

**City of Prineville
Ordinance No. 1189**

AN ORDINANCE GRANTING TO CENTRAL ELECTRIC COOPERATIVE, INC., AN OREGON COOPERATIVE CORPORATION, ITS SUBSIDIARIES, AFFILIATES AND THEIR SUCCESSORS AND ASSIGNS, NONEXCLUSIVE RIGHT AND FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE, IN, ON AND UNDER THE PRESENT AND FUTURE STREETS, ALLEYS, BRIDGES AND PUBLIC PLACES OF THE CITY OF PRINEVILLE EXCLUDING THE CITY OF PRINEVILLE RAILWAY, CROOK COUNTY, OREGON, ELECTRIC LIGHT AND POWER LINES AND APPURTENANCES FOR THE PURPOSE OF SUPPLYING ELECTRICITY AND ELECTRIC SERVICE TO THE CITY OF PRINEVILLE, THE INHABITANTS THEREOF AND OTHERS, SUBJECT TO THE TERMS AND CONDITIONS AND TO THE MAKING OF PAYMENTS SPECIFIED IN THE ORDINANCE.

THE CITY OF PRINEVILLE DOES ORDAIN AS FOLLOWS:

Section 1. The City of Prineville, Crook County, Oregon, hereinafter called the "City", does hereby grant to Central Electric Cooperative, Inc., an Oregon cooperative corporation, its subsidiaries, affiliates and their successors and assigns, hereinafter called "Grantee", the right and franchise to construct, maintain, and operate in, on and under the present and future streets, alleys, bridges and public places of the City, excluding real property in the name of, used, managed, or controlled by the City of Prineville Railway, hereinafter referred to as "streets", electric light and power lines, with the necessary or desirable appurtenances relating thereto, for the purpose of supplying electricity and electric service to the City and to the inhabitants thereof, subject to the terms and conditions and to the making of payments hereinafter specified. The right and franchise shall begin on May 10, 2012, and shall be a continuing seven (7) year franchise. Beginning on May 1 of each year, the franchise will be renewed for an additional one (1) year term, unless prior to April 30 of any year either party notifies the other in writing of their intent to terminate the franchise. Upon giving of a notice of termination the Franchise shall continue until seven (7) years from the date of notice termination. In the event of notice of termination is given, the parties upon mutual agreement may extend the term or reinstate the continuing renewal.

Section 2. The City acknowledges that Grantee has been granted exclusive service territories within the city limits of the City by the Public Utilities Commission of Oregon (PUC) for the purpose of supplying electricity and electric service to the City and to the inhabitants thereof. The City further acknowledges and hereby agrees that during the term of this Agreement that it will not compete in any way with Grantee's supplying electricity and electric service to the City and to its inhabitants.

Section 3. The locations and methods of installation and maintenance of all Grantees poles, wires, fixtures, underground lines, and appurtenances thereto (hereinafter referred to as "facilities") shall be subject at all times to regulation by the City, and all such facilities shall be so constructed and maintained as to interfere as little as practicable with street or other traffic. Nothing herein however shall be construed to change or modify Oregon law regarding Grantee's ability to recover costs for any relocation of its facilities. All of such facilities shall be installed and at all times maintained by Grantee in accordance with good electrical practice. Grantee shall change the location of or remove any pole, conduit, structure or facility within the public right of way when the City determines that the public convenience requires such changes or removal. The expense of said change shall be paid by Grantee unless Grantee's pole, conduit, structure or facility existed prior to the particular public right of way, in which case the City shall pay the expense for such removal or change. The City shall assign or otherwise transfer to Grantee all right it may have to recover the cost for the relocation work and shall support the efforts of Grantee to obtain reimbursement. Grantee shall not be obliged to pay the costs of any

relocation that is required or made a condition of a private development. However, if as a condition of a private development a street or alley needs to be improved in order to comply with City's transportation system plan and the removal or relocation of facilities as caused directly or otherwise by an identifiable development of property in the area, or as made for the convenience of a customer of Grantee, Grantee may charge the expense of removal or relocation to the developer or customer. In the event a street or alley widening or relocation is made a condition of or caused by a private development and the street or alley does not need to be improved to comply with City's transportation system plan, the City shall require the developer to pay Grantee for such relocation costs as part of its approval procedures.

Section 4. The service to be furnished hereunder by Grantee shall be continuous and shall be adequate for the requirements of the City and its inhabitants, subject to accidents, interferences or interruptions beyond the reasonable control of Grantee, and shall be furnished under such rules and regulations as Grantee may institute from time to time for the proper conduct of its business. Such service and all rates and charges therefore and all rules and regulation pertaining thereto or to the making of any necessary and proper extension of service shall be subject at all times to any rules, regulations, and orders lawfully prescribed by the PUC and such rules and regulations adopted by the governing authority of Grantee.

Section 5. When necessary, in order to permit any duly authorized person to move any building or structure across or along any of said streets, Grantee shall temporarily raise or remove its facilities upon such streets, upon reasonable notice in advance from the City, and at such time and in such manner as may be reasonably necessary to accommodate such moving, consistent with the maintenance of proper service to Grantee's customers; provided, however, that the cost to Grantee of such temporary raising or removal, and of any interruption of Grantee's service to its customers caused thereby, shall first be paid or satisfactorily secured to Grantee by the owner or mover of such building or other structure. Nothing contained in this Section shall preclude the City from requiring Grantee to remove or relocate its facilities when required in accordance with Section 3 of this franchise.

Section 6. The City shall have the right, upon reasonable notice to Grantee and without payment or charge therefore, to attach to the poles of Grantee, but at its own risk and only in accordance with the standards of the National Electric Safety Code (NESC) its fire alarm, police signal wires or traffic control systems or other public safety communication lines used for governmental purposes; provided, however, any such uses shall be for activities owned, operated, or used by the City or other governmental agencies for a public, non-commercial purpose and shall not include the provisions of cable TV, internet, or similar services.. If there is not sufficient space available thereon for said purposes, Grantee's structures may be changed, altered, or rearranged only by Grantee at the expense of the City so as to provide proper clearance for such wires or appurtenant facilities. Such facilities shall be subject to interference by Grantee only when and to the extent necessary for the proper construction, maintenance, operation or repair of Grantee's facilities.

Section 7.

- (a) Grantee shall protect and save the City, its officers, employees and agents harmless against and from any and all damages claims, and any and all loss, liability, cost or expense occasioned by any negligent or intentional acts or omission of Grantee in the construction, maintenance, operation or repair of Grantee's property in any use thereof; except such claims, loss, liability, cost or expense which may result from the negligent acts or omissions of the City. Grantee shall comply with any present or future charter provisions, ordinances, rules or regulations of the City relating to the manner of occupation or use, or to the repair or improvement of said streets.

- (b) Grantee shall maintain automobile, comprehensive general liability and property damage insurance that protects Grantee and the City, as well as the City's officers, agents and employees, from the claims referred to in Section 6. The insurance shall provide coverage as follows: combined single limit of not less than \$1,000,000 for each occurrence and \$2,000,000 annual aggregate. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees.
- (c) The insurance policy shall provide the insurance shall not be cancelled or materially altered without 30 days prior written notice first being given to the City. If the insurance is cancelled or materially altered within the term of this Franchise, Grantee shall provide a replacement policy with the same terms. Grantee shall maintain continuous uninterrupted coverage, in the terms and amounts required, upon and after the effective date of this Franchise and shall require Grantee's insurance carrier to provide proof of such insurance to City.

Section 8. Grantee shall have the right and privilege of trimming all trees which overhang said streets to prevent the branches or limbs or other parts of such trees from interfering with Grantee's electric facilities. Such trimming shall be done, in such a manner and to such an extent as recommended by the NESC and the Oregon PUC. Nothing contained in this Section shall prevent Grantee, when necessary and with the approval of the owner of the property on which they may be located and with the approval of the City from cutting down and removing any trees which overhang said streets.

Section 9.

- (a) Grantee shall pay to the City a franchise fee or charge equal to five percent (5%) of Grantee's gross operating revenue as the same is defined herein. Grantee and City agree to renegotiate the franchise fee every seven (7) years during the term of this agreement. Either party may request such review by making the request in writing to the other party not more than 90 days and not less than 30 days prior to end of each seven (7) year period measured from the effective date of this agreement. If after reasonable negotiations the parties cannot reach agreement regarding the franchise fee, either party can terminate this agreement on 90 days notice.
- (b) For purposes herein, "gross operating revenue", shall mean Grantee's gross revenues from the sale and use of electricity and electric service within the corporate limits of the City and including revenue from the use, rental or lease of operating facilities of Grantee relating to the sale or use of electricity, other than revenues derived from business done with the government of the United States or any agency thereof and after deducting any amounts paid by Grantee to the United States or to the State of Oregon as excise, occupation, or to the state of Oregon as excise occupation, or business taxes upon the sale or distribution of electric service in the City. At the election of Grantee, Grantee may also deduct uncollectible accounts of customers within the City from gross operating revenue.
- (c) The franchise fee shall be paid monthly on or before the 20th of each month during the term hereof, and shall be computed upon the gross operating revenue accruing during the previous calendar month or portion thereof. Grantee shall furnish to City with each payment of compensation required by this section, a statement showing the amount of gross revenue for the period covered by the payment. The compensation for the period covered by this statement shall be computed on the basis of the reported gross revenue. If Grantee fails to pay the entire amount of compensation due the City through error or otherwise, the difference due the City shall be paid by Grantee within 30 days from discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise shall be offset against the next payment due from Grantee.

- (d) For the term of the Franchise, Grantee shall keep books of financial accounts of the sale and use of electricity and electric service within the corporate limits of the City of Prineville. Grantee shall produce the books of financial accounts mentioned above for inspection by the City at any time during normal business hours.
- (e) The Grantee and the City will conduct an annual reconciliation of data used to record the Franchise Fees subject to the terms of this Agreement. The Grantee and the City will mutually exchange the data necessary to perform the annual reconciliation. Any discrepancies in the reconciliation shall be resolved between the parties and become conclusive and binding. The Grantee and the City will each pay its own expense related to performing the annual reconciliation.
- (f) City shall have the right to have an audit made of Grantee's books and records used to determine Grantee's gross operating revenue. If the franchise fee for the period of the audit is found to be incorrect to an extent of more than 5% over the franchise fee paid by Grantee to City, Grantee shall pay for the audit; otherwise, City shall pay for the audit. Grantee shall promptly pay to City any deficiency or City shall immediately issue a credit to Grantee for any over payment, as the case may be, which is established by the audit. Any credit issued to Grantee shall be applied toward the next franchise fee payment payable by Grantee to City. If there are no further franchise fee payments owed by Grantee to City, City shall promptly pay Grantee the amount of the over payment.
- (g) Acceptance of any payment due by either party under this section shall not be deemed as an accord that the amount paid is the correct amount, nor shall any acceptance of payment be construed as a release of any claim the City or Grantee may have for additional funds or as a waiver by the City or Grantee of any breach of this franchise.
- (h) Notwithstanding any provision to the contrary, at any time during the term of this franchise, the City may elect to increase the franchise fee amount as it may then be allowed by state law. The City shall provide Grantee with prior written notice of such increase following adoption of the change in percentage by the City. The increase shall be effective one year after City has provided such written notice to Grantee.
- (i) The franchise fee shall not be in addition to any other license, occupation, franchise, or excise taxes or charges which might otherwise be levied or collected by the City from Grantee with the respect to Grantee's electric business or the exercise of this franchise within the corporate limits of the City and the amount due the City under any such other license, occupation, franchise, or excise taxes or other charges for corresponding periods shall be reduced by deducting therefrom the amount of said franchise fee paid hereunder.

Section 10. Grantee hereby agrees to comply with all City ordinances relating to the conduct of Grantee's business. Grantee shall be in default of this franchise if it fails to comply with any term or condition or fulfill any obligation of the franchise within 30 days after written notice by the city specifying the nature of the default with reasonable particularity. If the default is or such a nature that it cannot be completely remedied within the 30-day period, this provision shall be complied with if Grantee begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. If Grantee is in default of this franchise, the City may revoke this franchise whereupon all rights of Grantee shall immediately be divested without a further act upon the part of Grantor.

Section 11. Grantee shall not transfer or assign any rights under this franchise to another entity, except transfers and assignments to affiliates or subsidiaries of Grantee, which assume all of Grantee's obligations hereunder, unless the City shall first give its approval in writing, which approval shall not be

unreasonably withheld, conditioned, or delayed. Any assignment of this franchise, whether voluntary by operation of law, or under due process of law, shall carry with it to and impose upon the assignee the duty an obligation to perform each and every obligation of the Grantee hereunder from the date of assignment as though such assignee had originally been named as Grantee hereunder.

Section 12. The parties agree that during the term of this Franchise Ordinance they shall make good faith efforts to resolve any disputes through negotiation.

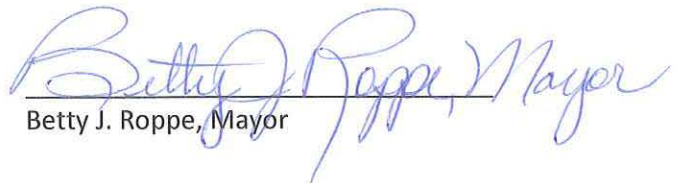
Section 13. Grantee shall have the continued right to use the streets in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise provided the City and Grantee are in the process of negotiating an extension or replacement Franchise.

Section 14. Neither the City nor Grantee shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

Section 15. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or constitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

Section 16. Prior to May 10, 2012, Grantee shall file an unqualified written acceptance of this Ordinance with the city Recorder, otherwise the Ordinance and the rights granted herein shall be null and void.

Passed by the City Council and approved by the Mayor of the City of Prineville, Oregon, this 10th day of April, 2012.


Betty J. Roppe, Mayor

ATTEST:


Lisa Morgan, City Recorder

Accepted by :

David D. Markham, President/CEO
Central Electric Cooperative, Inc. Franchisee

Date