the City, the Franchisee shall use reasonable efforts to accommodate the City's requests for the placement of City or community messages approved by the City on billing statements for Cable Service, at no cost to the City.

5.13 Customers' Right of Privacy.

The Franchisee shall comply fully with any provisions protecting or regarding the privacy rights of Subscribers contained in federal, State or local laws and regulations.

SECTION 6. FRANCHISE RENEWAL, EXTENSION AND TRANSFER

6.1 Transfer of Franchise.

Franchisee's, title, or interest in the Franchise may be sold, transferred, assigned, or otherwise encumbered (hereinafter an "Act of Sale"), without the prior consent of the City, so long as Franchisee provides City with at least forty-five days of notice of the closing date of an Act of Sale and provides the City with sufficient information as it reasonably requires to determine the legal, financial, and technical qualifications of the transferee to continue to operate Franchisee's OVS system. Further, no consent shall be required for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or OVS System in order to secure indebtedness. Within fifteen days of receiving a notice for transfer, the City may notify the Franchisee in writing requesting any additional information it reasonably requires to determine the legal, financial, and technical qualifications of the transferee, and may provide notice to the transferee that it must file an application for a new franchise within 60 days of the Act of Sale. If the City provides such notice to the transferee, this Franchise shall be deemed binding upon the transferee, as successor in interest to Franchisee, until a new franchise is granted to the transferee.

6.2 Other Contracts or Agreements.

Franchisee, its affiliates, or its owners, shareholders, employees or directors shall not enter into nor allow to be entered into any contract or agreement with unaffiliated parties for management services or any other services relating to the provision of services on the OVS. Franchisee further agrees that all carriage fees charged to any program provider shall be at fair market values for the capacity leased.

6.3 Franchise Renewal.

The City and the Franchisee agree that any proceedings undertaken by the City that relate to the renewal of the Franchisee's Franchise shall be governed by and comply with applicable federal, state and local laws, ordinances, and regulations or as otherwise agreed to by the parties.

SECTION 7. VIOLATIONS; ENFORCEMENT

7.1 Enforcement.

7.1.1 Notice of Violation. In the event that the City believes that the Franchisee has not complied with any terms of the Franchise, the City, at its sole election may informally discuss the matter with Franchisee, or issue a notice of violation as provided for in this Section 7. If discussions do not lead to resolution of the problem or if the City elects not to informally discuss the matter with the Franchisee, the City shall notify the Franchisee in writing of the alleged non-compliance.

7.1.2 Franchisee's Right to Cure or Respond. The Franchisee shall have thirty (30) days from receipt of the notice described in Section 7.1.1 to (i) respond to the City, contesting the assertion of non-compliance and request a meeting as provided in section 7.2.1 or (ii) cure such default, or (iii) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

7.2 Franchisee Contests Non-compliance.

7.2.1 If the Franchisee timely notifies the City that it contests the assertion of non-compliance with the Franchise and requests a meeting with the City pursuant to section 7.1.2 (i), the Mayor shall hold a meeting within fourteen (14) days with the Franchisee, provided that said timeframe may be extended at the sole discretion of the Mayor.

7.2.2 If after such meeting, the Mayor believes that the Franchisee is in breach, violation or non-compliance with the Franchise, then the Mayor shall notify the Franchisee of his/her decision in writing.

7.2.3 The Franchisee may request a public hearing before the City Council as to whether or not a violation, breach or non-compliance with the Franchise has occurred. Said request must be made in writing, stating with specificity the reasons why the Franchisee believes that the alleged non-compliance has not occurred, and delivered to the Assistant City Administrator within fourteen (14) days of receipt of the Mayor's decision. The Assistant City Administrator shall cause the public hearing to be held at the next available City Council meeting, provided that the Franchisee shall be provided at least ten (10) calendar days notice of such hearing.

7.2.4 At the City Council public hearing, the Franchisee shall have the burden of proof that a violation, breach or non-compliance with the Franchise has not occurred, and must demonstrate that a preponderance of evidence supports the conclusion that there is not a violation or breach of the Franchise or that such violation or breach was timely cured as required in this Franchise.

7.2.5 During such public hearing, the opportunity to cross examine witnesses shall be in the sole discretion of the City Council.

7.2.6 The City Council's decision following the close of the public hearing shall be decided based upon a majority of the City Council present at the City Council meeting. In the event of a tie vote, the decision of the Mayor shall be deemed to be upheld.

7.2.7 In the event that the City Council upholds the revocation of the Franchise, then the City Council shall immediately pass an ordinance declaring the Franchise revoked and terminated, any security or bonds shall be forfeited to the City, and said revocation ordinance shall include findings of fact and conclusions derived from those facts which support the decision of the City Council.

7.2.8 The City Council may adopt the findings and conclusions of the Mayor.

7.2.9 The Franchisee shall be bound by the decision of the City Council, unless an appeal is filed to a court of competent jurisdiction within thirty (30) days of the date of the Council's decision.

7.1.10 Failure to timely cure. If the Franchisee fails to timely cure the non-compliance, then in addition to any other remedy at law or equity, or provided for in this Franchise, the City may revoke the Franchise. Said revocation shall be immediately after the delivery of a written notice of revocation executed by the Mayor stating the grounds of the violation, breach or non-compliance with the Franchise.

7.3 Removal.

7.3.1 If the Franchise has been terminated, canceled, or has expired, and Franchisee has not exercised its rights, if any, to contest the termination, the City may give Franchisee notice to remove its Open Video System from the City's streets and public places or it may, in the City's sole discretion, allow Franchisee to abandon the system in place if the Franchisee requests in writing to abandon its Cable System in place. Within ten (10) days of receiving the City's notice, in the event that the City requires removal of the Open Video System, the Franchisee agrees to commence removal of its system and to proceed diligently with such removal. Work shall be completely done one hundred-eighty (180) days from notice to complete such work. Prior to the commencement of such work, the Franchisee shall submit to the City a performance bond in the amount of one hundred fifty percent (150%) of the estimated cost of removal and the restoration required by this Franchise.

7.3.2 If the Franchisee fails to remove any of its property as provided herein, the City may elect to cause such removal and may recover its reasonable costs and expenses from Franchisee, including its attorney's fees and costs incurred in recovering such costs and expenses.

7.3.3 If any Franchise is terminated by the City by reason of the Franchisee's non-compliance with this Ordinance or with federal or state regulations, then that part of the system under such Franchise located in the streets and public property, may, at the election of the City, become the property of the City at a cost consistent with the provisions of the Act.

7.4 Effective Abandonment.

Any property of the Franchisee remaining in place ninety (90) days after the termination or expiration of the Franchise may be considered permanently abandoned. Upon abandonment of the property of the Franchisee in place the property shall become that of the City, and the Franchisee shall submit to the City Clerk an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property.

7.5 Discontinued Services.

In the event that the use of any part of the Open Video System, excluding residential drops, is discontinued for any reason for a continuous period of six (6) months, the City may give notice to Franchisee of the City's intent that such unused part be promptly removed by Franchisee. Upon receipt of such notice by the City, Franchisee may seek reconsideration of the City's decision pursuant to the procedures authorized in the Act.

SECTION 8. FINANCIAL AND INSURANCE REQUIREMENTS

8.1 Indemnity and Hold Harmless.

8.1.1 General Indemnification. The Franchisee shall indemnify, defend and hold the City, its officers, officials, employees, agents and consultants ("City"), harmless from and against any and all liabilities, claims, fees, costs and damages, whether to person or property, or expense of any type or nature which may occur to the City, including without limitation reasonable attorneys' fees, experts' fees and other costs, by reason of the construction, operation, maintenance, repair and alterations of Franchisee's facilities or any other act done under this Franchise by or for Franchisee, its employees or agents.

8.1.2 Relocation Indemnification. To the extent not covered by the indemnity requirements of Section 8.1.1, Franchisee shall indemnify, defend and hold the City harmless from and against any and all liabilities, claims, fees, costs and damages, whether to person or property, or expense of any type or nature which may occur to the City, including without limitation reasonable attorneys' fees, experts' fees and other costs, arising out of, or resulting from, directly or indirectly, Franchisee's failure to remove, adjust, or relocate any of its facilities in the Right-of-Way in a timely manner in accordance with any relocation required by the City under this Franchise.

8.1.3 Procedures and Defense. In any case in which suit or action is instituted against the City by reason of damages or injury caused in whole or in part by an act or omission of Franchisee, the City shall cause written notice thereof to be given to the Franchisee and Franchisee thereupon shall have the duty to appear and defend in any such suit or action, without cost or expense to the City. The City may participate in the defense of a claim, and in any event, Franchisee may not agree to any settlement of claims financially affecting the City without the City's prior written consent, which consent shall not be unreasonably withheld.

8.2 Insurance.

8.2.1 General Requirement. During the entire term of this Franchise, the Franchisee shall have and maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy, in protection of the City, its officers, boards, commissioners, agents, employees, and consultants, in a company and a form satisfactory to the City, protecting the City and all persons against liability for loss or damage or personal

injury, death and property damage, and errors or omissions, occasioned by the operations of Franchisee under such Franchise.

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

A. Commercial General Liability Insurance with limits of no less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000.00) excess liability.

B. Commercial Automobile Liability Insurance with minimum combined single limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000.00) excess liability with respect to each of Franchisee's owned, hired and non-owned vehicles assigned to or used in the operation of the OVS in the City.

C. Employer's Liability: One Million Dollars (\$1,000,000).

8.2.3 Franchisee's insurance coverage shall be primary insurance with respect to the City. Any insurance or self insurance maintained by the City shall be in excess to the Franchisee's insurance. A certificate of insurance acceptable to the City shall be filed with the City Clerk. The company shall be approved by the state insurance Commissioner pursuant to Title 48 RCW, and have at least an A- Best Rating.

8.2.4 Each policy of insurance shall contain a provision that a written notice of cancellation or reduction in coverage shall be delivered to the City thirty (30) days in advance of the effective date thereof. If the insurance is cancelled or materially altered so as to be out of compliance with the requirements of this section, Franchisee shall provide a replacement policy. Franchisee shall maintain continuous, uninterrupted insurance coverage, in at least the amounts required, for the duration of the Franchise term, and in the case of Commercial General Liability, for at least one year after expiration of this Franchise.

8.3 Performance Bond.

8.3.1 If requested by the City, no later than the effective date of this Franchise, Franchisee shall establish and provide to the City, as security for the faithful performance of all of the requirements of this Franchise, a performance bond or irrevocable letter of credit, from a surety or financial institution acceptable to the City, in the amount of Ten Thousand Dollars (\$10,000.00). The performance bond or letter of credit may be drawn upon by the City for purposes, including but not limited to the following: (1) failure of Franchisee to pay the City sums due under the terms of this Franchise; (2) reimbursement of costs born by the City to correct Franchise violations not corrected by Franchisee; and (3) monetary remedies or damages assessed against Franchisee due to default or breach of Franchise requirements.

8.3.2 The City shall give Franchisee written notice of any withdrawal under this section upon such withdrawal. Within seven (7) days following receipt of such notice, Franchisee shall restore the performance bond or irrevocable letter of credit to the amount required under this Franchise. Franchisee's maintenance of the bond or letter of credit shall not be construed to

excuse performance of obligations under the Franchise, or to limit the liability of Franchisee or otherwise limit the City's recourse to any other remedy available at law or equity.

SECTION 9. MISCELLANEOUS TERMS

9.1 Confirmation of Consistency with Federal Provisions.

The Franchisee forever agrees and acknowledges that this Franchise is consistent with the Act, and all FCC or other federal legislation and/or regulations. The Franchisee agrees that it shall not undertake any action to seek to establish that any portion of this Franchise is inconsistent with the Act, and all FCC or other federal legislation and/or regulations. If any portion of this Franchise is deemed to be inconsistent with any rule or regulation hereinafter adopted by the FCC or other federal legislation, then to the extent of the inconsistency, the rule or regulation of the FCC or other federal legislation shall control for so long, but only for so long, as such rule or regulation shall remain in effect, and the remaining provisions of this Franchise shall not thereby be affected. If that legislation, rule or regulation allows existing franchises to not be affected, then there shall be no effect to this franchise. If federal law changes, whether through legislative or rule-making action or court or administrative interpretation during the term of this Franchise, then Franchise shall be considered modified to include the same terms and conditions to which the existing cable franchisee is subject.

If any portion of this Ordinance is inconsistent with any rule or regulation now or hereinafter adopted by the FCC or other federal legislation, then to the extent of the inconsistency, the rule or regulation of the FCC or other federal legislation shall control for so long, but only for so long, as such rule or regulation shall remain in effect, and the remaining provisions of this Ordinance shall not thereby be affected. If that legislation, rule or regulation allows existing franchises to not be affected, then there shall be no effect to this franchise. If federal law changes, whether through legislative or rule-making action or court or administrative interpretation during the term of this Franchise, then Franchise shall be considered modified to include the same terms and conditions to which the existing cable franchisee is subject.

9.2 Right of City to Purchase.

The City reserves the right to purchase the existing System under provisions of the Act, or in the event of a judicial or foreclosure sale.

9.3 Force Majeure.

In the event that the Franchisee's or City's performance of any of the terms, conditions, obligations or requirements of this Ordinance is prevented or impaired due to any cause(s) beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof.

9.4 Severability.

Each section, subsection, or other portion of this Ordinance shall be severable and the invalidity of any section, subsection, or other portion shall not invalidate the remainder.

9.5 Community Programming.

In the event Franchisee begins providing Cable Services within the City, the community programming requirements for the Franchisee shall be governed by FCC regulations, 47 CFR 76.1505. Under these regulations, the Franchisee is required to provide the same channel capacity as the incumbent cable operator and is required to interconnect to the incumbent cable operator or elsewhere to receive the PEG programming.

9.6 Notice.

Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

CITY OF LYNNWOOD:

City of Lynnwood
City Clerk
19100 44th Ave W
Lynnwood, WA 98036

FRANCHISEE:

Black Rock Cable, Inc.
Attn: Bob Warshawer
1512 Fairview St.
Bellingham, WA 98229

Notice shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the United States Mail in the case of regular mail, or the next day in the case of overnight delivery.

9.7 Entire Franchise.

This Franchise and its acceptance constitutes the entire terms between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon approval and acceptance of this Franchise. Any amendment to this Franchise shall only occur by mutual written agreement of the parties and amendment of this Ordinance.

9.8 Reserved Rights.

The City reserves all rights and powers under its police powers and powers conferred by federal, state or local law. In particular the City reserves the right to alter, amend, or repeal its municipal code and cable ordinance as it determines shall be conducive to the health, safety and welfare of the public, or otherwise in the public interest. The City agrees that by accepting this Franchise, Black Rock Cable has not waived its right to object to the application to it of actions by the City pursuant to its reserved rights or police powers.

9.9 Franchise Acceptance.

Franchisee shall execute and return to the City three Franchisee Acceptance forms, attached to this Ordinance. The executed Franchise Acceptances shall be returned to the City accompanied by performance bonds, security funds, and evidence of insurance, all as provided in this Ordinance. In the event Franchisee fails to accept this Franchise, or fails to provide the required documents, this Franchise shall be null and void.

9.10 Ratification of Prior Acts.

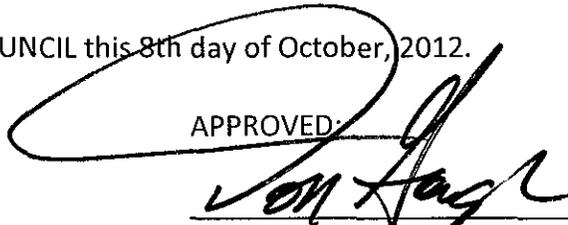
All prior acts of either party taken consistent with the terms of this Franchise are hereby ratified, confirmed and approved.

9.11 Effective Date.

This Ordinance shall be effective upon passage, approval and publication as provided by law; provided, however, that if Franchisee does not accept this Franchise and comply with all conditions for such acceptance set forth herein prior to the effective date, this Ordinance shall be null and void.

PASSED BY THE CITY COUNCIL this 8th day of October, 2012.

APPROVED:



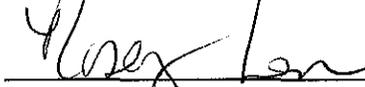
DON GOUGH, MAYOR

ATTEST/AUTHENTICATED:



Lorenzo Hines, FINANCE DIRECTOR

APPROVED AS TO FORM:



Rosemary Larson, CITY ATTORNEY

FILED WITH ADMINISTRATIVE SERVICES: 10/09/2012
PASSED BY THE CITY COUNCIL: 10/08/2012
PUBLISHED: 10/12/2012
EFFECTIVE DATE: 10/17/2012
ORDINANCE NUMBER: 2963

FRANCHISEE ACCEPTANCE

Franchisee expressly acknowledges that on accepting this Franchise it did so relying on its own investigation and understanding of the power and authority to grant this Franchise.

ACCEPTED this 15th day of October, 2012, subject to applicable federal, state and local law.

Black Rock Cable, Inc.

Signature: 

Name:

Bob Warshawer, President



LYNNWOOD
WASHINGTON

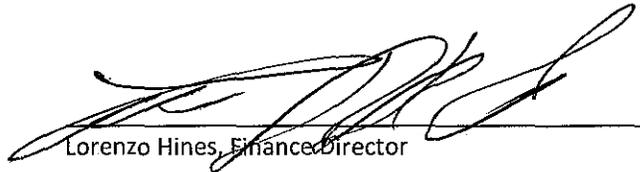
On the 8th day of October, 2012, the City Council of the City of Lynnwood, Washington, passed the following ordinances.. A summary of the content of each said ordinance, consisting of the title, provides as follows:

ORDINANCE NO. 2963

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON;
GRANTING A NON-EXCLUSIVE FRANCHISE TO BLACK ROCK
CABLE, INC. FOR THE CONSTRUCTION AND OPERATION OF AN
OPEN-VIDEO SYSTEM WITHIN THE CITY OF LYNNWOOD.

For the cost of copying, a full copy of any ordinance may be obtained by contacting the City Clerk's Office at 425.670.5161. Alternatively, they may be viewed online at www.ci.lynnwood.wa.us

DATED this 12th day of October, 2012



Lorenzo Hines, Finance Director

Affidavit of Publication

STATE OF WASHINGTON,
COUNTY OF SNOHOMISH }

S.S.



On the 8th day of October, 2012, the City Council of the City of Lynnwood, Washington, passed the following ordinance: A summary of the content of each said ordinance, consisting of the title, provides as follows:

ORDINANCE NO. 2963

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO BLACK ROCK CABLE, INC. FOR THE CONSTRUCTION AND OPERATION OF AN OPEN-VIDEO SYSTEM WITHIN THE CITY OF LYNNWOOD.

For the cost of copying, a full copy of any ordinance may be obtained by contacting the City Clerk's Office at 425.670.5181. Alternatively, they may be viewed online at www.ci.lynnwood.wa.us

DATED this 12th day of October, 2012

Published: October 12, 2012. Lorenzo Hines, Finance Director

The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice

Ordinance No. 2963

a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper on the following days and times, namely:

October 12, 2012

and that said newspaper was regularly distributed to its subscribers during all of said period.

Karen E. Zema

Principal Clerk

Subscribed and sworn to before me this

12th

day of October, 2012

Diana Hendrix

Notary Public in and for the State of Washington, residing at Everett, Snohomish County.

