

Ordinance No. 00402

[City Council meeting minutes of Jan 17 2006](#)

ORDINANCE NO. 402

An ORDINANCE of the City of Lakewood agreeing to grant the Clover Park School District the right, privilege, authority and franchise to construct and maintain, repair, replace and/or operate a fiber optic cable system upon, over, under, along and/or across a franchise area

WHEREAS, the City Council for the City of Lakewood and the Clover Park School District have worked cooperatively in past endeavors, believing that education is critical to achieving the goals and ideals necessary for a successful future; and,

WHEREAS, the Clover Park School District has requested to use City rights of way for installation and use of a fiber optic cable system that will enhance communications between its schools and allow greater technology-related educational opportunities for its students; and,

WHEREAS, pursuant to the authority vested in the City pursuant to section 35A.47.040 of the Revised Code of Washington, the City is empowered to grant franchises to regulate the use of public rights of way; and,

WHEREAS, the City does support the intent of the School District in this effort and has agreed with the School District to allow this use based upon the franchise terms and conditions stated in this Ordinance.

NOW, THEREFORE,

THIS FRANCHISE AGREEMENT is made and entered into on the date on which the parties or the last of them executes the same, or on the date this franchise agreement is accepted by the Clover Park School District, by and between the City of Lakewood, Washington, a municipal corporation, as Grantor, and the Clover Park School District, a public school district, as Grantee.

WITNESSETH:

IN CONSIDERATION of the mutual benefits, terms, conditions and provisions provided herein, including but not limited to the compensation to the City as Grantor, and the use of the City rights of way by the School District as Grantee, the sufficiency of which consideration is hereby acknowledged, the parties agree to the terms in ?Exhibit A? attached hereto and incorporated herein by this reference.

NOW, THEREFORE, the City Council of the City of Lakewood, Washington, do ordain as follows:

Section 1. That the Clover Park School District Fiber Optic Franchise Agreement attached and marked as "[Exhibit A](#)" is hereby granted.

Section 2. Severability. If any portion of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of the provisions to other persons or circumstances shall not be affected.

Section 3. Effective Date. That this Ordinance shall be in full force and effect five (5) days after the publication of the Ordinance Summary.

ADOPTED by the City Council this 17th day of January, 2006.

CITY OF LAKEWOOD

Claudia Thomas, Mayor

ATTEST:

Alice M. Bush, MMC, City Clerk

APPROVED AS TO FORM:

Heidi Ann Wachter, City Attorney

EXHIBIT A

FIBER OPTIC CABLE FRANCHISE

This franchise agreement will be made and entered into this 17th day of January, 2006, by and between the City of Lakewood, Washington, a municipal corporation as Grantor, and the Clover Park School District, a public school district, as Grantee.

WHEREAS, the City Council for the City of Lakewood and the Clover Park School District have worked cooperatively in past endeavors, believing that education is critical to achieving the goals and ideals necessary for a successful future; and,

WHEREAS, the Clover Park School District has requested to use City rights of way for installation and use of a fiber optic cable system that will enhance communications between its schools and allow greater technology-related educational opportunities for its students; and,

WHEREAS, pursuant to the authority vested in the City pursuant to section 35A.47.040 of the Revised Code of Washington, the City is empowered to grant franchises to regulate the use of public rights of way; and,

WHEREAS, the City does support the intent of the School District in this effort and has agreed with the School District to allow this use based upon the franchise terms and conditions stated in this Ordinance.

NOW, THEREFORE, in consideration of the mutual promises made herein, including but not limited to compensation paid to the City as Grantor, and the use of City rights of way by the School District as Grantee, the sufficiency of which consideration is hereby acknowledged, the parties do agree to the terms contained herein.

Section 1. DEFINITIONS.

Where used in this franchise (the "Franchise") these terms have the following meanings:

- (a) "School District" means The Clover Park School District, a public school district and a municipal corporation of the state of Washington, and its respective successors and assigns.
- (b) "City" means the City of Lakewood, a municipal corporation of the State of Washington, and its respective successors and assigns.
- (c) "Franchise Area" means any, every and all of the roads, streets, avenues, alleys, highways and unrestricted utility easements of the City as now laid out, platted, dedicated

or improved; and any, every and all roads, streets, avenues, alleys and highways that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and such limits as may be hereafter extended.

(d) “Facilities” means wires, lines, conduits, cables, vaults, duct runs, and all necessary or convenient facilities and appurtenances thereto, whether the same is located over or under ground.

(e) “Ordinance” means this Ordinance, which sets forth the terms and conditions of this Franchise.

(f) “Public Works Improvement” means construction of any water, sewer or storm drainage, lighting, signalization, sidewalk, pedestrian / bicycle facilities, public street and/or related appurtenances.

Section 2. FACILITIES WITHIN FRANCHISE AREA.

(a) The City hereby grants to the School District the right, privilege, authority and franchise to construct, support, attach, connect and stretch facilities between, maintain, repair, replace, enlarge, operate and use facilities in, upon, over, under, along and across the Franchise Area for purposes of installing, maintaining, and operating a Fiber Optic Network designed for the transmission of electronic data for non-revenue generating, public school use only. Any other use including a use and/or purpose which generates revenue will subject this Franchise to reconsideration of the terms and conditions by the City including termination thereof.

(b) Permission Required to Enter Onto Other City Property.

Nothing contained in this Ordinance is to be construed as granting permission to the School District to go upon any other public place other than those types of public places specifically designated as the Franchise Area in this Ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case-by-case basis from the City. Permission shall not be unreasonably withheld.

(c) Compliance with WUTC Regulations. At all times during the term of this Franchise, the School District shall fully comply with all applicable regulations of the Washington Utilities and Transportation Commission (W.U.T.C.).

Section 3. NON-INTERFERENCE OF FACILITIES.

(a) The School District’s Facilities shall be located, relocated and maintained within the Franchise Area so as not to unreasonably interfere with the free and safe passage of pedestrian and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington. Whenever it is necessary for the School District, in the exercise of its rights under this Franchise, to make any excavation in the Franchise Area, the School District shall, upon completion of such excavation, restore the surface of the Franchise Area to the specifications established within the City

of Lakewood Public Works Policies and Standards and in accordance with standards of general applicability imposed by the City by ordinance or administrative order. If the School District should fail to leave any portion of any Franchise Area so excavated in a condition that meets the City's specifications per the Public Works Policies and Standards, the City may, after written notice of not less than ten (10) days to the School District, which notice shall not be required in case of an emergency, order any and all work considered necessary to restore to a safe condition that portion of the Franchise Area so excavated, and the School District shall pay to the City the reasonable cost of such work.

(b) In the event that the City reasonably determines, after providing written notice to the School District and a reasonable opportunity for the School District to respond to its concerns, that any one or more of the School District's Facilities within the Franchise Area interferes with the free and safe passage of pedestrian and/or vehicular traffic therein or with the reasonable ingress or egress to properties abutting thereto, then the School District shall promptly take such action as is reasonably necessary to eliminate such interference. In so doing, the City shall fully cooperate with the School District. In the event such interference requires relocation of the School District Facilities within the Franchise Area, such relocation shall be accomplished in accordance with Section 4 below. Any such interference, resulting from new development, with ingress or egress to properties abutting the Franchise Area in proximity to the School District's Facilities existing within the Franchise Area prior to the development shall be subject to Section 4(c).

(c) Any surface or subsurface failure occurring during the term of this Agreement and caused by any excavation by the School District shall be repaired to the City's specifications, within 30 days of the discovery of such failure or upon 5 days written notice to the School District. Should the School District fail to adequately remedy such failure, the City shall have the right to remedy the failure in accordance with Section 3(a).

Section 4. RELOCATION OF FACILITIES.

(a) Whenever the City causes the grading or widening of the Franchise Area or undertakes construction of any water, sewer or storm drainage line, lighting, signalization, sidewalk improvement, pedestrian amenities or other public street improvement (for purposes other than those described in Section 6(b) below) and such project requires the relocation of the School District's then existing Facilities within the Franchise Area, the City shall:

- (1) Provide the School District written notice at least 90 days prior to the commencement of such project, that project is expected to require relocation; and
- (2) Provide the School District with reasonable plans and specifications for such grading or widening, construction, or other public street improvement.

After receipt of such notice and such plans and specifications, the School District shall relocate such Facilities within the Franchise area, at no charge to the City so as to accommodate such public works improvement project, provided, however, for any Facilities that are jointly owned by the School District and the City, the costs to relocate shall be based on the proportionate share of ownership of the fiber optic cables within the fiber optic facility. The City shall cooperate with the School District to designate a substitute location for its Facilities within the Franchise Area. In cooperation with the School District, the City will establish a date by which the commencement of the work for the Facilities will be relocated, which date will be not less than 60 days after written notice to the School District as to the facility to be relocated. The School District must finish relocation of each such Facility by the date so established.

(b) Whenever any person or entity requires the relocation of the School District's Facilities to accommodate the work of such person or entity within the Franchise Area or whenever the City requires the relocation of the School District's Facilities within the Franchise area for the benefit of any person or entity other than the City, then the School District shall have the right as a condition of such relocation to require such person or entity to:

(1) Make payment to the School District, at a time and upon terms acceptable to the School District, for any and all costs and expenses incurred by the School District in the relocation of the School District's Facilities; and

(2) Indemnify and hold the School District harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of the School District's Facilities, to the extent such injury or damage is caused by the negligence of the person or entity requesting the relocation of the School District's Facilities or other negligence of the agents, servants, or employees of the person or entity requesting the relocation of the School District's Facilities.

(c) Any condition or requirement imposed by the City upon any person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development) which necessitates the relocation of the School District's Facilities within the Franchise Area shall be subject to the provisions of subsection 4(b). However, in the event the City reasonably determines (and promptly notifies the School District in writing of such determination) that the primary purpose of imposing such condition or requirement upon such person or entity which necessitates such relocation is to cause the construction of an improvement on the City's behalf and in a manner consistent with City-approved improvement plans (as described in 4(a) above) within a segment of the Franchise Area then:

The School District shall require only those costs and expenses incurred by the School District in integrating and connecting such relocated Facilities with the School District's other Facilities to be paid to the School District by such person or entity, and the School

District shall otherwise relocate its facilities within such segment of the Franchise Area in accordance with the provisions of subsection 4(a) above.

(d) This Section 4 shall govern all relocations of the School District's Facilities required in accordance with this Franchise. Any required relocation of the School District's Facilities which also involves a conversion of above-ground Facilities to underground Facilities shall, as to those Facilities being converted from above ground Facilities to underground Facilities, be arranged and accomplished in accordance with Section 12. Nothing in this Section 4 shall require the School District to bear any cost or expense in connection with the location or relocation of any Facilities existing under benefit of easement or other rights not arising under this Franchise.

(e) The School District recognizes the need for the City to maintain adequate width for installation and maintenance of City owned, Pierce County owned, and/or Lakewood Water District owned utilities such as, but not limited to, sanitary sewer, water, and storm drainage. Thus, the City reserves the right to maintain clear zones within the public right-of-way for installation and maintenance of said utilities. The clear zones for each right-of-way segment shall be noted and conditioned with the issuance of each right-of-way permit. If adequate clear zones are unable to be achieved on a particular right-of-way, the School District shall locate in an alternate right-of-way, obtain easements from private property owners, or propose alternate construction methods which maintain and/or enhance the existing clear zones.

SECTION 5. INDEMNIFICATION.

The School District shall indemnify, defend and hold the City, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortuous or negligent acts, failures and/or omissions of the School District or its agents, servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted the School District in this Franchise. Provided, however, such indemnification shall not extend to injury or damage caused by the negligence or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.

In the event any such claim or demand be presented to or filed with the City, the City shall promptly notify the School District in writing of the claim thereof, and the School District shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand, provided further, that in the event any suit or action be begun against the City based upon any such claim or demand, the City shall likewise promptly notify the School District thereof, and the School District shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

SECTION 6. MOVING BUILDINGS WITHIN THE FRANCHISE AREA.

If any person or entity obtains permission from the City to use the Franchise Area for the moving or the removal of any building or other object, the City shall require such person or entity to make any necessary arrangements with the School District for the temporary adjustment of the School District's Facilities to accommodate the moving or removal of such building or other object. Such necessary arrangements with the School District shall be made, to the School District's satisfaction, not less than fourteen (14) days prior to the moving or removal of said building or other object. In such event, the School District shall, at the expense of the person or entity desiring to move or remove such building or other object, adjust any of its wires which may obstruct the moving or removal of such building or other object, provided that:

(a) The moving or removal of such building or other object which necessitates the adjustment of wires shall be done at a reasonable time and in a reasonable manner so as not to unreasonably interfere with the School District's business:

(b) Where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route which will minimize the interruption of utility service, interference with transportation and potential detriments to the public safety, as determined by the City.

(c) The person or entity other than the City obtaining such permission from the City to move or remove such building or other object shall be required to indemnify and save the School District harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence or willful misconduct of the person or entity moving or removing such building or other object or the negligence or willful misconduct of the agents, servants or employees of the person or entity moving such building or other object.

Section 7. DEFAULT.

If the School District shall fail to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon the School District a written notice to so comply within thirty (30) days from the date such order is received by the School District. If the School District is not in compliance with this Franchise after expiration of said thirty (30) day period, the City may act to remedy the violation and may charge the costs and expenses of such action to the School District, provided, however, if any failure to comply with this Franchise by the School District cannot be corrected with due diligence within said thirty (30) day period (the School District's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which the School

District may so comply shall be extended for such time as may be reasonably necessary and so long as the School District commences promptly and diligently to effect such compliance.

The City may act without the thirty (30) day notice in case of an emergency. In the event the School District fails to cure defaults on more than two (2) occasions, the City may in addition, by ordinance, declare an immediate forfeiture of this Franchise.

SECTION 8. NONEXCLUSIVE FRANCHISE.

This Franchise is not and shall not be deemed to be an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area which do not interfere with School District's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

SECTION 9. FRANCHISE TERM.

This Franchise is and shall remain in full force and effect for a period of ten (10) years from and after the effective date of the Ordinance, and automatically renew for an additional ten (10) years upon the agreement of the School District and the City, and provided further, however, the School District shall have no rights under this Franchise nor shall the School District be bound by the terms and conditions of this Franchise unless the School District shall, within thirty (30) days after the effective date of the Ordinance, file with the City its written acceptance of this Franchise, in a form acceptable to the City Attorney.

SECTION 10. FRANCHISE FEE.

The School District shall pay the City of Lakewood a one time Franchise Fee of **\$10,000.00**, covering the duration of the franchise term stated in Section 9. This Franchise fee covers the City's administration costs associated with the development of this Agreement and on-going coordination of projects within the Franchise Area. Payment of the Franchise Fee does not preclude or prevent the City from charging the School District for required permits necessary for the construction, relocation, and maintenance of facilities within the Franchise Area as set forth in City codes and policies.

SECTION 11. COMPLIANCE WITH CODES AND REGULATIONS.

(a) The rights, privileges and authority herein granted are subject to and governed by this ordinance and all other applicable ordinances and codes of the City as they now exist or may hereafter be amended. Nothing in this ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public. Any location, relocation, erection or excavation by the School District shall be performed by the School District in accordance with applicable federal, state and city rules and

regulations, including the City Public Works Policies and Standard Plans, and any required permits, licenses or fees, and applicable safety standards then in effect.

(b) Upon written inquiry, the School District shall provide a specific reference to either the federal, state or local law or the W.U.T.C. order or action establishing a basis for the School District's actions related to a specific franchise issue.

(c) In the event that any territory served by the School District is annexed to the City after the effective date of this Franchise, such territory shall be governed by the terms and conditions contained herein upon the effective date of such annexation.

(d) The School District is responsible for painting over or removing any graffiti on the School District's facilities covered by the agreement. The School District shall commence removal or painting over graffiti within ten (10) days of written notice and it shall diligently pursue completion of such removal or painting.

SECTION 12. UNDERGROUNDING AND USE OF CITY-OWNED CONDUIT.

The City encourages the School District to locate or relocate its facilities underground when and where practical. The School District acknowledges that the City desires to promote a policy of undergrounding of Facilities within the Franchise Area. The School District will cooperate with the City in the undergrounding of the School District's Facilities within the Franchise Areas. If, during the term of this Franchise, the Facilities within any Franchise area are undergrounded, the School District will participate and underground their Facilities including paying all costs thereof. In situations where City overhead Facilities are also being undergrounded, the School District will participate and pay to the City their proportional share of the underground conversion costs based upon the School District's proportional ownership of the combined total of City and School District cable being undergrounded. For example, should there be 2, 12-strand cables undergrounded, and the School District owns one 12-strand cable, and the City owns the other 12-strand cable, the School District would be responsible for 50% of the cost to underground the Fiber Optic Cable. The School District shall comply with all federal, state and city regulations on undergrounding. This section 12 shall govern all matters related to undergrounding of the School District's Facilities (e.g.; conversion or otherwise) within the Franchise Area.

(a) Public Works Improvements. If the City undertakes any Public Works improvement which would otherwise require relocation of School District's above-ground facilities in accordance with subsection 4(a) above, or if subsection 4(c) above applies, the City may, by written notice to School District, direct that School District convert any such Facilities to underground Facilities. All costs for such conversion shall be paid by School District.

(b) Location of Equipment. All equipment to be installed within the Franchise Area shall be installed underground; provided, however, that such equipment or Facilities may be installed above ground if so authorized by the City, such as

splice boxes, which authorization shall not be unreasonably withheld or delayed, consistent with the provision of the City's Land Use Code and applicable development standards.

(c) Use of City-Owned Conduit: The School District shall utilize City-Owned conduit for the installation of facilities when available. The School District shall pay the City a one-time fee for utilizing the City-owned conduit equivalent to the cost incurred by the City to install the conduit. To support the City-incurred costs, the City will either: (1) provide bid tabulations from the associated project that the conduit was installed on if available, or (2) provide bid tabulations from a similar project of the same size conduit and junction boxes as to be utilized by the School District. The City will remain owner of the conduit and associated junction boxes and may at any time utilize space within the conduit and junction boxes for other City approved purposes.

Section 13. RECORD OF INSTALLATIONS AND SERVICE.

With respect to excavations by the School District and the City within the Franchise Area, the School District and the City shall each comply with its respective obligations pursuant to Chapter 19.122 RCW and any other applicable state law.

Upon written request of the City, the School District shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

“As Built Drawings” (both hard copy and in electronic format (i.e. *.dwg or ESRI format) of the precise location of any Facilities placed by School District in any street, alley, avenue, highway, easement, etc. shall be made available to the City within thirty (30) working days of request.

Section 14. CITY USE OF FACILITIES.

(a) With respect to trenches which are facilities and which are (1) owned by the School District and (2) within the Franchise Area, the City, subject to the School District's prior written consent, which may not be unreasonably withheld, may install and maintain City owned conduit in such trenches, for police, fire and other noncommercial communications purposes, subject to the following:

(1) Such installation and maintenance shall be done by the City and any additional costs shall be at the City's expense.

(2) The School District shall have no obligation under the indemnification provisions of the Franchise for the installation or maintenance of such City owned wires or conduits.

(3) The School District shall not charge the City a fee for the use of such trenches in accordance with this Section as a means of deriving revenue therefrom; provided, however, nothing herein shall require the School District to bear any cost or expense in connection with such installation and maintenance by the City.

(b) With respect to messenger cables which are facilities and which are (1) owned by the School District and (2) within the Franchise Area, the City, subject to the School District's prior written consent, which may not be unreasonably withheld, may install and maintain City owned fiber optic cable, for police, fire and other noncommercial communications purposes, subject to the following:

(1) Such installation and maintenance shall be done by the City and any additional costs shall be at the City's expense.

(2) The School District shall have no obligation under the indemnification provisions of the Franchise for the installation or maintenance of such City owned wires.

(3) The School District shall not charge the City a fee for the use of such messenger cables in accordance with this Section as a means of deriving revenue therefrom; provided, however, nothing herein shall require the School District to bear any cost or expense in connection with such installation and maintenance by the City.

(c) Pole Attachment Agreements. It is agreed and understood that the School District shall not install poles in the Franchise Area, nor shall it acquire poles from any other entity with Facilities in the Franchise Area; provided, however, that nothing in this Franchise shall prohibit the School District from entering into pole attachment agreements with pole owners in the Franchise Area.

Section 15. SHARED USE OF EXCAVATIONS.

The School District and the City shall exercise best efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other party and other utilities within the Franchise Areas informed of its intent to undertake such construction work. This includes the School District's attendance at the City-hosted monthly utility coordination meetings. The School District and the City shall further exercise best efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

If at any time either the School District, the City, or another franchise, shall cause excavations to be made within the Franchise Area, the party causing such excavation to be made shall afford the other upon receipt of a written request to do so, an opportunity to use such excavation, provided that:

(a) Such joint use shall not unreasonably delay the work of the party causing the excavation to be made;

(b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties. The parties shall each cooperate with other utilities in the Franchise Area to minimize hindrance or delay in construction.

The City reserves the right to not allow open trenching for five years following a street overlay or improvement project. The School District shall be given written notice at least 90 days prior to the commencement of the project. Required trenching due to an emergency will not be subject to five year street trenching moratoriums.

The City reserves the right to require the School District to joint trench with other facilities if both parties are anticipating trenching within the same Franchise Area and provided that the terms of (a) and (b) above are met.

Section 16. INSURANCE.

The School District shall maintain in full force and effect throughout the term of this Franchise, a minimum of One Million Dollars (\$1,000,000.00) liability insurance for property damage and bodily injury.

The City shall be named as an additional insured on any policy of liability insurance obtained by the School District for the purpose of complying with the requirements of this section.

In satisfying the insurance requirements set forth in this section, the School District may self-insure against such risks in such amounts as are consistent with good utility practice or shall obtain a coverage agreement through a Risk Pool authorized by Chapter 39.24 RCW which shall provide liability coverage to the School District for the liabilities contractually assumed by the School District in this Agreement. The School District shall provide the City with an insurance certificate indicating that such insurance (or self-insurance) is being so maintained by the School District. The City may, in addition, require the School District to provide additional insurance information, including but not limited to a copy of the insurance policy on which the insurance certificate is based.

Section 17. TARIFF CHANGES.

If the School District shall file, pursuant to Chapter 80.28 RCW, with the Washington Utilities and Transportation Commission (or its successor) any tariff

affecting the City's rights arising under this Franchise, the School District shall give the City Clerk written notice thereof within five (5) days of the date of such filing.

IN WITNESS WHEREOF, and pursuant to the vote of approval of the qualified electors (if required) of Lakewood, Washington, this franchise is signed in the name of the City of Lakewood, a municipal corporation on this 17th day of January, 2006.

CITY OF LAKEWOOD

Andrew Neiditz, City Manager

Attest:

Alice Bush, MMC, City Clerk

Approved as to form:

Heidi Ann Wachter, City Attorney

ACCEPTED this ____ day of _____, 2006, subject to applicable federal, state and local law.

CLOVER PARK SCHOOL DISTRICT

Dr. Doris McEwen,
District Superintendent
Clover Park School District

EXHIBIT A

FIBER OPTIC CABLE FRANCHISE

This franchise agreement will be made and entered into this ⁻⁷⁷⁴/₂ day of 2006, by and between the City of Lakewood, Washington, a municipal corporation as Grantor, and the Clover Park School District, a public school district as Grantee.

WHEREAS, the City Council for the City of Lakewood and the Clover Park School District have worked cooperatively in past endeavors, believing that education is critical to achieving the goals and ideals necessary for a successful future; and,

WHEREAS, the Clover Park School District has requested to use City rights of way for installation and use of a fiber optic cable system that will enhance communications between its schools and allow greater technology-related educational opportunities for its students; and,

WHEREAS, pursuant to the authority vested in the City pursuant to section 35A.47.040 of the Revised Code of Washington, the City is empowered to grant franchises to regulate the use of public rights of way; and,

WHEREAS, the City does support the intent of the School District in this effort and has agreed with the School District to allow this use based upon the franchise terms and conditions stated in this Ordinance.

NOW, THEREFORE, in consideration of the mutual promises made herein, including but not limited to compensation paid to the City as Grantor, and the use of City rights of way by the School District as Grantee, the sufficiency of which consideration is hereby acknowledged, the parties do agree to the terms contained herein.

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(b) "City" means the City of Lakewood, a municipal corporation of the State of Washington, and its respective successors and assigns.

(c) "Franchise Area" means any, every and all of the roads, streets, avenues, alleys, highways and unrestricted utility easements of the City as now laid out, platted, dedicated

or improved; and any, every and all roads, streets, avenues, alleys and highways that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and such limits as may be hereafter extended.

(d) "Facilities" means wires, lines, conduits, cables, vaults, duct runs, and all necessary or convenient facilities and appurtenances thereto, whether the same is located over or under ground.

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Section 2. FACILITIES WITHIN FRANCHISE AREA.

(a) The City hereby grants to the School District the right, privilege, authority and franchise to construct, support, attach, connect and stretch facilities between, maintain, repair, replace, enlarge, operate and use facilities in, upon, over, under, along and across the Franchise Area for purposes of installing, maintaining, and operating a Fiber Optic Network designed for the transmission of electronic data for non-revenue generating, public school use only. Any other use including a use and/or purpose which generates revenue will subject this Franchise to reconsideration of the terms and conditions by the City including termination thereof.

(b) Permission Required to Enter Onto Other City Property.

Nothing contained in this Ordinance is to be construed as granting permission to the School District to go upon any other public place other than those types of public places specifically designated as the Franchise Area in this Ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case-by-case basis from the City. Permission shall not be unreasonably withheld.

(c) Compliance with WUTC Regulations. At all times during the term of this Franchise, the School District shall fully comply with all applicable regulations of the Washington Utilities and Transportation Commission (W.U.T.C.).

Section 3. NON-INTERFERENCE OF FACILITIES.

(a) The School District's Facilities shall be located, relocated and maintained within the Franchise Area so as not to unreasonably interfere with the free and safe passage of pedestrian and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington. Whenever it is necessary for the School District, in the exercise of its rights under this Franchise, to make any excavation in the Franchise Area, the School District shall, upon completion of such excavation, restore the surface of the Franchise Area to the specifications established within the City

of Lakewood Public Works Policies and Standards and in accordance with standards of general applicability imposed by the City by ordinance or administrative order. If the School District should fail to leave any portion of any Franchise Area so excavated in a condition that meets the City's specifications per the Public Works Policies and Standards, the City may, after written notice of not less than ten (10) days to the School District, which notice shall not be required in case of an emergency, order any and all work considered necessary to restore to a safe condition that portion of the Franchise Area so excavated, and the School District shall pay to the City the reasonable cost of such work.

(b) In the event that the City reasonably determines, after providing written notice to the School District and a reasonable opportunity for the School District to respond to its concerns, that any one or more of the School District's Facilities within the Franchise Area interferes with the free and safe passage of pedestrian and/or vehicular traffic therein or with the reasonable ingress or egress to properties abutting thereto, then the School District shall promptly take such action as is reasonably necessary to eliminate such interference. In so doing, the City shall fully cooperate with the School District. In the event such interference requires relocation of the School District Facilities within the Franchise Area, such relocation shall be accomplished in accordance with Section 4 below. Any such interference, resulting from new development, with ingress or egress to properties abutting the Franchise Area in proximity to the School District's Facilities existing within the Franchise Area prior to the development shall be subject to Section 4(c).

(c) Any surface or subsurface failure occurring during the term of this Agreement and caused by any excavation by the School District shall be repaired to the City's specifications, within 30 days of the discovery of such failure or upon 5 days written notice to the School District. Should the School District fail to adequately remedy such failure, the City shall have the right to remedy the failure in accordance with Section 3(a).

Section 4. RELOCATION OF FACILITIES.

(a) Whenever the City causes the grading or widening of the Franchise Area or undertakes construction of any water, sewer or storm drainage line, lighting, signalization, sidewalk improvement, pedestrian amenities or other public street improvement (for purposes other than those described in Section 6(b) below) and such project requires the relocation of the School District's then existing Facilities within the Franchise Area, the City shall:

- (1) Provide the School District written notice at least 90 days prior to the commencement of such project, that project is expected to require relocation; and
- (2) Provide the School District with reasonable plans and specifications for such grading or widening, construction, or other public street improvement.

After receipt of such notice and such plans and specifications, the School District shall relocate such Facilities within the Franchise area, at no charge to the City so as to accommodate such public works improvement project, provided, however, for any Facilities that are jointly owned by the School District and the City, the costs to relocate shall be based on the proportionate share of ownership of the fiber optic cables within the fiber optic facility. The City shall cooperate with the School District to designate a substitute location for its Facilities within the Franchise Area. In cooperation with the School District, the City will establish a date by which the commencement of the work for the Facilities will be relocated, which date will be not less than 60 days after written notice to the School District as to the facility to be relocated. The School District must finish relocation of each such Facility by the date so established.

(b) Whenever any person or entity requires the relocation of the School District's Facilities to accommodate the work of such person or entity within the Franchise Area or whenever the City requires the relocation of the School District's Facilities within the Franchise area for the benefit of any person or entity other than the City, then the School District shall have the right as a condition of such relocation to require such person or entity to:

(1) Make payment to the School District, at a time and upon terms acceptable to the School District, for any and all costs and expenses incurred by the School District in the relocation of the School District's Facilities; and

(2) Indemnify and hold the School District harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of the School District's Facilities, to the extent such injury or damage is caused by the negligence of the person or entity requesting the relocation of the School District's Facilities or other negligence of the agents, servants, or employees of the person or entity requesting the relocation of the School District's Facilities.

(c) Any condition or requirement imposed by the City upon any person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development) which necessitates the relocation of the School District's Facilities within the Franchise Area shall be subject to the provisions of subsection 4(b). However, in the event the City reasonably determines (and promptly notifies the School District in writing of such determination) that the primary purpose of imposing such condition or requirement upon such person or entity which necessitates such relocation is to cause the construction of an improvement on the City's behalf and in a manner consistent with City-approved improvement plans (as described in 4(a) above) within a segment of the Franchise Area then:

The School District shall require only those costs and expenses incurred by the School District in integrating and connecting such relocated Facilities with the School District's other Facilities to be paid to the School District by such person or entity, and the School

District shall otherwise relocate its facilities within such segment of the Franchise Area in accordance with the provisions of subsection 4(a) above.

(d) This Section 4 shall govern all relocations of the School District's Facilities required in accordance with this Franchise. Any required relocation of the School District's Facilities which also involves a conversion of above-ground Facilities to underground Facilities shall, as to those Facilities being converted from above ground Facilities to underground Facilities, be arranged and accomplished in accordance with Section 12. Nothing in this Section 4 shall require the School District to bear any cost or expense in connection with the location or relocation of any Facilities existing under benefit of easement or other rights not arising under this Franchise.

(e) The School District recognizes the need for the City to maintain adequate width for installation and maintenance of City owned, Pierce County owned, and/or Lakewood Water District owned utilities such as, but not limited to, sanitary sewer, water, and storm drainage. Thus, the City reserves the right to maintain clear zones within the public right-of-way for installation and maintenance of said utilities. The clear zones for each right-of-way segment shall be noted and conditioned with the issuance of each right-of-way permit. If adequate clear zones are unable to be achieved on a particular right-of-way, the School District shall locate in an alternate right-of-way, obtain easements from private property owners, or propose alternate construction methods which maintain and/or enhance the existing clear zones.

SECTION 5. INDEMNIFICATION.

The School District shall indemnify, defend and hold the City, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortuous or negligent acts, failures and/or omissions of the School District or its agents, servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted the School District in this Franchise. Provided, however, such indemnification shall not extend to injury or damage caused by the negligence or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.

In the event any such claim or demand be presented to or filed with the City, the City shall promptly notify the School District in writing of the claim thereof, and the School District shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand, provided further, that in the event any suit or action be begun against the City based upon any such claim or demand, the City shall likewise promptly notify the School District thereof, and the School District shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

SECTION 6. MOVING BUILDINGS WITHIN THE FRANCHISE AREA.

If any person or entity obtains permission from the City to use the Franchise Area for the moving or the removal of any building or other object, the City shall require such person or entity to make any necessary arrangements with the School District for the temporary adjustment of the School District's Facilities to accommodate the moving or removal of such building or other object. Such necessary arrangements with the School District shall be made, to the School District's satisfaction, not less than fourteen (14) days prior to the moving or removal of said building or other object. In such event, the School District shall, at the expense of the person or entity desiring to move or remove such building or other object, adjust any of its wires which may obstruct the moving or removal of such building or other object, provided that:

(a) The moving or removal of such building or other object which necessitates the adjustment of wires shall be done at a reasonable time and in a reasonable manner so as not to unreasonably interfere with the School District's business:

(b) Where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route which will minimize the interruption of utility service, interference with transportation and potential detriments to the public safety, as determined by the City.

(c) The person or entity other than the City obtaining such permission from the City to move or remove such building or other object shall be required to indemnify and save the School District harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence or willful misconduct of the person or entity moving or removing such building or other object or the negligence or willful misconduct of the agents, servants or employees of the person or entity moving such building or other object.

Section 7. DEFAULT.

If the School District shall fail to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon the School District a written notice to so comply within thirty (30) days from the date such order is received by the School District. If the School District is not in compliance with this Franchise after expiration of said thirty (30) day period, the City may act to remedy the violation and may charge the costs and expenses of such action to the School District, provided, however, if any failure to comply with this Franchise by the School District cannot be corrected with due diligence within said thirty (30) day period (the School District's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which the School

District may so comply shall be extended for such time as may be reasonably necessary and so long as the School District commences promptly and diligently to effect such compliance.

The City may act without the thirty (30) day notice in case of an emergency. In the event the School District fails to cure defaults on more than two (2) occasions, the City may in addition, by ordinance, declare an immediate forfeiture of this Franchise.

SECTION 8. NONEXCLUSIVE FRANCHISE.

This Franchise is not and shall not be deemed to be an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area which do not interfere with School District's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

SECTION 9. FRANCHISE TERM.

This Franchise is and shall remain in full force and effect for a period of ten (10) years from and after the effective date of the Ordinance, and automatically renew for an additional ten (10) years upon the agreement of the School District and the City, and provided further, however, the School District shall have no rights under this Franchise nor shall the School District be bound by the terms and conditions of this Franchise unless the School District shall, within thirty (30) days after the effective date of the Ordinance, file with the City its written acceptance of this Franchise, in a form acceptable to the City Attorney.

SECTION 10. FRANCHISE FEE.

The School District shall pay the City of Lakewood a one time Franchise Fee of \$10,000.00, covering the duration of the franchise term stated in Section 9. This Franchise fee covers the City's administration costs associated with the development of this Agreement and on-going coordination of projects within the Franchise Area. Payment of the Franchise Fee does not preclude or prevent the City from charging the School District for required permits necessary for the construction, relocation, and maintenance of facilities within the Franchise Area as set forth in City codes and policies.

SECTION 11. COMPLIANCE WITH CODES AND REGULATIONS.

(a) The rights, privileges and authority herein granted are subject to and governed by this ordinance and all other applicable ordinances and codes of the City as they now exist or may hereafter be amended. Nothing in this ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public. Any location, relocation, erection or excavation by the School District shall be performed by the School District in accordance with applicable federal, state and city rules and

regulations, including the City Public Works Policies and Standard Plans, and any required permits, licenses or fees, and applicable safety standards then in effect.

(b) Upon written inquiry, the School District shall provide a specific reference to either the federal, state or local law or the W.U.T.C. order or action establishing a basis for the School District's actions related to a specific franchise issue.

(c) In the event that any territory served by the School District is annexed to the City after the effective date of this Franchise, such territory shall be governed by the terms and conditions contained herein upon the effective date of such annexation.

(d) The School District is responsible for painting over or removing any graffiti on the School District's facilities covered by the agreement. The School District shall commence removal or painting over graffiti within ten (10) days of written notice and it shall diligently pursue completion of such removal or painting.

SECTION 12. UNDERGROUNDING AND USE OF CITY-OWNED CONDUIT.

The City encourages the School District to locate or relocate its facilities underground when and where practical. The School District acknowledges that the City desires to promote a policy of undergrounding of Facilities within the Franchise Area. The School District will cooperate with the City in the undergrounding of the School District's Facilities within the Franchise Areas. If, during the term of this Franchise, the Facilities within any Franchise area are undergrounded, the School District will participate and underground their Facilities including paying all costs thereof. In situations where City overhead Facilities are also being undergrounded, the School District will participate and pay to the City their proportional share of the underground conversion costs based upon the School District's proportional ownership of the combined total of City and School District cable being undergrounded. For example, should there be 2, 12-strand cables undergrounded, and the School District owns one 12-strand cable, and the City owns the other 12-strand cable, the School District would be responsible for 50% of the cost to underground the Fiber Optic Cable. The School District shall comply with all federal, state and city regulations on undergrounding. This section 12 shall govern all matters related to undergrounding of the School District's Facilities (e.g.; conversion or otherwise) within the Franchise Area.

(a) Public Works Improvements. If the City undertakes any Public Works improvement which would otherwise require relocation of School District's above-ground facilities in accordance with subsection 4(a) above, or if subsection 4(c) above applies, the City may, by written notice to School District, direct that School District convert any such Facilities to underground Facilities. All costs for such conversion shall be paid by School District.

(b) Location of Equipment. All equipment to be installed within the Franchise Area shall be installed underground; provided, however, that such equipment or Facilities may be installed above ground if so authorized by the City, such as

splice boxes, which authorization shall not be unreasonably withheld or delayed, consistent with the provision of the City's Land Use Code and applicable development standards.

(c) Use of City-Owned Conduit: The School District shall utilize City-Owned conduit for the installation of facilities when available. The School District shall pay the City a one-time fee for utilizing the City-owned conduit equivalent to the cost incurred by the City to install the conduit. To support the City-incurred costs, the City will either: (1) provide bid tabulations from the associated project that the conduit was installed on if available, or (2) provide bid tabulations from a similar project of the same size conduit and junction boxes as to be utilized by the School District. The City will remain owner of the conduit and associated junction boxes and may at any time utilize space within the conduit and junction boxes for other City approved purposes.

Section 13. RECORD OF INSTALLATIONS AND SERVICE.

With respect to excavations by the School District and the City within the Franchise Area, the School District and the City shall each comply with its respective obligations pursuant to Chapter 19.122 RCW and any other applicable state law.

Upon written request of the City, the School District shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

"As Built Drawings" (both hard copy and in electronic format (i.e. *.dwg or ESRI format) of the precise location of any Facilities placed by School District in any street, alley, avenue, highway, easement, etc. shall be made available to the City within thirty (30) working days of request.

Section 14. CITY USE OF FACILITIES.

(a) With respect to trenches which are facilities and which are (1) owned by the School District and (2) within the Franchise Area, the City, subject to the School District's prior written consent, which may not be unreasonably withheld, may install and maintain City owned conduit in such trenches, for police, fire and other noncommercial communications purposes, subject to the following:

- (1) Such installation and maintenance shall be done by the City and any additional costs shall be at the City's expense.
- (2) The School District shall have no obligation under the indemnification provisions of the Franchise for the installation or maintenance of such City owned wires or conduits.

(3) The School District shall not charge the City a fee for the use of such trenches in accordance with this Section as a means of deriving revenue therefrom; provided, however, nothing herein shall require the School District to bear any cost or expense in connection with such installation and maintenance by the City.

(b) With respect to messenger cables which are facilities and which are (1) owned by the School District and (2) within the Franchise Area, the City, subject to the School District's prior written consent, which may not be unreasonably withheld, may install and maintain City owned fiber optic cable, for police, fire and other noncommercial communications purposes, subject to the following:

(1) Such installation and maintenance shall be done by the City and any additional costs shall be at the City's expense.

(2) The School District shall have no obligation under the indemnification provisions of the Franchise for the installation or maintenance of such City owned wires.

(3) The School District shall not charge the City a fee for the use of such messenger cables in accordance with this Section as a means of deriving revenue therefrom; provided, however, nothing herein shall require the School District to bear any cost or expense in connection with such installation and maintenance by the City.

(c) Pole Attachment Agreements. It is agreed and understood that the School District shall not install poles in the Franchise Area, nor shall it acquire poles from any other entity with Facilities in the Franchise Area; provided, however, that nothing in this Franchise shall prohibit the School District from entering into pole attachment agreements with pole owners in the Franchise Area.

Section 15. SHARED USE OF EXCAVATIONS.

The School District and the City shall exercise best efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other party and other utilities within the Franchise Areas informed of its intent to undertake such construction work. This includes the School District's attendance at the City-hosted monthly utility coordination meetings. The School District and the City shall further exercise best efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

If at any time either the School District, the City, or another franchise, shall cause excavations to be made within the Franchise Area, the party causing such excavation to be made shall afford the other upon receipt of a written request to do so, an opportunity to use such excavation, provided that:

- (a) Such joint use shall not unreasonably delay the work of the party causing the excavation to be made;
- (b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties. The parties shall each cooperate with other utilities in the Franchise Area to minimize hindrance or delay in construction.

The City reserves the right to not allow open trenching for five years following a street overlay or improvement project. The School District shall be given written notice at least 90 days prior to the commencement of the project. Required trenching due to an emergency will not be subject to five year street trenching moratoriums.

The City reserves the right to require the School District to joint trench with other facilities if both parties are anticipating trenching within the same Franchise Area and provided that the terms of (a) and (b) above are met.

Section 16. INSURANCE.

The School District shall maintain in full force and effect throughout the term of this Franchise, a minimum of One Million Dollars (\$1,000,000.00) liability insurance for property damage and bodily injury.

The City shall be named as an additional insured on any policy of liability insurance obtained by the School District for the purpose of complying with the requirements of this section.

In satisfying the insurance requirements set forth in this section, the School District may self-insure against such risks in such amounts as are consistent with good utility practice or shall obtain a coverage agreement through a Risk Pool authorized by Chapter 39.24 RCW which shall provide liability coverage to the School District for the liabilities contractually assumed by the School District in this Agreement. The School District shall provide the City with an insurance certificate indicating that such insurance (or self-insurance) is being so maintained by the School District. The City may, in addition, require the School District to provide additional insurance information, including but not limited to a copy of the insurance policy on which the insurance certificate is based.


Section 17. TARIFF CHANGES.

If the School District shall file, pursuant to Chapter 80.28 RCW, with the Washington Utilities and Transportation Commission (or its successor) any tariff

affecting the City's rights arising under this Franchise, the School District shall give the City Clerk written notice thereof within five (5) days of the date of such filing.


IN WITNESS WHEREOF, and pursuant to the vote of approval of the qualified electors (if required) of Lakewood, Washington, this franchise is signed in the name of the City of Lakewood, a municipal corporation on this day of , 2006.

CITY OF LAKEWOOD




Dr. W. Neiditz, City Manager

Attest:



Alice Bush, MMC, City Clerk

Approved as to form:



City Attorney

ACCEPTED this A⁶ day of 3-6-06, 2006, subject to applicable federal, state and local law.

CLOVER PARK SCHOOL DISTRICT

Dr. Doris McWen,
District Superintendent
Clover Park School District