

CITY OF LEWISVILLE

ORDINANCE NO. 2020-6

of the CITY OF LEWISVILLE, IDAHO

AN ORDINANCE OF THE CITY OF LEWISVILLE, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, GRANTING A FRANCHISE TO DIRECT COMMUNICATIONS ROCKLAND, INC., AN IDAHO CORPORATION, FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF A CITY-WIDE FIBER OPTICS INTERNET COMMUNICATION SYSTEM IN THE CITY OF LEWISVILLE.

WHEREAS, the residents of and the City of Lewisville have historically and currently need high-speed internet at a reasonable cost, which has heretofore been generally unavailable; and

WHEREAS, Direct Communications Rockland, Inc., an Idaho Corporation, has historically provided wireless fiber internet services to the City of Lewisville and its residence and now desires to install, construct, operate, and maintain a fiber optics internet communication system in the City of Lewisville at the sole expense of Direct Communications Rockland, Inc. and without cost to the City of Lewisville; and

WHEREAS, Idaho Code §§ 50-328 through 50-330 govern municipal franchises to allow public services providers access to a municipalities' right-of-way for the purposes of installing, constructing, operating, and maintaining public services; and although those sections do not govern fiber optic networks a franchise is the closest available method to allow Direct Communications Rockland, Inc., to operate a fiber optic communication system in the City of Lewisville to service the City of Lewisville and its residents;

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LEWISVILLE, IDAHO:

That a new city ordinance of the City of Lewisville shall be added to the laws of the City of Lewisville and shall read as follows:

Section 1: DEFINITIONS

For the purpose of this ordinance (the "Ordinance"), the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense.

words in the plural number include the singular number, and words in the singular number include the plural number:

- a. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership or control with Grantee.
- b. "Fiber Internet" means the two-way transmission to Subscribers of internet services using a Fiber Optic Communication System.
- c. "Fiber Optic Communication System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other equipment that is designed to provide Fiber Internet to Subscribers.
- d. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- e. "Franchise" means the initial authorization, or renewal thereof, issued by Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Fiber Optic Communication System for the purpose of offering Fiber Internet to Subscribers.
- f. "Franchising Authority" means the City of Lewisville or the lawful successor, transferee, or assignee thereof.
- g. "Grantee" means Direct Communications Rockland, Inc. d/b/a Direct Communications, or the lawful successor, transferee, or assignee thereof.
- h. "Person" means an individual, partnership, association, joint stock company, trust corporation, or governmental entity.
- i. "Public Way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by Franchising Authority in the Service Area which shall entitle Franchising Authority and Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Fiber Optic

Communication System. "Public Way" also means any easement now or hereafter held by Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle Franchising Authority and Grantee to the use thereof for the purposes of installing or transmitting Grantee's Fiber Internet or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Fiber Internet Communications System.

- j. "Service Area" means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means.
- k. "Subscriber" means a user of the Fiber Optic Communication System who lawfully receives Fiber Internet or other service therefrom with Grantee's express permission.

Section 2: GRANT OF FRANCHISE

2.1 **Grant.** Franchising Authority hereby grants to Grantee a nonexclusive Franchise which authorizes Grantee to construct and operate, at its sole cost and expense, a Fiber Optic Communication System and offer Fiber Internet and other service in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Fiber Optic Communication System.

2.2 **Term.** The Franchise granted pursuant to this Ordinance shall be for an initial term of ten (10) years from the date that this Ordinance is passed and adopted unless otherwise lawfully terminated in accordance with the terms of this Ordinance.

2.3 **Acceptance.** Grantee shall accept the Franchise granted pursuant hereto by signing this Ordinance and filing same with the City Clerk or other appropriated official or agency of Franchising Authority within thirty (30) days after the passage and final adoption of this Ordinance.

2.4 **No Unfair Competition.** In the event Franchising Authority enters into a franchise, permit, license, authorization, or other agreement of any kind with any Person

other than Grantee to enter into Franchising Authority's streets and public ways for the purpose of constructing or operating a Fiber Optic Communication System or providing Fiber Internet to any part of the Service Area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

2.5 Renewal of Franchise. By mutual consent, the Grantee shall have the option to renew this Franchise for an additional period not to exceed ten (10) years. Should Grantee desire to exercise this option, it shall so notify the Franchising Authority in writing, not less than three (3) months prior to expiration of this Franchise.

2.6 Costs of Publication. The Grantee shall assume the cost of publication of this Ordinance and the payment of such costs by Grantee is required by Idaho Code § 50-329.

Section 3: STANDARDS OF SERVICE

3.1 Minimum Interference with Public Ways. All transmission and distribution structures, poles, other lines, and equipment installed or erected by Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

3.2 Restoration of Public Ways. If during the course of Grantee's construction, operation, or maintenance of the Fiber Optic Communication System there occurs a disturbance of any Public Way by Grantee, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

3.3 Relocation at Request of Franchising Authority. Upon its receipt of reasonable advance notice, not to be less than 30 days, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of Grantee when lawfully required by Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by Franchising Authority; but, Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right of way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to Grantee.

3.4 Trimming of Plants and Shrubbery. Grantee shall have the authority to cut back and/or remove plants or other natural growth above any of its Fiber Optic Communication System in the Service Area so as to prevent plants, roots, and other vegetative growth from coming in contact with Grantee's wires, cables, or other equipment. Grantee shall be permitted to charge Persons who own, or are responsible for, such plants, roots, or natural growth for the cost of such trimming, provided that similar charges are assessed by and paid to the utilities of Franchising Authority for the removal of the same. Grantee shall reasonably compensate Franchising Authority or property owner for any damages caused by such maintenance, or shall, in its sole discretion and at its own cost and expense, reasonably replace all plants, trees, shrubs, or other vegetative growth damaged as a result of any construction of the System undertaken by Grantee. Such replacement shall satisfy any and all obligations Grantee may have to Franchising Authority or property owner pursuant to the terms of this Section.

3.5 Safety Requirements. Construction, installation, and maintenance of the Fiber Optic Communication System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The Fiber Optic Communication System shall not unreasonably endanger or interfere with the safety of Persons or property in the Service Area.

3.6 Aerial and Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Grantee's fiber optic lines and other equipment without technical degradation of the Fiber Optic Communication System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are both aerial and underground, Grantee shall solely construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, underground unless otherwise agreed upon between Franchisee and the City of Lewisville Mayor or his assign, which agreement will not be unreasonably withheld.

3.7 Required Service. The Fiber Optic Communication System, shall be constructed in compliance with the material provisions of this Ordinance and the planning and zoning laws of the City of Lewisville. Grantee shall install, construct, operate, and maintain a Fiber Optic Communication System to provide Fiber Internet to residents of the City of Lewisville that request such service from the Grantee at the sole cost of the Grantee for the construction of the Fiber Optic Communication System. Grantee may not deny service to any resident without just or reasonable cause. Grantee

may charge each Subscriber the usual connection, set-up, and construction fees for all Subscribers, as well as a charge for the monthly service. The Franchising Authority makes no representation or guarantee as to the number of residents who may subscribe to Franchise's fiber internet services.

3.8 Service to Public Buildings. Grantee shall provide without charge two (2) Fiber Internet connections to the Franchising Authority, one (1) to the Lewisville Community Center and one (1) to the Lewisville City Library. These connections of Fiber Internet shall not be used to distribute or sell Fiber Internet in or throughout such buildings. Users of such connections shall hold Grantee harmless from any and all liability or claims arising out of their use of such connections, including, but not limited to, those arising from copyright liability.

3.9 Notification of Work. Prior to doing installation, or repair of any portion of the Fiber Optic Communication System in the Public Way, the Grantee shall make reasonable efforts to inform the designated city official of any work to be done. This notification, when possible, shall include a written description, location and sketch of the work and the date the work will commence. When reasonably possible, the Grantee shall provide The Franchising Authority notification a minimum of 30 days prior to work commencing.

3.10 Additional Regulations. The Franchising Authority may adopt other regulations from time to time which shall regulate the Grantee's installation, construction, and operation of the Fiber Optic Communication System within the Service Area. Such regulations shall be in the Franchising Authorities sole discretion.

Section 4: REGULATION BY FRANCHISING AUTHORITY

4.1 Rates and Charges. The Franchising Authority may not regulate the rates for the provision of Fiber Internet or other service, including, but not limited to, ancillary charges relating thereto, except as expressly provided herein and except as may be authorized pursuant to federal and state law. From time to time, and at any time, Grantee has the right to modify its rates and charges, at its discretion and without consent of Franchising Authority, including, but not limited to, the implementation of additional charges and rates for the services to Subscribers.

4.2 Conditions of Sale. Except to the extent expressly required by federal or state law, if a renewal or extension of the Franchise is denied or the Franchise is lawfully terminated, and Franchising Authority either lawfully acquires ownership of the Fiber Optic Communication System or by its actions lawfully effects a transfer of ownership of the Fiber Optic Communication System to another party, any such acquisition or transfer shall be at a fair market value, determined on the basis of the Fiber Optic Communication System valued as a going concern.

Grantee and Franchising Authority agree that in the case of a lawful revocation of the Franchise, at Grantee's request, which shall be made in its sole discretion, Grantee shall be given a reasonable opportunity to effectuate a transfer of its Fiber Optic Communication System to a qualified third party. Franchising Authority further agrees that during such a period of time, it shall authorize Grantee to continue to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, Grantee is unsuccessful in procuring a qualified transferee or assignee of its Fiber Optic Communication System which is reasonably acceptable to Franchising Authority, Grantee and Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that Grantee's continued operation of its Fiber Optic Communication System during the six (6) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either Franchising Authority or Grantee. Notwithstanding anything to the contrary set forth in this Section 4.2, neither Franchising Authority nor Grantee shall be required to violate federal or state law.

4.3 Transfer of Franchise. All of the rights and privileges and all of the obligations, duties, and liabilities created by this Franchise shall pass to and be binding upon the successors of the Franchising Authority and the successors and assigns of Grantee; and the same shall not be assigned or transferred without the written approval of the City Council, which approval shall not be unreasonably withheld; provided, however, that this Section shall not prevent the assignment or hypothecation of the Franchise by Grantee as security for debt without such approval; and provided further that transfers or assignments of this Franchise between any parent and subsidiary corporation or between entities of which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons, or entities which are controlled or managed by the same person, persons, or entities, shall be permitted without the prior approval of the Franchising Authority ("intracompany transfers"). Grantee shall notify Franchising Authority in writing within 30 days of the closing of such intracompany transfer.

Section 5: COMPLIANCE AND MONITORING

5.1 Network Maps and Records. Grantee shall provide Franchising Authority, upon request, records regarding placement of the Fiber Optic Communication System in the Service Area and information about the equipment used (including but not limited to: fiber optic lines, conduit, cabinets, handholes, etc.) in the Service Area, during normal business hours and in a way that will not disrupt the normal business operations of Grantee, as are reasonably necessary to monitor compliance with the terms hereof. Such records include, but are not limited to, any public records required to be kept by Grantee pursuant to the rules and regulations that may pertain to the Fiber Optic Communication System. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to disclose information which it reasonably deems to be

proprietary or confidential in nature. Grantee shall not be required or expected to provide, disclose, or share any information that is not directly related to management of and installation of the Fiber Optic Network located in the Public Right of Way of the Franchising Authority. Franchising Authority agrees to treat any information disclosed to it by Grantee as confidential, and to disclose it only to employees, representatives, and agents of Franchising Authority that have a need to know, or in order to enforce the provisions hereof.

Section 6: INSURANCE, INDEMNIFICATION, AND BONDS OR OTHER SURETY

6.1 Insurance Requirements. Grantee shall maintain in full force and effect during the term of the Franchise, at its own cost and expense, Comprehensive General Liability Insurance in the amount of One Million and No/100ths Dollars (\$1,000,000.00). The Franchising Authority shall be named as an "Additional Named Insured" under Grantee's insurance policy. Should the minimum limits of insurance as set forth herein be increased above \$1,000,000.00, pursuant to the Idaho Tort Claims Act (Idaho Code Section 6-901 et. seq.) or any similar legislation, the Grantee shall be required to provide the Franchising Authority with a new Certificate of Insurance evidencing the higher limits upon the Franchising Authority's request.

6.2 Indemnification. Grantee shall indemnify, hold harmless, and defend Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death) which arise out of Grantee's construction, operation or maintenance of its Fiber Optic Communication System, including, but not limited to, reasonable attorneys' fees and costs.

6.3 Bonds and other Surety. Except as expressly provided herein, Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. Franchising Authority acknowledges that the legal, financial, and technical qualifications of Grantee are sufficient to afford compliance with the terms of the Franchise and the enforcement thereof. Grantee and Franchising Authority recognize that the costs associated with bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for Fiber Internet or other service. In order to minimize such costs, Franchising Authority agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefor. Franchising Authority agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than \$10,000.00, conditioned upon the substantial performance of the material terms, covenants, and conditions of the Franchise. Initially, no bond or other surety shall be required. In the event that one is required in the future, Franchising Authority agrees to give Grantee at least sixty (60) days prior written notice thereof stating the exact reason

for the requirement. Such reason must demonstrate a change in Grantee's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith.

Section 7: ENFORCEMENT AND TERMINATION OF FRANCHISE

7.1 Notice of Violation. In the event that Franchising Authority believes that Grantee has not complied with the terms of the Franchise, it shall notify Grantee in writing of the exact nature of the alleged default.

7.2 Grantee's Right to Cure or Respond. Grantee shall have sixty (60) days from receipt of the notice described in Section 7.1: (a) to respond to Franchising Authority contesting the assertion of default; (b) to cure such default; or (c) in the event that, by the nature of the default, such default cannot be cured within the sixty (60) day period, to initiate reasonable steps to remedy such default and to notify Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3 Public Hearing. In the event that Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within one hundred twenty (120) days after Grantee is notified of the alleged default pursuant to Section 7.1, Franchising Authority shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduled meeting of Franchising Authority which is scheduled at a time which is no fewer than five (5) business days therefrom. Franchising Authority shall notify Grantee of the time and place of such meeting and provide Grantee with an opportunity to be heard.

7.4 Enforcement. Subject to applicable federal and state law, in the event Franchising Authority determines, after such meeting, that Grantee is in default of any provision of the Franchise, Franchising Authority may:

(a) Foreclose on all or any part of any security provided under the Franchise, if any, including, without limitation, any bonds or other surety; provided, however, that the foreclosure shall only be in such a manner and in such amount as Franchising Authority reasonably determines is necessary to remedy the default;

(b) Commence an action at law for monetary damages or seek other equitable relief;

(c) In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked; or

(d) Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages.

Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of Franchising Authority to enforce prompt compliance.

7.5 Acts of God. Grantee shall not be held in default of the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such alleged default is caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

Section 8: UNAUTHORIZED RECEPTION

8.1 Misdemeanor. In addition to those criminal and civil remedies provided by state and federal law, it shall be a misdemeanor for any Person to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the Fiber Optic Communication System without the express consent of Grantee. Further, without the express consent of Grantee, it shall be a misdemeanor for any Person to tamper with, remove, or injure any property, equipment, or part of the Fiber Optic Communication System or any means of receiving Fiber Internet or other service. Subject to applicable federal and state law, Franchising Authority shall incorporate into its criminal code, if not presently a part thereof, criminal misdemeanor law which shall enforce the intent of this Section 8.1.

Section 9: MISCELLANEOUS PROVISIONS

9.1 Preemption. If the FCC or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Franchise, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by Franchising Authority, the jurisdiction of Franchising Authority shall cease and no longer exist.

9.2 Employment Requirements. Grantee shall afford equal opportunity in employment to all qualified persons. No person shall be discriminated against in employment because of race, color, religion, national origin or sex. Grantee shall maintain and carry out a continuing program of specific practices designed to assure equal opportunity in every aspect of its employment policies and practices.

9.3 Actions of Franchising Authority. In any action by Franchising Authority or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any

instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

9.4 **Notice.** Unless expressly otherwise agreed between the parties, every notice or response to be served upon Franchising Authority or Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service.

The notices or responses to Franchising Authority shall be addressed as follows:

City of Lewisville
P.O. Box 160
Lewisville, ID 83431

The notices or responses to Grantee shall be addressed as follows:

Direct Communications Rockland, Inc.
Attention: Timothy May
P.O. Box 269
Rockland, ID 83271-0269

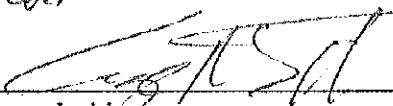
Franchising Authority and Grantee may designate such other address or addresses from time to time by giving written notice to the other party.

9.5 **Descriptive Headings.** The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

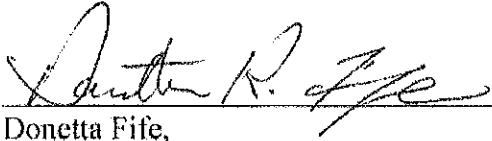
9.6 **Authority to Sign.** Each individual signing below on behalf of any municipality or business entity hereby states that he or she has the authority indicated below their signature line and has been duly authorized by said municipality or entity to sign on its behalf.

9.6 **Severability.** If any Section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term or provision hereof, all of which shall remain in full force and effect for the term of the Franchise, or any renewal or renewals thereof.

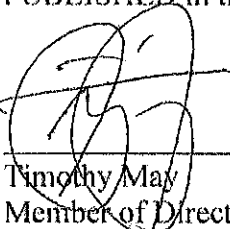
ENACTED by the Lewisville City Council and approved by the Mayor this ^{14th} ~~16th~~ day of ~~September~~ ^{October}, 2020.


George Judd
Mayor of the City of Lewisville

ATTEST:


Donetta Fife,
City Clerk of the City of Lewisville

PUBLISHED in the Jefferson Star the _____ day of _____, 2020.


Timothy May
Member of Direct Communications Rockland, Inc., d.b.a. Direct Communications

Dated: _____