

ORDINANCE NO. 10-~~881~~

AN ORDINANCE OF THE CITY OF DEER PARK, WASHINGTON, GRANTING TO NORTHSTAR BROADBAND, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, INSTALL, MAINTAIN, REPAIR, REPLACE, UPGRADE, EXTEND, AND OPERATE A CABLE SYSTEM IN THE CITY FOR PURPOSES OF PROVIDING CABLE TELEVISION SERVICES TO CITIZENS OF THE CITY; CONTAINING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Northstar Broadband, LLC is a limited liability company organized under the laws of the state of Washington ("Grantee"), engaged in the business of providing Cable Services to consumers consistent with applicable laws and regulations; and

WHEREAS, Grantee purchased the existing cable system from Gladstone Capital Corporation in January 2010 through a receivership proceeding; and

WHEREAS, the most recent City cable franchise expired by its terms on April 10, 2006; and

WHEREAS, Grantee has requested that the City grant it a new, nonexclusive franchise to construct, install, maintain, repair, replace, upgrade, extend, and operate a cable system in the City for purposes of providing citizens of the City with Cable Service; and

WHEREAS, pursuant to RCW 35A.47.040, the City Council is authorized to grant nonexclusive franchises for the use of its rights-of-way and other public properties for said franchises; and

WHEREAS, the Grantee has accepted the proposed franchise in accordance with this Ordinance and agrees to be bound by the terms and conditions of this Ordinance and the Franchise Agreement incorporated herein (Exhibit A); and

WHEREAS, the Mayor and City Council have determined that Grantee has the qualifications to meet the present and future Cable Service related needs of the citizens of the City;
NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF DEER PARK, WASHINGTON DO ORDAIN
AS FOLLOWS:

Section 1. The Franchise granted by this Ordinance has been accepted by Grantee, as a duly authorized representative of Grantee has signed this Ordinance and the Franchise Agreement, Exhibit A to this Ordinance, in the spaces provided and delivered to the City Clerk/Treasurer one (1) signed copy of this Ordinance together with one (1) signed copy of Exhibit A.

Section 2. The City hereby grants a nonexclusive Franchise to Grantee to construct, install, maintain, repair, replace, upgrade, extend, and operate a Cable System in the City for purposes of providing citizens of the City with Cable Service on the terms and conditions set forth in the Franchise Agreement attached hereto as Exhibit A, which by this reference is made a part of this Ordinance.

Section 3. All references in this Ordinance and the attached Franchise Agreement to state and/or federal statutes shall be considered references to the state and/or federal statutes as they currently exist or may hereafter be amended.

Section 4. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or

unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 5. This Ordinance, including the Franchise created pursuant to the Franchise Agreement attached as Exhibit A to this Ordinance, shall take effect and be in full force five (5) days after this Ordinance or a summary thereof consisting of the title is published.

APPROVED:

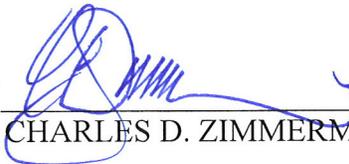

MAYOR ROBERT WHISMAN

ATTEST/AUTHENTICATED:


DEBY CRAGON, CITY CLERK-TREASURER

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

BY 
CHARLES D. ZIMMERMAN

FILED WITH THE CITY CLERK :	<u>3/29/10</u>
PASSED BY THE CITY COUNCIL :	<u>4/7/2010</u>
PUBLISHED :	<u>4/09/2010</u>
EFFECTIVE DATE :	<u>4/14/2010</u>
ORDINANCE NO. :	<u>10-886</u>

CABLE TELEVISION FRANCHISE AGREEMENT

**EXHIBIT A
TO CITY ORDINANCE NO. _____**

BETWEEN

THE CITY OF DEER PARK, WASHINGTON

AND

NORTHSTAR BROADBAND, LLC

Table of Contents

1.	Definitions	1
2.	Grant of Franchise - Non-Exclusive Franchise	3
3.	Term	4
4.	Franchise Area	4
5.	Franchise Fee	4
	(a) <i>Percent of Local Gross Revenues</i>	4
	(b) <i>Reasonable Access to Records</i>	4
6.	Utility Taxes	5
7.	Administrative and Permit Fees	5
8.	System Configuration	5
	(a) <i>Cable System</i>	5
	(b) <i>System Design</i>	6
9.	Services Provided to the City	6
10.	Customer Service Standards	6
11.	Construction, Relocation, Operation, Maintenance, and Extensions of the Cable System	6
	(a) <i>Applicable Standards</i>	6
	(b) <i>Construction in Rights-of-Way</i>	7
	(c) <i>Relocation or Removal of Cable System Facilities</i>	9
	(d) <i>Maintenance, Operations and Record Keeping</i>	10
	(e) <i>System Extensions</i>	11
12.	Insurance	11
13.	Rights Reserved by the City	12
	(a) <i>Enforcement of City Ordinances</i>	12
	(b) <i>Cable Rates</i>	12
	(c) <i>Continuous Service</i>	12
	(d) <i>Police Power Authority</i>	13
	(e) <i>Regulation of Rights-of-Way</i>	13
	(f) <i>City Inspection</i>	13
	(g) <i>FCC Regulations</i>	13
14.	Transfer of Franchise Agreement	13
15.	Conditions of Franchise Agreement	14
16.	Modifications Due to Other Franchises	14
17.	Modifications Due to Changes in Laws or Regulations	14
	(a) <i>Notice</i>	14
	(b) <i>Mutually Agreeable Modifications</i>	14
	(c) <i>Proposals for Modifications</i>	15
	(d) <i>City Council Action</i>	15
	(e) <i>Attorneys Fees & Costs</i>	15
18.	Indemnification	15
19.	Noncompliance - Penalties and Revocation	16
	(a) <i>Notice of Complaint</i>	16
	(b) <i>Opportunity to Cure</i>	16
	(c) <i>Public Hearing</i>	16
	(d) <i>Fines</i>	16
	(e) <i>Termination</i>	17
20.	Rights and Duties of Grantee upon Expiration of Franchise	17
21.	Abandonment of Facilities	17
22.	Notice to Parties	17
23.	Waiver	18
24.	Survival	18
25.	Governing Law	18
26.	Venue	18
27.	Attorneys Fees	18
28.	Severability	19
29.	Effective Date	19
30.	Grantee Acceptance	19

CABLE TELEVISION FRANCHISE AGREEMENT

The City of Deer Park, Washington, a Washington municipal corporation with offices at E 316 Crawford, Deer Park, Washington, 99006 ("City"), and Northstar Broadband, LLC., a Washington limited liability company, with offices at 3660 East Covington Avenue, Suite C, Post Falls, Idaho, 83854 ("Grantee"), enter into this Cable Television Franchise Agreement ("Franchise Agreement") as of the Effective Date.

RECITALS

- A. Grantee has purchased the assets of Gladstone Capital Corporation, which previously operated a Cable System serving the City under a franchise, but which franchise expired by its terms on April 10, 2006.
- B. Grantee desires to operate the Cable System in the City and to provide services to its customers over the Cable System.
- C. The City finds that granting a new Franchise to Grantee on the terms and conditions of this Franchise Agreement will serve the cable-related needs and interests of the City taking into account the costs thereof.

Based upon the foregoing recitals, which are incorporated into the following Agreement as if set forth in full, the City and Grantee agree as follows:

AGREEMENT

1. Definitions

Except as otherwise set forth herein, the definitions and word usages set forth in the Cable Act are incorporated herein and apply to this Franchise Agreement. In addition, the following definitions shall apply:

- (a) "Basic Cable Service" is defined by the FCC as the lowest level of cable service a subscriber can buy. It includes, at a minimum, all over-the-air television broadcast signals carried pursuant to the must-carry requirements of the Cable Act, and any public, educational, or government access channels required by the system's Franchise Agreement. It may include additional signals chosen by the operator.
- (b) "Cable Act" shall mean the 1984 Cable Communications Policy Act of 1984, as amended by the 1992 Cable Competition and Consumer Protection Act of 1992 and the 1996 Telecommunications Act.
- (c) "Cable Information Service" shall mean two-way digital packet switched service provided over the Cable System using a cable modem and Internet protocol, which

includes Internet access, interactive services and content, information services, electronic mail, access to newsgroups, a web browser, Website hosting and other enhancements.

- (d) "Cable Programming Service" shall mean a tier including all program channels on the cable system that are not included in Basic Cable Service, but are not separately offered as per-channel or per-program services. There may be one or more tiers of Cable Programming Service.
- (e) "Cable Service" shall mean:
 - (i) the one-way transmission to subscribers of video programming, or other programming service, and
 - (ii) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (f) "Cable System" shall mean a facility, 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 City.
- (g) "City" shall mean the City of Deer Park, Washington, a Washington municipal corporation and includes the Mayor, City Council, and all other duly appointed officials, officers, agents, representatives, employees, and volunteers of the City.
- (h) "Effective Date" shall mean the Effective Date of the Ordinance passed by the City Council which approves this Franchise Agreement as Exhibit A to the Ordinance.
- (i) "Facilities" shall mean any distribution or transmission component of a Cable System, including cables, conduits, converters, splice boxes, cabinets, manholes, vaults, equipment, drains, surface location markers, appurtenances, and related facilities located by Grantee in the rights-of-way.
- (j) "FCC" shall mean the Federal Communications Commission.
- (k) "Franchise" shall mean the franchise granted herein by this Franchise Agreement.
- (l) "Franchise Area" shall mean the entire corporate limits of the City and any extension thereto.
- (m) "Grantee" shall mean Northstar Broadband , LLC or its lawful successor or assign.
- (n) "Law(s)" shall mean any applicable state, Federal and local laws, ordinances, and regulations.

- (o) "Local Gross Subscriber Revenues" shall mean all gross revenues of the Grantee derived from the operation of the Cable System for the provision of video services within the City, adjusted for nonpayment. Local Gross Subscriber Revenues shall include equipment rental fees and fees attributable to video service when sold individually or as a part of a package or bundle, or functionally integrated, with services other than video service and any fee imposed on the Grantee that is passed on to subscribers. Local Gross Subscriber Revenues shall not include amounts collected for franchise fees, taxes, local origination programming or access programming fees, advertising, and revenues from Non-Cable Services.
- (p) "Non-Cable Services" shall mean those services not defined as Cable Services.
- (q) "Ordinance" shall mean the Ordinance passed by the City Council and approving this Franchise Agreement.
- (r) "Premium Cable Service" shall mean those single-channel programming tiers provided by the cable operator for which subscribers pay the cable operator an additional fee above the Basic Cable Service charge.
- (s) "Rights-of-Way" shall mean the space on, in, above, or below the surface of the public streets, roads, sidewalks, lanes, courts, ways, alleys, boulevards, bridges, tunnels, and places including, without limitation, all public utility easements and public service easements within the City's jurisdiction. This term shall not include any property owned by any person or agency other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any person.
- (t) "Telecommunications" shall mean 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.
- (u) "Telecommunications Service" shall mean 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.
- (v) "Tier" shall mean a manner in which Cable Services are often provided. A tier is a category of Cable Service or services provided by a cable operator for which a separate rate is charged by the cable operator.

2. Grant of Franchise - Non-Exclusive Franchise

The City grants to Grantee a non-exclusive Franchise to operate a Cable System within the Franchise Area. This grant allows Grantee to construct, install, maintain, extend, repair, replace, upgrade, and operate its Facilities, in, through, over, under, and along the Rights-of-Way for the purpose of providing Cable Services and Cable Information Services to the City and its inhabitants for the full term of this Franchise Agreement and any extension thereto, subject to the terms and conditions of this Franchise Agreement and applicable Law. To the extent required by Law, this grant of Franchise shall also

include the provision of Telecommunications Services over the Cable System, subject to certification of Grantee to provide such services under applicable Law. This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, through, over, under, and along any Rights-of-Way in the Franchise Area. This Franchise shall in no way prevent or prohibit the City from using any of the City Rights-of-Way or other public properties or affect its jurisdiction over them or any part of them. The City shall retain power and authority to make all necessary changes, relocations, repairs, maintenance, establishments, improvements, and dedications of the same as the City may deem appropriate, including the dedication, establishment, maintenance, and/or improvement of all new Rights-of-Way and other public properties of every type and description within the Franchise Area.

3. Term

The term of this Franchise Agreement shall be for a period of ten (10) years from the Effective Date, unless sooner terminated as provided in this Franchise Agreement.

4. Franchise Area

The Grantee is authorized to construct, install, maintain, extend, repair, replace, and operate a Cable System throughout the entire corporate limits of the City and any extension thereto. The City specifically retains the right to award franchises to other cable operators in the City.

5. Franchise Fee

(a) Percent of Local Gross Revenues

During the term of this Franchise Agreement and any extension thereto, Grantee shall pay to the City a franchise fee in an amount equal to five percent (5%) of the Local Gross Subscriber Revenues. The franchise fee shall be paid monthly and shall be in addition to any lawful utility or other tax payment owed to the City by the Grantee. The monthly franchise fee payments shall be made within forty-five (45) days following collection of the Local Gross Subscriber Revenues. Grantee shall annually provide the City with a financial report indicating the annual Local Gross Subscriber Revenues derived from subscribers within the City.

In the event Telecommunication or other Non-Cable Services are provided by Grantee, the Local Gross Subscriber Revenue for purposes of computing the franchisee fee shall be comprised of only the Cable Services.

(b) Reasonable Access to Records

Grantee shall provide the City with reasonable access to Grantee's records documenting the Local Gross Subscriber Revenues from Cable Service as defined in this Franchise Agreement. Grantee shall comply with all reasonable requests for

information in the performance of any audit. The City shall agree to appropriate confidentiality protection for access to confidential or proprietary information.

6. Utility Taxes

During the term of this Franchise Agreement and any extension or renewal thereto, the City may, by Ordinance, impose a utility tax in the amount of up to six percent (6%) of the Grantee's Local Gross Subscriber Revenue for the privilege of providing Cable Service in and to the City. Said utility tax shall accrue monthly and shall be collected by the Grantee during the Grantee's normal billing cycle (which shall be within thirty (30) days of the date of accrual). The Grantee shall remit the tax to the City within thirty (30) days of collection of the same. The City currently imposes this tax pursuant to Chapter 3.16 of the Deer Park Municipal Code.

7. Administrative and Permit Fees

- (a) Grantee shall pay a one time administrative fee in the amount of Two Thousand and no/100 Dollars (\$2,000.00) to reimburse the City for the administrative expenses, legal fees, and costs incurred in drafting and processing this Franchise Agreement and all work related thereto. The administrative fee shall be submitted to the City by Grantee with this executed Franchise Agreement and prior to placement of this Franchise Agreement on the City Council agenda for consideration by the Council. The City shall hold the administrative fee and deposit it upon passage of the Ordinance granting this non-exclusive Franchise to Grantee. In the event the Ordinance does not pass, the fee shall be refunded to Grantee.
- (b) Grantee shall be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise Agreement or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities undertaken through the authority granted in this Franchise Agreement, or any ordinances relating to the subject for which a permit fee is not established, Grantee shall reimburse the City directly for any and all costs.
- (c) Failure of the Grantee to timely pay franchise fees in accordance with Section 5, and/or utility taxes in accordance with Section 6, shall result in interest being charged and due in the amount of twelve percent (12%) per annum, together with costs and reasonable attorney's fees incurred by the City to collect the unpaid franchise fees and/or utility taxes.

8. System Configuration

(a) Cable System

- (i) Grantee shall operate for the term of this Franchise Agreement a Cable System providing a minimum signal capacity of 330 MHz and with the capability of delivering a minimum of 40 programming channels.

- (ii) Grantee shall comply with all rules and regulations of the F.C.C. with respect to the reception, carriage, and distribution of signals.
- (iii) Nothing herein shall be construed to prohibit the Grantee from increasing the capability of the Cable System or constructing the same in accord with more advanced technological standards than those proposed by the Grantee.

(b) System Design

Grantee may develop, construct, install, maintain, repair, replace, upgrade, operate, and extend a Cable System capable of providing non-video services such as Cable Information Service, high-speed data transmission, Internet access, local and long distance telephone service, and other competitive services that Grantee may activate in response to consumer and business demand for such services.

9. Services Provided to the City

Upon request, Grantee shall provide, at no recurring charge to the City, one outlet of Complimentary Basic Cable Service to the City Hall, fire stations, and public schools located within 125 feet of Grantee's existing Cable System. If the City Hall, fire stations, or schools are located beyond 125 feet, the additional construction costs and expense exceeding 125 feet will be calculated on a time and materials basis plus 15 percent for administrative overhead, and paid by the entity requesting service. Service drop installations for such outlets shall be provided at the cost of time and materials and paid by the requesting entity.

10. Customer Service Standards

Grantee shall comply with the customer service standards promulgated by the FCC, which are hereby included by reference, and all other customer service standards in this Franchise Agreement.

11. Construction, Relocation, Operation, Maintenance, and Extensions of the Cable System

(a) Applicable Standards

- (i) Grantee shall ensure that the Cable System is constructed, operated, and maintained in accordance with all applicable Laws and industry operational and safety standards. Grantee agrees to keep all Facilities in good and safe condition. In the event the City, in its sole discretion, finds that an unsafe condition exists with respect to all or any portion of the Cable System, it may order Grantee to make repairs, and Grantee shall make all such repairs necessary to correct any such unsafe condition within a reasonable time frame specified by the City and at Grantee's sole cost and expense.

- (ii) Any contractor engaged by Grantee to work on the Cable System must maintain all required licenses and certifications required by applicable Laws. Grantee shall remain solely responsible for all work performed by any contractor hired at Grantee's request or on Grantee's behalf.
- (iii) Grantee shall locate the Cable System and associated Facilities within the City so as to cause minimum interference with the proper use of the Rights-of-Way and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way or other public ways and places. Grantee shall not place any pole or other fixture in any Right-of-Way or other public way and places in such a manner as to interfere with the usual travel on such public way.
- (iv) Grantee may at its option utilize existing poles or other wire-holding structures occupying the Rights-of-Way in serving the City.
- (v) Grantee shall install any new construction of its Cable System and associated Facilities underground in locations where existing cables or other like facilities of the power and telephone utility companies are presently underground. If said utilities subsequently place their existing cables and other like facilities underground in a Grantee-served section of the City, Grantee shall within a reasonable period of time place its existing Cable System and associated Facilities underground on the same terms and conditions as the affected power and/or telephone utility(s) and as set forth herein.
- (vi) Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the City so as to prevent the branches of such trees from coming in contact with Grantee's Facilities. At the option of the City, trimming may be done by it or under its supervision and direction at the expense of the Grantee.

(b) Construction in Rights-of-Way

- (i) Subject to applicable Laws, rules, regulations, and ordinances of the City, and the provisions of this Franchise Agreement, Grantee shall perform all construction, installation, maintenance, repair, replacement, upgrade, and extension necessary for the operation of its Cable System at its sole expense. All construction, installation, maintenance, repair, replacement, upgrade, and/or extension of any and/or all of Grantee's Facilities within Rights-of-Way shall, regardless of who performs said services, be and remain Grantee's sole responsibility. Prior to performing any construction or excavation work in the Rights-of-Way, Grantee shall apply for, and obtain, all permits and bonds necessary for construction, installation, maintenance, repair, replacement, upgrade, or extension of any Facilities and for excavating and laying any Facilities within the Rights-of-Way. Grantee shall pay all applicable fees upon issuance of the requisite construction permits by the City to Grantee.

- (ii) Prior to commencing any construction or excavation work in the Rights-of-Way, Grantee shall provide the City with a construction schedule for work in the Rights-of-Ways as required by the City's rules and regulations.
- (iii) Grantee may make excavations in Rights-of-Way for any Facility needed for the installation, maintenance, repair, replacement, upgrade, or extension of Grantee's Cable System. Prior to performing such work, Grantee shall apply for, and obtain, appropriate permits from the City, and give appropriate written notices to the City. As a condition of any permits so issued, the City may require a bond and/or 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, protection of the public, and the continuity of pedestrian or vehicular traffic. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce to as few as possible the number of Rights-of-Way cuts within the Franchise Area.
- (iv) 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, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.
- (v) Whenever Grantee disturbs the surface of any Rights-of-Way for any purpose, Grantee shall promptly restore the Rights-of-Way to a condition as good or better than its prior condition at its sole cost and expense.
- (vi) In the event Grantee excavates the surface of any Rights-of-Way, Grantee shall be responsible for restoration in accordance with applicable Laws, rules, and regulations regarding the Rights-of-Way and its surface within the area affected by the excavation. The City may, after providing written notice to Grantee, refill or repave any opening made by Grantee in the Rights-of-Way, and the expense thereof shall be paid by Grantee. The City may, after providing reasonable written notice to Grantee, remove and repair any work done by Grantee which, in the determination of the City in its sole discretion, does not conform to applicable Laws, rules, regulations, and/or codes. The cost thereof, including the costs of inspection and supervision shall be paid by Grantee. All construction and excavations performed by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents to persons and property. All of Grantee's work under this Franchise Agreement, and this Section in particular, shall be done in strict compliance with all Laws, rules, regulations, and ordinances.
- (vii) Nothing in this Franchise Agreement shall prevent the City, public utilities, or other government entities from constructing any public work or improvement in the Rights-of-Way. In the event any part of Grantee's Cable System interferes with the construction or repair of any Rights-of-Way or public improvement,

including construction, repair, or removal of a sewer or water main, Grantee's Cable System shall be removed or relocated in the manner the City shall direct and as set forth below. Any and all such removal or relocation shall be at the expense of Grantee. In the case of a joint relocation project, Grantee shall be responsible for the cost of relocating its Facilities.

(c) Relocation or Removal of Cable System Facilities

- (i) Grantee shall, at its sole cost and expense, protect, support, temporarily disconnect, relocate, or remove from any Right-of-Way any portion of its Facilities when so required by the City by reason of traffic conditions, public safety, dedications of new Rights-of-way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement, utility, or structure by any governmental agency acting in a governmental capacity; *provided* that, Grantee shall in all cases have the privilege to temporarily bypass, in the authorized portion of the same Right-of-Way, upon approval by the City, any section of its Facilities required to be temporarily disconnected or removed.
- (ii) Upon the reasonable written request of the City, and in order to facilitate the design of City streets and Right-of-Way improvements, Grantee shall, at its sole cost and expense, locate, and if reasonably determined necessary by the City in its sole discretion, excavate and expose those portions of its underground Facilities for inspection so that the location of the same may be taken into account in the improvement design. The decision to relocate and remove said Facilities in order to accommodate the City's improvements shall be made by the City upon review of the location and construction of Grantee's Facilities.
- (iii) In the event the City determines that a City construction or improvement project requires the relocation or removal of Grantee's Facilities, the City shall: (1) provide Grantee with written notice requiring such relocation or removal within a reasonable time, which shall be no less than thirty (30) days prior to the commencement of such improvement project; *provided*, however, that in the event of an emergency posing a threat to public safety, health, or welfare, or in the event of an emergency beyond the City's control and which may result in severe financial consequences to the City, the City shall give Grantee written notice as soon as practicable; and (2) provide Grantee with copies of information for such improvement project and a proposed location for Grantee's Facilities so that Grantee may relocate its Facilities in other available Rights-of-Way in order to accommodate such improvement project.
- (iv) Grantee shall complete relocation or removal of its Facilities at no charge or expense to the City so as to accommodate the improvement project at least ten (10) days prior to commencement of the project. In the event of an emergency as described herein, Grantee shall relocate or remove its Facilities within the time period specified by the City.

- (v) Grantee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise Grantee in writing if one or more of the alternatives is suitable to accommodate the work, which would otherwise necessitate relocation of the Facilities. If so requested by the City, Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Grantee full and fair consideration, within a reasonable time, so as to allow for the relocation or removal work to be performed in a timely manner. In the event the City ultimately determines that there is no other reasonable alternative, Grantee shall relocate or remove its Facilities as otherwise provided in this Section.
- (vi) The provisions of this Section shall in no manner preclude or restrict Grantee from making any arrangements it may deem appropriate when responding to a request for relocation or removal of its Facilities by any person or entity other than the City, where the Facilities to be constructed by said person or entity are not or will not become City-owned, operated, or maintained Facilities; *provided* that, such arrangements do not unduly delay a City construction or improvement project.
- (vii) Grantee shall indemnify, hold harmless, and pay the costs of defending the City against any and all claims, suits, actions, damages, or liabilities for delays on City construction or improvement projects caused by or arising out of the failure of Grantee to relocate or remove its Facilities in a timely manner.

(d) Maintenance, Operations and Record Keeping

In maintaining and operating the Cable System, Grantee shall:

- (i) Render efficient service, locate and repair malfunctions promptly, and respond to subscriber service complaints as required by the FCC, applicable Laws, and this Franchise Agreement.
- (ii) Maintain a toll-free customer service telephone number, so operated that complaints and requests for repairs may be received and processed twenty-four (24) hours per day, seven (7) days per week.
- (iii) Operate the Cable System continuously, and schedule any planned interruptions of the Cable Service, including testing and maintenance interruptions, for the shortest time possible and when there will be a minimum number of customers inconvenienced.
- (iv) Temporarily raise or lower its wires to permit the moving of buildings at the request of any person holding a building-moving permit issued by the City. The permit holder shall pay the expense of such temporary raising or lowering of wires and the Grantee shall have the authority to require such payment in

advance. The permit holder shall provide Grantee with not less than three (3) weeks advance notice to arrange for such wire changes.

- (v) Upon the request of the City, file with the City Clerk maps of the City indicating the accurate location of all existing cables, whether leased or owned by Grantee.
- (vi) Upon the request of the City, send a representative to attend a regularly scheduled City Council meeting to discuss matters related to the Cable System.

(e) System Extensions

Extension of the Cable System beyond the original service area within the Franchise Area shall be contiguous made upon the basis of an average of twenty-eight (28) customers per additional mile of cable as measured from the existing trunking system. Extension of the system to subscribers in areas of less density than twenty-eight (28) customers per mile of cable or residents whose homes are located more than one hundred twenty five (125) feet from the existing cable distribution line shall be made if the subscribers agree to pay reasonable construction costs. Nothing above shall be construed to prevent Grantee from extending the service area at a faster rate or to areas of lower concentration than specified above. Grantee's obligation to provide service as indicated is subject to the Grantee's ability to obtain the necessary easements or rights-of-way required and its ability to extend its Facilities at a reasonable cost.

12. Insurance

The Grantee shall maintain throughout the term of this Franchise Agreement and any extension or renewal thereto, liability insurance insuring the City, its officers, elected officials, employees, agents, representatives, and volunteers, and the Grantee with regard to all damages for which the City and/or the Grantee may be liable, including, but not limited to, damages arising from the design, construction, installation, operation, maintenance, repair, replacement, upgrade, extension, operation, or removal of the Grantee's Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise Agreement. Grantee shall provide copies of such policies to the City.

The liability insurance referred to in this section shall be in the following minimum amounts. Insurance will be maintained as follows:

(i) General Liability Insurance

- \$1,000,000. Per Occurrence for Bodily Injury & Property Damage
- \$2,000,000. General Aggregate for Bodily Injury & Property Damage
- \$2,000,000. Products Aggregate for Bodily Injury & Property Damage

- (ii) Commercial Automobile Insurance

\$1,000,000. Per Occurrence for Bodily Injury & Property Damage

- (iii) Workman's compensation insurance shall also be provided as required by the laws of the State of Washington, as amended.

The insurance policies obtained by Grantee shall name the City (its officers, elected officials, employees, agents, representatives, and volunteers) as an additional insured with regard to activities performed by or on behalf of Grantee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, elected officials, employees, agents, representatives, and volunteers. In addition, the insurance policy (or policies) shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Grantee's insurance shall be primary insurance with respect to the City, its officers, elected officials, employees, agents, representatives, and volunteers. Any insurance maintained by the City, its officers, elected officials, employees, agents, representatives, or volunteers shall be excess to Grantee's insurance and shall not contribute with it.

Grantee shall submit to the City documentation confirming compliance with the provisions of this section and shall provide certificates of insurance naming the City as an additional insured, which certificates of insurance shall contain a provision prohibiting cancellation of the insurance without first providing thirty (30) days prior written notice to the City.

13. Rights Reserved by the City

(a) Enforcement of City Ordinances

This Franchise Agreement is subject to all applicable provisions of City ordinances as existing or hereafter executed and/or amended. During the term of this Franchise Agreement and any extension or renewal thereto, Grantee shall remain subject to the lawful exercise of the police power of the City and to observe such reasonable regulations as the City may provide, and shall comply with all applicable Laws.

(b) Cable Rates

The City retains all authority under the Cable Act to prevent unjust discrimination in services or rates.

(c) Continuous Service

Grantee shall use its best efforts to provide continuous and uninterrupted service to the public in accordance with this Franchise Agreement.

(d) Police Power Authority

The City may impose such other non-discriminatory and competitive neutral regulations as may be determined by the Council to be in the interest of public health, safety, welfare, convenience, or necessity of the City.

(e) Regulation of Rights-of-Way

The City may exercise all lawful control and regulation of the use of its Rights-of-Way, including streets, alleys, bridges, and other public places, and public ways, and the space above and beneath them. Grantee shall pay such part of the cost of repair or replacement of said Rights-of-Way and other public places, and public ways, as shall arise due to damage caused by Grantee due to construction, installation, maintenance, repair, replacement, upgrade, extension, and/or operation of its Cable System and shall protect and save the City harmless from all damages arising from Grantee's use of the same.

(f) City Inspection

Upon reasonable written notice to Grantee, the City may inspect construction, installation, maintenance, repair, replacement, upgrade, and/or extension work performed by Grantee, and make such inspections as reasonably necessary to insure compliance with this Franchise Agreement, City codes, and other applicable Laws.

(g) FCC Regulations

Subject to applicable law, the City may maintain in force rules or regulations respecting the minimal requirements of signal carriage, channel capacity, number and designation of access channels, access services, technical standards, and system performance promulgated by the FCC, should that agency at any time in the future cease regulation of one or more of the above-mentioned subjects of regulation.

14. Transfer of Franchise Agreement

This Franchise may not be assigned or transferred without the written approval of the City, which approval shall not be unreasonably withheld; except, Grantee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization, or refinancing. In the event of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. Grantee shall provide prompt, written notice to the City of any such assignment. Grantee shall reimburse the City for all costs and attorneys fees incurred by the City as a result of a request for approval of an assignment of this Franchise made by Grantee to the City.

15. Conditions of Franchise Agreement

This Franchise Agreement is granted and accepted under and subject to all applicable Laws, orders, and regulations now existing or later adopted or amended. Grantee's performance obligations shall remain subject to Acts of God, fires, strikes, riots, war, and other causes beyond Grantee's control.

16. Modifications Due to Other Franchises

The Franchise granted under this Franchise Agreement is non-exclusive. Grantee acknowledges the City's rights to grant one or more competing franchises. To avoid unfair competition due to disparate franchise obligations, Grantee may petition the City to modify or amend terms of this Franchise Agreement to adjust or eliminate terms that are more burdensome or costly than the terms of a competing provider's franchise. In considering a modification or amendment petition under this section, the City may evaluate Grantee's request in light of the aggregate burdens and costs of each provider's franchise obligations. The City shall provide Grantee with no less than two (2) weeks notice of a scheduled hearing date to consider the application of another cable telecommunications provider. The City shall not be required to make amendments or modifications to this Franchise Agreement. Grantee shall reimburse the City for all costs and attorneys fees incurred by the City associated with any request for amendment or modification of this Franchise Agreement.

17. Modifications Due to Changes in Laws or Regulations

The City or Grantee may seek modification or amendment of this Franchise Agreement due to changes in applicable Laws or regulations in accordance with the following procedures:

(a) Notice

The party seeking modification or amendment shall serve the other party written notice of a request for modification or amendment under this Section. The notice shall specify (i) the changes in applicable Laws or regulations on which the modification or amendment request is based, and (ii) the desired modifications or amendments.

(b) Mutually Agreeable Modifications

Within sixty (60) days of delivery of the notice, representatives of the City and Grantee shall meet to discuss mutually agreeable modifications or amendments to the Franchise Agreement. Any mutually agreeable modifications or amendments shall be presented to the City Council for consideration.

(c) Proposals for Modifications

If the City and Grantee cannot develop a mutually agreeable recommendation for modification or amendment within a reasonable time, then the City and Grantee shall submit to the City Council their respective proposals for modification or amendment under this Section.

(d) City Council Action

The City Council shall review the proposals and comments of interested parties at a public meeting. The City Council shall then issue a decision concerning any modification or amendment to the Franchise Agreement under this Section. The City Council shall not be required to approve any proposed modification or amendment to the Franchise Agreement.

(e) Attorneys Fees & Costs

Grantee shall reimburse the City for all costs and attorneys fees incurred by the City associated with any request by Grantee for modification or amendment of this Franchise Agreement.

18. Indemnification

Grantee hereby releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its officers, elected officials, employees, agents, representatives, and volunteers from any and all claims, costs, judgments, awards, or liability to any person, including claims by Grantee's own employees for which Grantee might otherwise be immune, for injury or death of any person or damage to property caused by or arising out of the negligent acts or omissions of Grantee, its officers, directors, employees, servants, agents, representatives, or volunteers in the performance of this Franchise Agreement, and any rights granted hereunder.

In the event Grantee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification provision contained herein, and said refusal is subsequently determined by a court having jurisdiction, to have been a wrongful refusal on the part of Grantee, then Grantee shall pay all of the City's costs for defense of the action, including all expert witness fees, costs, and attorneys' fees, including costs and fees incurred in recovering under this indemnification provision.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Grantee and the City, its officers, elected officials, employees, agents, representatives, and/or volunteers, Grantee's liability hereunder shall be only to the extent of Grantee's negligence.

It is further specifically and expressly understood that the indemnification provision provided herein constitutes Grantee's waiver of immunity under Title 51 RCW, solely for

the purposes of this indemnification. This waiver of immunity under Title 51 RCW has been mutually negotiated by the parties hereto, and Grantee acknowledges that the City would not enter into this Franchise Agreement without Grantee's waiver thereof. The provisions of this Section shall survive the expiration or termination of this Franchise Agreement.

19. Noncompliance - Penalties and Revocation

In case of material noncompliance with any term of this Franchise Agreement, the City may assess penalties and terminate this Franchise Agreement in accordance with the procedures in this section.

(a) Notice of Complaint

The City shall provide Grantee with written notice of the complaint. The notice shall describe in reasonable detail the alleged material noncompliance.

(b) Opportunity to Cure

Grantee shall have ninety (90) days from receipt of written notice to cure the alleged material noncompliance. If Grantee cures the alleged material noncompliance with the 90-day period, the City shall provide Grantee with written notice withdrawing the complaint.

(c) Public Hearing

If Grantee fails to cure the alleged noncompliance within the 90-day cure period, or if Grantee provides the City with written notice disputing the complaint, and the parties fail to otherwise resolve the matter, the City shall schedule a public hearing on the alleged noncompliance. At the public hearing, Grantee may present testimony, cross-examine witnesses, and deliver to the City Council all evidence relevant to Grantee's defense. At the conclusion of the public hearing, the City may dismiss the complaint, defer action, or order fines or Franchise Agreement termination in accordance with this Section.

(d) Fines

For willful non-compliance with any material provision of this Franchise Agreement that Grantee fails to cure after the 90-day period, the City may assess a fine of up to \$50 per day of noncompliance. If the City finds that the complaint resulted from Grantee's good faith misinterpretation of this Franchise Agreement, the fine shall not exceed \$1000.

(e) Termination

The City Council may, after a duly noticed public hearing, terminate this Franchise Agreement for material and willful continuing noncompliance by Grantee. Any such termination must be consistent with applicable Law. If Grantee contests the termination in a court of competent jurisdiction, Grantee may operate the Cable System in accordance with this Franchise Agreement while the case is pending.

20. Rights and Duties of Grantee upon Expiration of Franchise

Upon expiration of this Franchise Agreement, whether by lapse of time, by agreement between Grantee and the City, or by termination, Grantee has the right to remove its Facilities within ninety (90) days after such expiration or forfeiture. Grantee shall promptly restore the Rights-of-Way from which its Facilities are removed to as good or better condition as before removal and without cost to the City.

21. Abandonment of Facilities

In the event that the use of any part of Grantee's Facilities is discontinued for any reason for a continuous period of ninety (90) days, or in the event such Facilities have been installed in any Rights-of-Way or other public place without complying with the requirements of the Franchise Agreement, or other City rules or regulations, or the Franchise Agreement has been terminated, canceled, or has expired, Grantee shall, upon being given ten (10) days written notice, with the exception of Facilities that are authorized to be abandoned in place, remove all such Facilities from the Rights-of-Way or public places within ninety (90) days. In the event of such removal, Grantee shall promptly restore those portions of the Rights-of-Way, or other areas from which the Facilities have been removed, to as good or better condition as before removal and to the satisfaction of the City. The City's approval shall not be unduly withheld.

Any Facilities remaining in place ninety (90) days after the termination or expiration of this Franchise Agreement shall be considered permanently abandoned. The City may extend such time not to exceed an additional ninety (90) days.

Any Facilities of Grantee to be abandoned in place shall be abandoned in such manner as the City shall prescribe. Upon permanent abandonment of the Facilities in place, the Facilities shall become owned by the City, and Grantee shall submit to the City Clerk an instrument in writing, in a form approved by the City Attorney, transferring to the City the ownership of such Facilities.

22. Notice to Parties

Notices under this Franchise Agreement shall be in writing and shall be deemed given upon receipt by hand delivery, certified mail return receipt requested, or overnight courier to the following addresses:

To City:

City of Deer Park
E 316 Crawford
PO Box F
Deer Park, WA 99006

Attn: City Clerk-Treasurer

To Grantee:

Northstar Broadband, LLC
3660 Ease Covington Ave, Suite C
PO Box 2576
Post Falls, ID 83877

Attn: General Manager

A party may designate other addresses for providing notice by providing notice in writing of such addresses.

23. Waiver

The failure of the City on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement or any applicable Law(s) shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the City nor to excuse Grantee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

24. Survival

All of the provisions, conditions, and requirements of this Franchise Agreement shall be in addition to any and all other obligations and liabilities Grantee may have to the City pursuant to any applicable Law and shall survive the City's Franchise to Grantee for the use of any Rights-of-Way located in the Franchise Area, and any renewals or extensions thereof. All of the provisions, conditions, regulations, and requirements contained in this Franchise Agreement shall be binding upon the heirs, successors, and assigns of Grantee and the City, and all privileges, as well as all obligations and liabilities of Grantee and the City shall inure to their respective heirs, successors, and assigns equally as if they were specifically mentioned wherever Grantee and/or the City is named herein.

25. Governing Law

This Franchise shall be governed by and construed in accordance with the laws of the State of Washington and applicable federal laws.

26. Venue

Venue for any lawsuit involving this Franchise Agreement, or any matters between the City and Grantee shall be in Spokane County Superior Court in the State of Washington.

27. Attorneys Fees

Except as otherwise specifically set forth herein, in the event of litigation or other dispute resolution regarding interpretation or enforcement of any of the terms of this Franchise Agreement, each Party shall pay its own attorneys fees and costs.

28. Severability

If any provision of this Franchise Agreement, or its application to any person or circumstances, is held invalid or is preempted, such invalidity or preemption shall not affect other provisions, sections, subsections or applications of this Franchise Agreement.

29. Effective Date

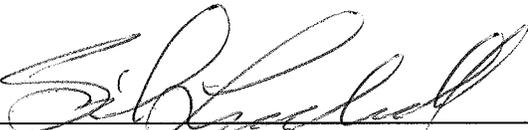
The Effective Date of this Franchise Agreement shall be after the following: (i) Grantee has filed the approved and duly executed Franchise Agreement and Ordinance with the City; (ii) the Ordinance approving the Franchise Agreement has been passed by the City Council at an Open Public Meeting and the Mayor has signed both documents; and (iii) the Ordinance has been duly published as required by law.

30. Grantee Acceptance

Prior to consideration of this Franchise Agreement and the Ordinance by the City Council, the Grantee shall file with the City Clerk its written acceptance of all the terms, conditions, and provisions of this Franchise Agreement and the Ordinance.

APPROVED AND ACCEPTED BY:

NORTHSTAR BROADBAND, LLC.

By: 
Sid Lundwall
General Manager

Date: 3-31-2010

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Approved by the City Council of the City of Deer Park, Washington at an Open Public Meeting the 07 day of April, 2010, by passage of City Ordinance No. 10-886.



Robert Whisman, Mayor

ATTEST:



Deby Cragun, City Clerk-Treasurer

The Effective Date of City Ordinance No. 10-886 is the 14th day of April, 2010, which is the Effective Date of this Franchise Agreement.