

**INTERLOCAL AGREEMENT IMPLEMENTING DARK FIBER
OPTIC LEASE FACILITATION AGREEMENT**

THIS INTERLOCAL AGREEMENT IMPLEMENTING DARK FIBER OPTIC LEASE FACILITATION AGREEMENT (this "Agreement") is entered into this 15th day of NOVEMBER, 2010 ("Execution Date"), by and between the SNOHOMISH COUNTY EMERGENCY RADIO SYSTEM, an interlocal nonprofit corporation organized under the laws of the State of Washington ("SERS"), and CITY OF EDMONDS, a municipal corporation organized under the laws of the State of Washington ("City").

RECITALS

A. On April 22, 2010, SERS entered into a Dark Fiber Optic Lease Facilitation Agreement with Black Rock Cable, a Nevada Corporation DBA Black Rock Cable, Inc., registered as a foreign corporation in the State of Washington (the "Fiber Agreement"). The Fiber Agreement is attached hereto as Exhibit A and incorporated herein by this reference.

B. In the Fiber Agreement, Black Rock Cable agreed to extend dark fiber connectivity to the cities of Arlington, Edmonds, Lynnwood, Marysville, Mill Creek and Mukilteo subject to certain terms and conditions.

C. In this Agreement, SERS and City specify certain terms and conditions with respect to City's responsibility in the implementation of the Fiber Agreement.

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Acknowledgement and Affirmative Acceptance of Terms and Conditions of Fiber Agreement.** City has reviewed the Fiber Agreement; it understands that the provision of dark fiber connectivity to its facility by Black Rock Cable pursuant to the Fiber Agreement creates obligations that must be fulfilled by City. City has reviewed the Fiber Agreement and it has satisfied itself that it can fulfill the obligations specified in the Fiber Agreement for the "City" or "Cities" as defined in the Fiber Agreement receiving dark fiber connectivity. By entering into this Agreement with SERS, City represents and warrants to SERS that City is prepared to fulfill the obligations of a "City" recipient of fiber connectivity services under the Fiber Agreement and to perform the obligations specified in the Fiber Agreement for a "City" recipient.

1.1 City has agreed and hereby reaffirms its agreement to reimburse SERS for SERS administrative and legal expenses in preparation of this Agreement and coordination with Black Rock for the initiation of dark fiber connectivity to City and the Cities, provided that City's pro rata equal share (with the other Cities) of the initial reimbursement shall not exceed Three Thousand Dollars (\$3,000.00).

2. **Public Safety Technology Committee Fiber/Wireless Subcommittee.** City agrees to participate on the Public Safety Technology Committee Fiber/Wireless Subcommittee (the "PSTC Fiber/Wireless Subcommittee") that is to be composed of all of the cities participating in the Fiber Agreement. The PSTC Fiber/Wireless Subcommittee shall develop its bylaws and/or rules of procedure upon becoming constituted after all cities have entered into their respective agreements with SERS. A primary purpose of the PSTC Fiber/Wireless Subcommittee shall be to create a single interface between the participating cities and SERS and Black Rock Cable to communicate matters relating to the Fiber Agreement and the provision of dark fiber connectivity to each of the cities receiving that fiber connection.

2.1 The PSTC Fiber/Wireless Subcommittee shall also be the focal point for the City to determine whether or not to exercise the option to purchase the Indefeasible Right to Use ("IRU") that is available to each of the cities under Section 11 of the Fiber Agreement. To the extent that some or all of the Cities in the Fiber Agreement determine that the option will be exercised, the PSTC Fiber/Wireless Subcommittee and/or an entity to be formed at the direction of the PSTC Fiber/Wireless Subcommittee will be the vehicle through which the option to purchase the IRU will be exercised. The option to purchase the IRU in the Fiber Agreement must be exercised collectively by the Cities desiring to do so. SERS will not be participating in or the entity that exercises the option in the Fiber Agreement for the City or the other Cities with respect to the IRU.

3. **Indemnification.**

3.1. The City shall indemnify, defend and hold harmless SERS, its board members, officials, agents, officers, employees and/or volunteers from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees, made against SERS, its board members, officials, agents, officers, employees and/or volunteers on account of injury, harm, death or damage to persons or property which is caused by, in whole or in part, negligent acts and/or omissions of the City, its elected officials, directors, officers, agents, and/or employees arising out of or in connection with the performance and/or nonperformance of the services, duties and/or obligations required of the City under this Agreement.

3.2. In the event that SERS and the City are both negligent, then the City's liability for indemnification of the SERS shall be limited to its contributory negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorneys' fees and disbursements) that can be apportioned to the City.

3.3. Nothing contained in this section or Agreement shall be construed to create a liability or a right of indemnification by any third party.

3.4. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

4. **Release.** -City hereby releases SERS, its employees, Governing Board Members and agents from any claims arising from a failure of the dark fiber optic system or

communications provided pursuant to the Fiber Agreement or other systems utilizing that fiber connectivity. This release applies to direct claims from City and indirect claims from third parties. City further acknowledges that SERS does not warrant the fiber connectivity provided by Black Rock Cable and any remedies for nonperformance of the Black Rock Cable fiber connectivity are specified in the Fiber Agreement and are the responsibility of Black Rock Cable. Nothing in this Section shall be interpreted and/or applied to require the City to indemnify, defend and/or hold SERS harmless in a manner inconsistent with the terms, conditions and limitations contained in Section 3 of this Agreement.

5. **Interlocal Agreement Provisions.** Pursuant to RCW 39.34.030, the following provisions shall apply to this Agreement:

5.1. **Duration.** The duration of this Agreement shall be Four (4) Years unless extended by mutual agreement of the parties or terminated earlier.

5.2. **Purpose.** The purpose of this Agreement is to allow City to receive dark fiber connectivity from Black Rock Cable through the Fiber Agreement and specify the terms and conditions of the contractual relationship of City and SERS because SERS is the contractual point of contact with Black Rock Cable.

5.3. **Administration.** There shall be no separate legal entity for this Agreement. City shall designate a representative to act on its behalf in the administration of this Agreement and SERS shall designate a representative to act on its behalf in the administration of this Agreement. The parties shall update their respective designated representatives, as needed. The two representatives shall meet together, as needed, to conduct the administrative matters relating to the Agreement.

5.4. **Manner of Financing.** Each party to this Agreement is responsible to finance its own obligations and hold the other party harmless from those financing obligations.

5.5. **Manner of Acquiring, Holding and Disposing of Property.** Each party will be responsible for its own property acquisitions. No property in furtherance of this Agreement will be jointly acquired or owned during the Term of this Agreement.

5.6. **Filing of Agreement.** As provided by RCW 39.34.040, this Agreement shall be filed prior to its entry in force with the EDMONDS City Clerk, the Snohomish County Auditor, or, alternatively, listed by subject on the City and/or SERS website.

6. **Termination.** In the event that City terminates its dark fiber connection with Black Rock Cable and has no further obligations, directly or indirectly, under the Fiber Agreement as a result of the fiber connection it had established with Black Rock Cable, it may terminate this Agreement, provided that the Indemnity provision, Section 3, shall survive the termination with respect to any event occurring prior to such termination. As long as City is

being provided dark fiber connectivity as a result of the Fiber Agreement, it shall not terminate this Agreement unilaterally.

7. **Non-Waiver.** A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

8. **Severability.** If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

9. **Drafting of Agreement.** Both SERS and the City have participated in the drafting of this Agreement. As such, it is agreed by the parties that the general contract rule of law that ambiguities in the contract language shall be construed against the drafter of a contract shall have no application to any legal proceeding, arbitration and/or action in which this Agreement and its terms and conditions are being interpreted and/or enforced.

10. **Integration and Supersession.** This Agreement sets forth all of the terms, conditions, and agreements of the parties relative to the subject matter of this Agreement, and supersedes any and all such former agreements which are hereby declared terminated and of no further force and effect upon the execution and delivery hereof. There are no terms, conditions, or agreements with respect thereto except as provided herein, and no amendment or modification of this Agreement shall be effective unless reduced to writing and executed by the parties.

11. **Notice.** Any notice or consent required to be give or made under any provision of this Agreement shall be given or made in writing and delivered personally, delivered by a facsimile or sent by certified mail, postage prepaid, addressed to the party at the address set forth below or to such other address as the party may from time to time designate in writing. Notices shall be deemed delivered immediately upon personal delivery or three (3) business days after being mailed. Notices delivered by facsimile shall be deemed personally delivered upon sender's receipt of a facsimile confirmation notice to:

Snohomish County Emergency Radio System: City: EDMONDS

Mr. Ron Solemsaas, System Manager
1121 SE Everett Mall Way, Suite 210
Everett, WA 98201-2832

CITY CLERK
121 5th AVE. N.
EDMONDS, WA 98020

12. **Disputes, Jurisdiction, Governing Law and Venue.** In the event that a dispute arises between SERS and City under this Agreement or the Fiber Agreement, the parties shall endeavor to resolve the dispute in an amicable manner by direct discussion and, if both parties consent, through alternate dispute resolution, if discussions do not resolve the dispute. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. No Party waives its rights to seek a legal remedy, the jurisdiction and venue for which shall be the Snohomish County Superior Court. In the event legal action is initiated to enforce a Party's rights, the substantially prevailing party shall be entitled to an award of its reasonable attorney fees in addition to whatever other relief the party may be entitled.

13. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument.

WHEREFORE, the parties have executed this Interlocal Agreement Implementing Dark Fiber Optic Lease Facilitation Agreement on the date(s) set forth below.

SNOHOMISH COUNTY EMERGENCY
RADIO SYSTEM

CITY OF EDMONDS

By [Signature]
Printed Name:
Title: President
Date:

By [Signature]
Printed Name:
Title: Mayor
Date: 11-15-2010

Approved as to Form:

Attest:

SERS Attorney

[Signature]
City Clerk

Approved as to Form:

[Signature]
City Attorney

DARK FIBER OPTIC LEASE FACILITATION AGREEMENT

This Dark Fiber Optic Lease Facilitation Agreement ("**Agreement**") is made and entered into this _____ day of _____, 2009, ("**Execution Date**") by and between Snohomish County Emergency Radio System, an interlocal nonprofit corporation organized under the laws of the State of Washington ("**SERS**") and Black Rock Cable, a Nevada Corporation DBA Black Rock Cable, Inc., registered as a foreign corporation in the State of Washington ("**Black Rock**").

Whereas, Black Rock has the authority under various municipal and county franchise ordinances to construct and maintain various wire line facilities within the rights-of-way of certain counties and municipalities;

Whereas, SERS has agreed to enter into the Agreement as a master facilitation agreement to enable the dark fiber connectivity to be made available to the cities of Arlington, Edmonds, Lynnwood, Marysville, Mill Creek and Mukilteo (individually each may be referred to as "City" and collectively as "Cities"); subject to each City choosing to participate and entering into a separate, implementing agreement with SERS as specified in Section 1 ("Fiber Implementing Agreements").

Whereas, Black Rock is offering unrestricted bandwidth dark fiber optic connectivity ("**Fiber**") to Cities for a period of three (3) years without service charge as specified in this Agreement;

Whereas, SERS desires to obtain certain Fiber connectivity for the Cities from Black Rock between locations within Black Rock's franchise authority and Black Rock is willing to do so under the terms and conditions set forth herein.

Accordingly, in consideration of the mutual benefits and obligations set forth herein, the legal sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1. BLACK ROCK RESPONSIBILITIES FOR FIBER FACILITY

Upon written confirmation from SERS that a specified City has entered into a Fiber Implementation Agreement with SERS, Black Rock shall arrange for the installation and shall install, own, operate and maintain (except as specified in Section 12) the facility necessary to provide Fiber to the City between the demarcation point at the locations, under specific terms and conditions for each such location, described in Exhibits A, B, C, D, E, and F, respectively, attached to and made part of this Agreement.

The demarcation point shall be the termination cabinet at each respective City location and shall be the point of separation of responsibility between Black Rock and that City. Black Rock shall be responsible for everything including operations and maintenance between the demarcation points and the City shall be responsible for everything including operations and maintenance (except as specified in Section 12) on the City side of each demarcation point.

During the term of this Agreement, Black Rock will be responsible for securing and maintaining any and all necessary franchises, permits, easements or agreements necessary for the use of public and private property and the use of utility poles for the

construction and maintenance of the Fiber facility. Black Rock will deploy a standard single mode fiber optic product and will perform all work using industry standards.

2. FIBER ROUTE AND LOSS BUDGET

Black Rock, at all times, maintains the discretion to choose the route of the fiber optic lines and such route may not be the most direct route between the locations desired by the respective City. Prior to the execution of this Agreement, Black Rock shall notify the respective City of the proposed fiber footage distance between the locations and the maximum loss budget, which shall be included on Exhibits A, B, C, D, E and F, respectively, to this Agreement. Black Rock reserves the right to change the route of the Fiber that is used for any of the respective City's connections, provided that the actual optical loss for the re-routed connection is consistent with the City's permits and less than the maximum loss budget, which shall be included on Exhibits A, B, C, D, E and F, respectively, to this Agreement.

3. DELIVERY OF FIBER FACILITY

When required by Black Rock, the respective City shall promptly facilitate Black Rock's access to the City's buildings to construct and maintain the Fibers. Black Rock shall notify each City in writing, with a copy provided to SERS, that the Fiber has been placed and is ready for use. The date of such notification ("**Start Date**") shall be the first day that the City will become responsible for Maintenance Costs under Section 12. Black Rock shall provide the Fiber to the respective Cities within timeframes specified in each Exhibit. If Black Rock cannot provide the Fiber to the respective Cities within the aforementioned time frame ("**End Date**"), SERS will have the option to void this Agreement and all terms conditions and payments required herein, provided that the reason for Black Rock's inability to deliver the Fiber within the time frame was not force majeure, pursuant to this Agreement.

4. TERM

The Term of this Agreement ("**Term**") shall be for a period of three (3) years from the Start Date of the first of the Cities to receive a Start Date but that Start Date shall not be later than June 1, 2010. Upon notification to SERS of that Start Date for the first City, it shall be added as Exhibit G to this Agreement, after execution, and the three (3) year Term shall be calculated from the date so specified in Exhibit G.

5. FIBER SERVICE

For the three (3) year Term of this Agreement, Black Rock will not charge for Fiber Service provided to the Cities. Neither SERS, on behalf of the Cities (nor the Cities themselves), will be billed for Fiber service from the Start Date and during the Term of this Agreement. Black Rock will charge a Maintenance Cost as specified in Section 12, below.

6. FIBER CONNECTIVITY RESTORATION, REPAIR & MAINTENANCE

Black Rock must maintain continuity of the Fiber at all times. If a City becomes aware that Fiber continuity is lost between locations ("**Failure Event**"), the City shall notify Black Rock as soon as possible. Once Black Rock has been notified, Black Rock will inspect the Fiber and report back to the City and SERS within four (4) hours after gaining access to each terminated end of the Fiber. Black Rock must reestablish continuity of the Fiber as soon as possible or notify the City and SERS that problems

encountered are not due to lack of Fiber continuity. If Black Rock cannot provide continuity within twenty-four (24) hours after notification by the City, then the affected City will be allowed a credit against its Maintenance Costs equaling one-twelfth of the annual Maintenance Cost. This is SERS's and the affected City's sole remedy for loss of continuity.

Black Rock must have the ability to perform emergency and regular maintenance of the Fiber. Such maintenance may require that the Fiber continuity be disrupted for a period of time. Black Rock shall coordinate with the affected City to schedule regular maintenance at times that are mutually convenient to both parties.

Within fourteen (14) days of the Failure Event the affected City shall document in a written notice to Black Rock, with a copy to SERS, the date, time and duration of the Failure Event.

If during a thirty (30) day period there is one (1) Failure Event not caused by emergency and or regular maintenance of the Fiber the affected City shall give written notice documenting the same to Black Rock, with a copy to SERS, within fourteen (14) days of the Failure Event.

During the term of this Agreement, Black Rock will provide all outside plant maintenance (except as specified in Section 12) of the Fiber at no additional cost to SERS or any City. If maintenance is required due to any acts of a City or employees or agents of the City, the City will be responsible for all costs of maintenance related to the specific act.

Black Rock will need access to interior areas to access the demarcation points. Each City shall provide 24/7 escorted access, as necessary, to repair and maintain the City Fiber.

7. CREDITS FOR LOSS OF CONTINUITY

Credits against Maintenance Costs for loss of continuity will not be issued by Black Rock, if failure to restore connectivity is attributable to any of the following: (a) unavailability during any regular maintenance of the Fiber; (b) unavailability caused by a City's applications, equipment, or facilities; (c) unavailability due to acts or omissions of a City; (d) unavailability due to electronics associated with the actual transport or conversion of information moving through the Fiber; or (e) unavailability due to reasons of Force Majeure.

8. TERMINATION FOR REPEATED LOSS OF CONTINUITY

After giving written notice of three (3) Failure Events in a three month period, SERS shall have the option to terminate this Agreement if the Failure Events are not attributable to any of the following: (a) unavailability during any regular scheduled maintenance of the Fiber; (b) unavailability caused by a respective City's applications, equipment, or facilities; (c) unavailability due to acts or omissions of a City or SERS; (d) unavailability due to electronics associated with the actual transport or conversion of information moving through the Fiber; or (e) unavailability due to reasons of Force Majeure. If SERS exercises this option to terminate this agreement because of repeated Failure Events then SERS must within ninety (90) days of latest Failure Event provide

written notice to Black Rock of its intent to terminate and Black Rock shall provide the Fiber to the Cities for up to sixty (60) days in order that SERS and the Cities may transition to another provider or service, provided that SERS and the Cities are otherwise in compliance with this Agreement. If SERS does not provide written notice of its intent to exercise the option to terminate within ninety (90) days, then SERS shall lose its option to terminate this Agreement only with respect to any previous loss of Failure Events.

9. LIMITATIONS OF LIABILITY

During the initial three (3) year Term of this Agreement, notwithstanding any provision of this Agreement to the contrary, except to the extent caused by its own willful misconduct, neither party shall be liable to the other party for any incidental, indirect or punitive damages including, but not limited to, loss of profits or revenue, cost of capital, or claims of SERS or the respective Cities, (whether arising out of transmission interruptions or problems, any interruption or degradation of service or otherwise), whether foreseeable or not, arising out of, or in connection with either party's performance or non performance of its respective obligations under this Agreement or any other cause or nature whatsoever and all claims with respect to which such special, incidental, indirect, punitive or consequential damages are hereby specifically waived. In the event that the Cities exercise their respective option rights to purchase an Indefeasible Right to Use, Black Rock and the Cities may renegotiate the Limitations of Liability applicable to that succeeding contractual relationship.

10. CITY RESTRICTIONS ON USE OF FIBER

Black Rock will provide dark Fibers to each respective City with no bandwidth restrictions. SERS will obtain a warranty from each City that it will use the dark Fiber only for legal and authorized purposes. The Fiber optic line will be provided as a discrete and dedicated connection for the City. The City must use the Fiber for internal purposes only and cannot resell the dark Fiber to any other person or entity without the written consent of Black Rock.

11. OPTION TO PURCHASE IRU

Each City shall have an option to purchase an Indefeasible Right to Use (IRU) for the fibers that are the subject of this Agreement and are connected to each City as specified on Exhibits A, B, C, D, E and F, respectively. The IRU will have terms and conditions similar to the IRU signed on May 8, 2009 between Black Rock and the Snohomish County Emergency Radio System ~~Public Safety Network~~ except for:

Cost:

Within 1 year of the execution of this agreement:	\$304,500.00 plus sales tax
Within 2 years of the execution of this agreement:	\$325,500.00 plus sales tax
Within 3 years of the execution of this agreement:	\$346,500.00 plus sales tax

12. MAINTENANCE

The Cities shall be responsible to pay to Black Rock the costs of maintenance ("Maintenance Costs"), which SERS shall collect from the Cities and remit to Black Rock.

Maintenance Costs will be comprised of two parts:

1. Normal pole attachments, pole transfers, damages, etc \$1.00 per strand mile per month for an approximate cost of \$840/year.

2. For major undergrounding of overhead fiber routes and/or relocations due to City/County ordinance, orders or plan (Municipal Projects), the affected City and the other users will share the costs of moving the Cable Bundle at pro rata cost. Pro Rata means the affected City share will be determined by dividing number of fibers owned by affected City into the total number of fibers used by all customers at that location. By way of example and for illustrative purposes only, if a relocation project will cost \$100,000.00; the Cable Bundle has 60 fibers with 40 of those fiber "lit" and actively used by 20 Black Rock Customers (2 fibers/customer), the allocated share of relocation cost to affected City would be \$5,000.00 (\$100,000.00 divided by the number of active fibers in the Fiber Bundle). Notwithstanding the foregoing, nothing herein shall be interpreted to waive any right or obligation under any applicable franchise agreement.

13. INDEMNIFICATION

Subject to the provisions of this Agreement, Black Rock hereby releases and agrees to indemnify, defend, protect and hold harmless SERS, its directors, officers, agents, and employees, and its respective successors or permitted assigns from and against: (i) any and all causes of action, demands, claims, suits, losses, judgments or costs (collectively "Damages") which may be brought by or asserted by any third party against SERS related to Black Rock's design, construction, maintenance or operation or use of the Fiber, or (ii) each and every breach, or material default by Black Rock of any of its covenants, agreements, duties or obligations hereunder, or (iii) any violation by Black Rock of any regulation, rule, statute or court order of any local, state or federal governmental agency, court or body in connection with Black Rock's performance of its obligations under this Agreement, or (iv) damages directly attributable to the negligent act or omission or willful misconduct of Black Rock.

Black Rock shall indemnify and hold SERS, its directors, officers, agents and employees and the Cities, their officials and employees, from any workers' compensation claims to which Black Rock may become subject during the Term of this Agreement. It is further specifically and expressly understood that, solely to the extent required to enforce the indemnification provided pursuant to this Agreement, Black Rock waives its immunity under Title 51 RCW; provided, however, the foregoing waiver shall not in any way preclude Black Rock from raising such immunity as a defense against any claim brought against Black Rock by any of its employees or other third party. This waiver has been mutually negotiated by the parties. Black Rock's duty to indemnify SERS and the Cities shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of those parties, their respective officials, agents or employees. Black Rock's duty to indemnify SERS and the Cities for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of: (a) SERS or SERS' agents, officials or employees or Cities, their respective agents, officials or

employees and (b) Black Rock or Black Rock's agents or employees shall apply only to the extent of negligence of Black Rock or Black Rock's agents or employees. Further, Black Rock's waiver of immunity by the provisions of this paragraph extends only to claims against Black Rock by SERS, its agents, officials or employees, or the Cities, their respective agents, officials or employees, and does not include or extend to any claims by Black Rock's employees directly against Black Rock.

Subject to the provisions of this Agreement, SERS hereby releases and agrees to indemnify, defend, protect and hold harmless Black Rock, its directors, officers, stockholders, agents, and employees, and its respective successors or permitted assigns from and against: (i) any and all causes of action, demands, claims, suits, losses, judgments or costs (collectively "**Damages**") which may be brought by or asserted by any third party against Black Rock related to a City's maintenance, operation or use of the Fibers, or (ii) each and every breach, or material default by Customer of any of its covenants, agreements, duties or obligations hereunder, or (iii) any violation by SERS or the Cities of any regulation, rule, statute or court order of any local, state or federal governmental agency, court or body in connection with SERS's and/or a City's performance of its obligations under this Agreement, or (iv) damages directly attributable to the negligent act or omission or willful misconduct of SERS and/or a City.

14. RESOLUTION OF DISPUTES

The parties shall attempt to resolve by negotiation and compromise any disputes as to the validity or enforcement of any term or provision of this Agreement. Failing such compromise, such claim or assertion shall be settled by binding arbitration. Venue of any such proceeding shall be in Everett, Snohomish County, Washington. There shall be one arbitrator agreed upon by the parties, or if the parties cannot agree on that arbitrator within fourteen (14) days of the receipt of the initial arbitration demand, the arbitrator shall be selected by the administrator of the American Arbitration Association ("AAA") office closest to Everett, Washington. The arbitration shall be conducted under the AAA Commercial Arbitration Rules with Expedited Procedures in effect. The arbitrator may award injunctive relief or any other remedy available from a judge, including temporary restraining orders or injunctions or the joinder of parties or consolidation of the arbitration proceedings with any other proceedings involving common issues of law or fact or which may promote judicial economy. Pending appointment of an arbitrator, any party to a claim or assertion may apply to a court of competent jurisdiction for such interim order or relief as may be appropriate, including temporary restraining orders or injunctions, provided that once the arbitrator is appointed, all further interim relief, including temporary restraining orders or injunctions, shall be awarded by the arbitrator whose powers in that regard shall include the power to vary or dissolve any temporary order or relief granted by the court. The arbitrator in such proceedings shall award to the substantially prevailing party reasonable attorney's fees and costs incurred by the substantially prevailing party in conjunction with such dispute.

15. ASSIGNMENT & TRANSFER

The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto and all of the parties shall be jointly and severally liable hereunder. Neither Party may assign this

Agreement without the written consent of the other party, which consent shall not be unreasonably withheld.

16. REPRESENTATION & WARRANTY

The signatories of this Agreement represent and warrant that they are authorized to execute this Agreement on behalf of the entities which are party to this Agreement, bind their respective entities to this Agreement; that the parties are registered to do business in the State of Washington and that the execution of this Agreement has been approved by the governing boards, members or partners, if any, of the parties to this Agreement.

17. FORCE MAJEURE

Neither party shall be in default under this Agreement if, and to the extent that, any failure or delay in such party's performance of one or more of its obligations hereunder is caused by any of the following conditions, each of which shall constitute a force majeure, and the affected party shall be released from liability and shall suffer no prejudice for the failure of performance of its obligation or obligations, and, if the construction schedule is affected, the Start Date shall be excused and extended for and during the period of any such delay: any circumstance beyond the reasonable control of the affected party, including without limitation, any change of circumstances not reasonably foreseen at the time this Agreement was executed which is beyond the reasonable control of the affected party, and which materially affects the ability of the affected party to perform its obligations hereunder; any act of God; fire; flood; lack of or delay in transportation; the adoption or amendment of government codes, ordinances, laws, rules, regulations or restrictions that materially impair the affected party's performance hereunder; war or civil disorder; strikes, lock-outs or other labor disputes; failure of a third party to grant or recognize an obligation to Black Rock (provided Black Rock has made timely and reasonable commercial efforts to obtain the same).

18. ENTIRE AGREEMENT

This Agreement constitutes the full and final agreement between the parties hereto and incorporates and supersedes all prior agreements and negotiations. It may not be modified or supplemented in any manner whatsoever, except upon the written agreement of all parties hereto.

19. NOTICE

Any notice or consent required to be given or made under any provision of this Agreement shall be given or made in writing and delivered personally, delivered via facsimile, or sent by certified mail, postage prepaid, addressed to the party at the address set forth below, or to such other address as that party may from time to time designate, in writing. Notices shall be deemed delivered immediately upon personal delivery or three (3) business days after being mailed. Notices delivered by facsimile shall be deemed personally delivered upon the sender's receipt of a facsimile confirmation notice.

To SERS:

Mr. Ron Solemsaas, System Manager
1121 SE. Everett Mall Way, Suite 210

Everett, WA 98201-2832

To Black Rock:

Mr. Robert Warshawer, President
1512 Fairview Street
Bellingham, WA 98229

20. GOVERNING LAW; VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The venue for any legal proceeding arising under this Agreement shall be in the Snohomish County Superior Court or, in the event of a claim arising under federal law, in the United States District Court for the Western District of Washington.

FOR
SERS

FOR
BLACK ROCK CABLE, INC.

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

EXHIBIT A

**TO DARK FIBER OPTIC LEASE FACILITATION AGREEMENT
BETWEEN BLACK ROCK CABLE, INC. AND
SERS**

LOCATIONS / WORK PROVIDED

SERS has indicated a desire for one count single mode fiber optic connectivity between:

Snohomish County DataCenter
3000 Rockefeller Ave
Everett WA 98201

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

FIBER DISTANCE AND LOSS BUDGET

The proposed distance of the Fiber is less than 30 km and the maximum loss budget at 1310nm is 16 db.

START DATE: 5 months after contract signing

END DATE: 1 months after contract signing

INSTALLATION CHARGES

The one-time charge to install the Fiber shall be as follows:

Data Center	n/c
City of Lynnwood	n/c

PRICING

The monthly price for the lease of the facility is \$0.00 including taxes and fees.

Maintenance price is as described in Section 12.

EXHIBIT B

**TO DARK FIBER OPTIC LEASE FACILITATION AGREEMENT
BETWEEN BLACK ROCK CABLE, INC. AND
SERS**

LOCATIONS / WORK PROVIDED

SERS has indicated a desire for one count single mode fiber optic connectivity between:

Snohomish County DataCenter 3000 Rockefeller Ave Everett WA 98201	And	City of Edmonds xxxx
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FIBER DISTANCE AND LOSS BUDGET

The proposed distance of the Fiber is less than 30 km and the maximum loss budget at 1310nm is 16 db.

START DATE: .5 months after contract signing

END DATE: 1 months after contract signing

INSTALLATION CHARGES

The one-time charge to install the Fiber shall be as follows:

Data Center	n/c
City of Edmonds	n/c

PRICING

The monthly price for the lease of the facility is \$0.00 including taxes and fees.

Maintenance price is as described in Section 12.

EXHIBIT C

**TO DARK FIBER OPTIC LEASE FACILITATION AGREEMENT
BETWEEN BLACK ROCK CABLE, INC. AND
SERS**

LOCATIONS / WORK PROVIDED

SERS has indicated a desire for one count single mode fiber optic connectivity between:

Snohomish County DataCenter
3000 Rockefeller Ave
Everett WA 98201

City of Mill Creek
And

FIBER DISTANCE AND LOSS BUDGET

The proposed distance of the Fiber is less than 30 km and the maximum loss budget at 1310nm is 16 db.

START DATE: 2 months after contract signing

END DATE: 4 months after contract signing

INSTALLATION CHARGES

The one-time charge to install the Fiber shall be as follows:

Data Center	n/c
City of Mill Creek	n/c

THIS INSTALLATION SHALL SATISFY THE REQUIREMENT IN BLACK ROCKS FRANCHISE WITH THE CITY OF MILL CREEK TO CONNECT AT NO CHARGE THE MAIN CITY BUILDING TO THE LIBRARY AND TO THE SPORTS PARK.

FROM THE FRANCHISE:

At the City's request, Grantee shall provide, at no cost to the City or other entity, Open Video System facilities to the City Hall, the adjacent 15720 Building (formerly known as the Huntron Building), the Mill Creek Library, and the Mill Creek Sports Park concession stand.

PRICING

The monthly price for the lease of the facility is \$0.00 including taxes and fees.

Maintenance price is as described in Section 12.

EXHIBIT D

**TO DARK FIBER OPTIC LEASE FACILITATION AGREEMENT
BETWEEN BLACK ROCK CABLE, INC. AND
SERS**

LOCATIONS / WORK PROVIDED

SERS has indicated a desire for one count single mode fiber optic connectivity between:

Snohomish County DataCenter
3000 Rockefeller Ave
Everett WA 98201

City of Marysville
And

FIBER DISTANCE AND LOSS BUDGET

The proposed distance of the Fiber is less than 30 km and the maximum loss budget at 1310nm is 16 db.

Note: Private fiber will switch to a wavelength across the Everett Slough (where Black Rock currently leases fiber from SNOPUD).

START DATE: 2 months after contract signing

END DATE: 4 months after contract signing

INSTALLATION CHARGES

The one-time charge to install the Fiber shall be as follows:

Data Center	n/c
City of Marysville	n/c

PRICING

The monthly price for the lease of the facility is \$0.00 including taxes and fees.

Maintenance price is as described in Section 12.

EXHIBIT E

**TO DARK FIBER OPTIC LEASE FACILITATION AGREEMENT
BETWEEN BLACK ROCK CABLE, INC. AND
SERS**

LOCATIONS / WORK PROVIDED

SERS has indicated a desire for one count single mode fiber optic connectivity between:

Snohomish County DataCenter
3000 Rockefeller Ave
Everett WA 98201

City of Arlington
And

FIBER DISTANCE AND LOSS BUDGET

The proposed distance of the Fiber is less than 30 km and the maximum loss budget at 1310nm is 16 db.

Note: Private fiber will switch to a wavelength across the Everett Slough (where Black Rock currently leases fiber from SNOPUD).

START DATE: 2 months after contract signing

END DATE: 4 months after contract signing

INSTALLATION CHARGES

The one-time charge to install the Fiber shall be as follows:

Data Center	n/c
City of Arlington	n/c

PRICING

The monthly price for the lease of the facility is \$0.00 including taxes and fees.

Maintenance price is as described in Section 12.

EXHIBIT F

**TO DARK FIBER OPTIC LEASE FACILITATION AGREEMENT
BETWEEN BLACK ROCK CABLE, INC. AND
SERS**

LOCATIONS / WORK PROVIDED

SERS has indicated a desire for one count single mode fiber optic connectivity between:

Snohomish County DataCenter
3000 Rockefeller Ave
Everett WA 98201

And City of Mukilteo
Police Station

FIBER DISTANCE AND LOSS BUDGET

The proposed distance of the Fiber is less than 30 km and the maximum loss budget at 1310nm is 16 db.

Note: Private fiber will switch to a wavelength across the Everett Slough (where Black Rock currently leases fiber from SNOPUD).

START DATE: 2 months after contract signing

END DATE: 4 months after contract signing

INSTALLATION CHARGES

The one-time charge to install the Fiber shall be as follows:

Data Center	n/c
City of Mukilteo	n/c

PRICING

The monthly price for the lease of the facility is \$0.00 including taxes and fees.

Maintenance price is as described in Section 12.

EXHIBIT G

**TO DARK FIBER OPTIC LEASE FACILITATION AGREEMENT
BETWEEN BLACK ROCK CABLE, INC. AND
SERS**

The Start Date for the first City is identified as _____, 2010. Pursuant to Section 4, the Term of this Agreement is three(3) years from that date.