



Location: City Hall – Council Chambers
Date: January 11, 2022
Time: 6:00 PM

City Council Meeting Agenda

Mayor Jason Beebe, Council Members Steve Uffelman, Janet Hutchison, Patricia Jungmann, Gail Merritt, Jeff Papke, Raymond Law and City Manager Steve Forrester
ATTEND TELEPHONICALLY BY CALLING 346-248-7799 Meeting ID: 947 5839 2608 Passcode: 123456

Call to Order

Flag Salute

1. Mayor's State of the City Address - Mayor Beebe

Additions to Agenda

Consent Agenda

- [2.](#) Regular Meeting Brief 12-14-2021

Visitors, Appearances and Requests

Council Presentations

3. Crook County Foundation Update - Brandi Ebner / Tom Jay

Council Business

- [4.](#) Intent to Award Solar Field Fence Project - Mike Kasberger / Eric Klann
- [5.](#) Council Committee Appointments Annual Review - Mayor Beebe

Staff Reports and Requests

6. City Manager's Report - Steve Forrester
- [7.](#) Combs Flat Road Extension/Irrigation Modernization Project

Committee Reports

Ordinances

- [8.](#) Ordinance No. 1273 - Granting OTC a Telecommunications Franchise (**FIRST PRESENTATION**) - Jered Reid

Resolutions

Visitors, Appearances and Requests

Adjourn

9. Executive Session Pursuant to ORS 192.660 (2)(f) - To consider information or records that are exempt from disclosure by law, including written advise from attorney.

Agenda items maybe added or removed as necessary after publication deadline





CITY OF PRINEVILLE
Regular Meeting Brief
387 NE Third Street – Prineville, OR 97754
541.447.5627 ph 541-447-5628 fax

Full Meeting Recordings Available at:
<http://cityofprineville.com/meetings/>

City Council Meeting Brief
December 14, 2021

Council Members Present:

Patricia Jungmann
Steve Uffelman
Janet Hutchison
Gail Merritt

Jason Beebe
Jeff Papke
Ray Law

Council Members Absent

None.

Additions to the Agenda

None.

Consent Agenda

1. Regular Meeting Brief 11-9-2021
2. Planning Commission Re-Appointments
3. Terry's Jewelry Second Hand License

Councilor Hutchison made a motion to approve consent agenda as presented. Motion seconded. No discussion on motion. Motion carried.

Visitors, Appearances and Requests:

No one came forward.

4. **Retirement Recognitions** – Scott Smith & Sgt. James Peterson

Eric Klann, City Engineer thanked Scott Smith for his 34 years of dedication and recapped his 15 years of working with Mr. Smith. Mr. Klann talked about the great condition of the street department now.

Steve Forrester, City Manager talked about Mr. Smith being a great representative for the city and the relationships Mr. Smith developed with other agencies.

Mr. Forrester presented Mr. Smith with his award.

Mr. Forrester went to Sgt. Peterson and complimented him on being instrumental in moving the police department and that the administrative side of things are in the best condition they have ever been.

Captain Seymour congratulated Sgt. James Peterson on his 13 years of service with the police department and provided a summary of his different roles in his career. Captain Seymour talked about the nick names that had been given to Sgt. Peterson such as Popeye and Milk Bone and the meaning behind them.

Captain Seymour went through Sgt. Peterson's many accomplishments and all of his hard work.

Sgt. Peterson talked about himself wanting to become a cop at 40 years old and all of the cool things he has been able to do while becoming a part of the community.

Captain Seymour presented Sgt. Peterson with his award

Mayor Beebe thanked both gentlemen for the jobs they have done for the city.

Councilor Merritt thanked both for everything and that we have some fine men retiring.

Councilor Papke talked about the dedication of both men and thanked them for doing whatever it took to do the job.

Council Presentations

None.

Council Business

5. First Monday in January Meeting Discussion – Steve Forrester / Jered Reid

Jered Reid, City Attorney provided the background information and purpose of the first Monday meeting in January. This meeting was probably initially set up to swear new councilors into office after an election year. There is not any pressing business that would need to happen at this meeting.

Councilor Law made a motion to cancel the first Monday in January meeting. Motion seconded. No discussion on motion. All in favor, motion carried.

Staff Reports and Requests:**6. City Manager's Report**– Steve Forrester

Mr. Forrester covered the highlights of his Manager's Report and went through each department.

There were no questions or comments.

7. Railroad Update – Matt Wiederholt

Matt Wiederholt, Railroad Manager provided a briefing on the Madras Highway bridge accident where a motorhome crashed into the bridge.

Mr. Wiederholt gave overview on who is involved in the assessments following and why, stating that Rail Star engineering has been on board with us for about 7years. Rail Star were the first call made when the RV hit the bridge and took about 48 hours to inspect to say that we can continue to use with reduced speed and weight and are still able to serve our customers. A scope of work is being put together. No structural damage to concrete pillars but it did expose it and needs to be sealed. The bridge will have to be lifted and then moved 1.5 inches. Our bridge is one of three hit in the North West right now. Not many contractors are able to do this type of work. Hoping to get this done sooner than later. We are waiting for the estimate and are kind of at a standstill until then.

Committee Reports

Councilor Uffelman reported that Community Renewable Energy (CREA) met and he was elected to the board for another two year term. CREA is currently reviewing OR Fish and wildlife, and dual land use on energy production. The League of Oregon Cities (LOC) board of directors had last meeting of the year last week. Primary discussion was about a membership increase of 5%. The HB2021 study committee had their initial meeting and has a project that has to be wrapped up. They also talked about possible renewable energy projects that communities will be looking at in the future.

There were no other reports.

Ordinances:**8. Ordinance No. 1271 – Adopting Changes to Prineville Code Chapter 30 (SECOND PRESENTATION)** Jered Reid / Councilor Papke

Mr. Reid explained that this was voted on and approved at the last meeting. The copy that is in the packet tonight is the clean version. Everything else is the same.

There were no discussions.

Councilor Papke made a motion to approve the second presentation of Ordinance No. 1271. Motion seconded. No discussion on motion. All in favor, motion carried.

9. Ordinance No. 1272 – Amending Chapter 32 of the Prineville Code – Josh Smith

Josh Smith, Planning Director presented the staff report and went through the three recommended changes adding this is to re-organize the format and make this code more readable.

Discussions continued regarding should vs. shall language, much changing since the code was first adopted, and wanting to see a council member appointed to the interview committee for potential commission members.

Jered Reid, City Attorney explained that this did not go to the Council Governance Committee because it is planning related, however it certainly could be referred to the Council Governance Committee for review and added that the Planning Commission has had a lot of struggles getting a full commission.

Discussions continued regarding more than two of the same profession serving, council having a better understanding of what the Planning Commission does, quorums, and the Council Governance Committee reviewing this ordinance.

Councilor Merritt explained she would like to see the Council Governance Committee review this since there were so many questions.

Councilor Uffelman made motion to refer Ordinance No. 1272 to the Governance Committee. Motion seconded. Discussion on motion regarding goal for when they would like it to come back. Mr. Smith said it would be nice to have this reviewed sometime in January. All in favor, motion carried.

Resolutions:

10. Resolution No. 1509 – Approving an Extension and Amendment to Public Transportation Agreement with COIC – Jered Reid

Mr. Reid provided background information on agreement, the original agreement and joint procurement process with Madras and other Central Oregon cities. This extends agreement for two years and the amendment is for a change in original grant language.

There were no questions.

Councilor Merritt made motion to approve Resolution No. 1509. Motion seconded. No discussion on motion. All in favor, motion carried.

11. Resolution No. 1510 – Approving Amendment No. 1 to Chip Seal Project IGA with Crook County – Scott Smith / Justin Severance

Justin Severance, Street Supervisor presented the staff report. Scott Smith added that the road master is willing to extend the agreement due to material shortages.

There were discussions regarding how far the project extends on South Main.

Councilor Hutchison made motion to approve Resolution No. 1510. Motion seconded. No discussion on motion. All in favor, motion carried.

Adjourn

Councilor Papke made a motion to adjourn the meeting. Motion seconded. No discussion on motion. All in favor, motion carried.

Meeting adjourned at 6:57 P.M.

Motions and Outcomes:

Motion:	Outcome	Beebe	Hutchison	Jungmann	Law	Merritt	Papke	Uffelman
Consent Agenda	PASSED	Y	Y	Y	Y	Y	Y	Y
Motion to cancel the first Monday in January meeting.	PASSED	Y	Y	Y	Y	Y	Y	Y
Ordinance No. 1271 – Adopting Changes to Prineville Code Chapter 30 (SECOND PRESENTATION)	PASSED	Y	Y	Y	Y	Y	Y	Y
Motion to refer Ordinance No. 1272 to the Governance Committee.	PASSED	Y	Y	Y	Y	Y	Y	Y
Resolution No. 1509 – Approving an Extension and Amendment to Public Transportation Agreement with COIC	PASSED	Y	Y	Y	y	Y	Y	Y
Resolution No. 1510 – Approving Amendment No. 1 to Chip Seal Project IGA with Crook County	PASSED	Y	Y	Y	Y	Y	Y	Y
Adjourn Meeting	PASSED	Y	Y	Y	Y	Y	Y	Y

Public Records Disclosure

Under the Oregon public records law, all meeting information, agenda packets, ordinances, resolutions, audio and meeting briefs are available at the following URL:

<https://www.cityofprineville.com/meetings> .



STAFF REPORT

MEETING DATE: 1/6/2022

PREPARED BY: Lori Ontko

SECTION: Council Business

DEPARTMENT: Public Works

CITY GOAL: Fiscal Responsibility, Provide Quality Municipal Service & Programs

SUBJECT: Intent to Award Solar Field Fence Project to Mike's Fence Center

REASON FOR CONSIDERATION:

Solar Field Fence Installation Project off of O'Neil Highway at Treatment Plant.

BACKGROUND:

A Solar Field has been installed at the Treatment Plant on O'Neil Highway per Resolution 1422 Solar Site Lease Agreement. The City is required to put a fence around the Solar Field per National Electric Code (NEC) 110.31 (D). This request is for the approval of the Intent to Award contract for installation of the Solar Field Fence Project.

FISCAL IMPACT:

We received bids on Thursday, January 6, 2022 and results are as follows:

Mike's Fence Center	\$118,800.00
Redmond Fencing and Pole Structure	\$132,828.88
Excel Northwest LLC.	\$163,980.00

RECOMMENDATION:

Staff recommends Council approve the Intent to award the **Solar Field Fence Project to Mike's Fence Center** in the amount of **\$118,800.00**

Council Committee Appointments - 2021

Committee Name	Facilitated By	Committee Type	Meeting Times	Appointed By	City Members	Comments
Air Quality Committee	City	AD Hoc	Monthly - Thursday 1 to 2PM or 11 AM to Noon	City	Janet Hutchison, CCF&R, County, DEQ, BLM, USDA, Citizens	
Central Oregon Intergovernmental Council (COIC)	COIC	Permanent	Monthly - 1st Thursday 5:30 PM - Redmond COIC	Mayor	Primary : Gail Merritt, Alternate: Jeff Papke	
Crooked River Watershed	Crooked River Watershed	Permanent	Monthly - 2nd Thursday 6-9 PM	Mayor	Josh Smith Jason Beebe	
Crook County Community Foundation (CCF)	CCF	Permanent	Monthly -3rd Thursday 7:30-8:30 AM	Mayor	Ray Law	
Central Oregon Cities Organization (COCO)	COCO	Permanent	Monthly - 3rd Monday - Redmond City Hall 11:30 AM	Mayor	Primary: Jason Beebe Steve Forrester	
Central Oregon Area Commission on Transportation (COACT)	COACT	Permanent	Every Other Month March, May, August & Nov	Mayor	Steve Uffelman(Primary)/ Ray Law (Alternate) Steve Forrester	
Crook County School District Facilities	School District	AD Hoc	As needed	Mayor	Steve Forrester Jeff Papke	As needed
Deschutes Water Alliance (DWA)	DWA	Permanent	As needed	Mayor	Eric Klann	As needed
Economic Development of Central Oregon Boad (EDCO)	EDCO	Permanent	Monthly - 2nd Thursday 8:30-10:30 AM	Mayor	City Manager Jason Beebe	Quarterly from EDCO
Habitat Conservation Plan - Fish Re-introduction (HCP)	COIC/DBBC	AD Hoc	As needed	Mayor	Jason Beebe Eric Klann	
Crook County Human Services Committee	County	Permanent	Monthly - 2nd Tuesday 4-5:30 PM	Mayor	Janet Hutchison	

Committee Name	Facilitated By	Committee Type	Meeting Times	Appointed By	City Members	Comments
Finance Committee	City	Permanent	Quarterly or as needed	Mayor	Janet Hutchison Jason Beebe Gail Merritt Liz Schuette Andy Parks City Manager	Quarterly from Finance Director
Public Works Committee	City	Permanent	As needed	Mayor	Janet Hutchison Jason Beebe City Manager	As needed
Public Safety Funding Committee	City	Permanent	As needed	Mayor	City Manager Chief of Police Patricia Jungmann Steve Uffelman Gail Merritt	As needed
Transportation Committee New Name as of Jan. 2017 formerly Traffic Safety Committee	City	Permanent	As needed	Mayor	Ray Law Planning Dept Police Dept Public Works Dept	As needed
Railroad Advisory Committee	City	Permanent	Monthly - 3rd Wednesday - Railroad Office - Noon		Steve Uffelman Matt Weiderholt Mike Ervin (Citizen/Industry Expert) Dustin Wilson (Rail User) Jerry Evans- (Citizen) Larry Gerke (Shipper Rep) City Manager (Ex- Officio)	

Committee Name	Facilitated By	Committee Type	Meeting Times	Appointed By	City Members	Comments
Local Intergovernmental Committee	City	Permanent	January, March, May, July, Sept, Nov	Mayor	Jason Beebe School District Superintendent County Court Rep Parks & Rec Chamber of Commerce City Manager Fire Dept / Police Dept	
Solid Waste Advisory Committee (SWAC)	Republic Disposal	AD Hoc	Quarterly	Mayor	Jeff Papke Eric Klann	As needed (new committee as of 2011)
Downtown Revitalization Committee	City	TBD	TBD	Mayor	City Staff Reps - Josh Smith /Casey Kaiser Chamber of Commerce Patricia Jungmann Various Downtown Business Owners and citizens	
Chamber of Commerce Board	Chamber			Mayor	Ray Law	
Barnes Butte Focus Committee New Name as of 2017 (formerly Iron Horse Development Committee) formerly Sports Complex Committee	CCF/City/Committee	AD Hoc	TBD	Mayor for City Reps	Eric Klann Gail Merritt Jason Beebe Janet Hutchison	OVER 30 COMMUNITY MEMBERS
Franchise Fee Committee 10/9/2014	City	AD Hoc	TBD	Mayor/Steve F.	Ray Law Steve Forrester	
Neighbor Impact	Scott Cooper			Mayor	Patricia Jungmann	
Council Governance Committee	City	Permanent	As needed	Mayor	Patricia Jungmann Jason Beebe Jeff Papke - Chair	
County Natural Resource Committee	County	Permanent		Mayor	Ray Law	
Ochoco Forrest Collaborative Last Updated: 1/26/2021	OFC	Permanent		Mayor	Janet Hutchison	

**** PLEASE NOTE, ANY COUNCIL MEMBER IS WELCOME TO VISIT ANY OF THESE COMMITTEE GROUPS WITH ADVANCED NOTICE TO AVOID A QUORUM ****



Barnes Butte Canal Piping Opportunity

JANUARY 11, 2022

Barnes Butte Canal



Barnes Butte Canal



Barnes Butte Canal

- ▶ OID may have the opportunity to pipe the Barnes Butte Main Canal
 - ▶ Improves Public Safety
 - ▶ Supports the construction of the Combs Flat Extension
 - ▶ Significant Water Savings
 - ▶ Increase in housing
 - ▶ Cost Savings
 - ▶ Reduces two to three bridges at \$2 million each

Barnes Butte Canal

- ▶ Estimated Cost to Pipe the Canal = \$6.4 million
 - ▶ PL566 funds, Feb 2022 = \$4.8 million (75%)
 - ▶ 25% match (\$1.6 million) needed
- ▶ Staff would like to identify funding (grants) and in-kind opportunities to move this project forward
- ▶ Questions?



STAFF REPORT

MEETING DATE: 1/11/2022

PREPARED BY: Eric Klann

SECTION:

DEPARTMENT: Public Works

CITY GOAL(S): Position the City for the future, Community safety

SUBJECT: Combs Flat Road Extension/Irrigation Modernization Project

REASON FOR CONSIDERATION: Ochoco Irrigation District (OID) seeks to install buried pipeline in place of the current open canal. Piping the canal provides many benefits which are listed below. A portion of the project, referred to as the Ironhorse section, is in the area of the Combs Flat Rd. extension. The estimated cost for this portion of the project is approximately \$6.4 million with a majority of the funding expected to come from Congressionally Directed Spending dollars contained in appropriations legislation. The legislation will be addressed by Congress, likely sometime in February of 2022. If passed, it will provide \$4.8 million (75%) for the project and requires a 25% match of approximately \$1.6 million. OID has approached the City about potentially providing the 25% match, which may come from a combination of in-kind and cash contributions, for the reasons/benefits listed below.

BACKGROUND: Ochoco Irrigation District (OID) is completing a major infrastructure modernization project that seeks to improve water conservation and water delivery reliability for the district through the installation of 16.8 miles of buried pipeline, installation of four new pump stations and associated pipe, and canal improvements along 15.2 miles of canal where needed. The Combs Flat Road extension may be done all or partially in conjunction with the Ironhorse portion of the irrigation modernization project. Completing these two projects in parallel, which involves piping and realignment of the current canal, provides cost savings for both OID and the City. Cost savings for OID will result from a reduction in the amount of pipe required and for the City approximately \$4 million will be saved through the mitigation of two bridges. Additionally, completing the projects in parallel creates the opportunity for the City to contribute the in-kind and/or cash match required for OID's grant funding.

The projects will provide a host of benefits including:

1. Improved public safety

- Eliminates risks from open canals such as injury, car accidents, drowning deaths
- Eliminates risk of canal breaching events
- Reduces traffic at key intersections

- Creates safe routes to schools & services

2. Improved Transportation Infrastructure

- Est. 10% reduction in highway travel- provides secondary route to 3rd Street for businesses and residences located to the north
- Reduction in traffic on N. Main St. Reduces the dependence on N. Main as the only route into Prineville's commercial center for residents of the northern neighborhoods
- Improves conditions at N. Main St. and Peters Rd. intersection

3. Water savings/quality improvement

- Piping the Ironhorse section is necessary for OID to complete the McKay Switch, which will dedicate 11.2 CFS into McKay Creek to increase flow, lower water temperatures and improve fish passage, all while providing landowners with more reliable irrigation water.
- Adds capacity and resiliency for OID
- Reduces aquatic herbicide application
- Piping the canal reduces water loss

4. Housing

- Realignment of current canal will increase number of home sites available
- Increases land values

5. Cost Savings

- Reduces OID's ongoing costs for canal cleaning, repair, herbicide, & inspection
- Two (2) bridges mitigated saving \$4 million

FISCAL IMPACT: Estimated \$1.6 million (25%) contribution from the City of Prineville in the form of cash and in-kind match.

RECOMMENDATION: Staff encourages council to consider directing staff to proceed with identifying funding and moving forward with providing the needed funds and in-kind match to complete the OID canal piping project and associated rough grading of the Combs Flat to Peters Rd. Extension.

RELATED DOCUMENT(S):

**CITY OF PRINEVILLE
ORDINANCE NO. 1273**

AN ORDINANCE GRANTING OREGON TELEPHONE CORPORATION THE RIGHT AND PRIVILEGE TO PROVIDE AND OPERATE A TELECOMMUNICATIONS BUSINESS WITHIN THE CITY OF PRINEVILLE, AND TO PLACE, ERECT, LAY, MAINTAIN, AND OPERATE IN, UPON, OVER, AND UNDER THE PUBLIC STREETS, ALLEYS, AVENUES, THOROUGHFARES, HIGHWAYS, PLACES, AND GROUNDS WITHIN THE CITY OF PRINEVILLE, POLES, WIRES, OPTICAL FIBER CABLE, AND OTHER APPLIANCES AND CONDUCTORS FOR ALL TELECOMMUNICATION PURPOSES; AND DECLARING AN EMERGENCY.

Whereas, Oregon Telephone Corporation, an Oregon corporation duly authorized to transact business in the state of Oregon (“OTC”), desires to provide and operate a telecommunications business within the City of Prineville (“City”); and

Whereas, by passage of this Ordinance (“Ordinance”), City will grant OTC the right and franchise to provide and operate a telecommunications business within City, subject to the terms and conditions contained in this Ordinance.

Now, Therefore, the people of the City of Prineville ordain as follows:

1. Grant of Franchise

1.1 Grant of Franchise. Subject to the terms and conditions contained in this Ordinance, City grants OTC the right and privilege to provide and operate a telecommunications business within City, and to place, erect, lay, maintain, and operate the Facilities (as defined below) in, upon, over, and under the Right-of-Ways (as defined below) for all telecommunications purposes. OTC will enter into, onto, and/or over the Right-of-Ways only for the purposes described in the immediately preceding sentence. For purposes of this Ordinance, the term “Right-of-Way(s)” means the public streets, alleys, avenues, thoroughfares, and highways located within City which are owned and/or controlled by City; “Facilities” means poles, wires, optical fiber wire, conductors, appliances, and related equipment OTC requires for telecommunication purposes.

1.2 Franchise Non-Exclusive. The franchise granted by City under this Ordinance is and will be construed as a non-exclusive franchise. City reserves the right to grant franchises, licenses, permits, and/or other similar rights to other persons to use and/or place, erect, lay, maintain, and/or operate in, on, over, and/or under the Right-of-Ways for similar or different purposes allowed under this Ordinance.

2. Location, Relocation, and Removal

2.1 Location of Facilities. For any new construction of Facilities concerning or impacting any new construction or development within City, OTC, with permission from City to occupy such Right-of-Way, will locate its Facilities underground; provided, however, OTC will

not be required to locate the Facilities underground if all other utilities in the subject Right-of-Way are located aboveground. Whenever utility services are located or relocated underground within a particular Right-of-Way, OTC will relocate its Facilities underground concurrently with the other affected utilities to minimize disruption of the Right-of-Way. Notwithstanding anything contained in this Ordinance to the contrary, (a) OTC will not be permitted to place, erect, lay, maintain, and/or operate its Facilities in, upon, over, and/or under any City park, trail, open space, and/or similar areas, and (b) City will have the authority to prescribe which Right-of-Ways will be used by OTC for the Facilities, and the location of the Facilities within the Right-of-Ways (whether such Facilities are newly constructed, replaced, repaired, or otherwise).

2.2 Relocation. Except in the case of an Emergency (as defined below), within thirty (30) days after City's request, OTC will, at OTC's cost and expense, remove, relocate, change, and/or alter the position or location of any Facilities within the Right-of-Way whenever City has determined that such removal, relocation, change, and/or alteration is necessary for any of the following reasons: (a) an Emergency; (b) the construction, repair, installation, and/or maintenance of any City or other public work or improvement; (c) the operations of City or other governmental entity in, on, and/or under the Right-of-Way requires the removal, relocation, change, and/or alteration of the Facilities; (d) the removal, relocation, change, and/or alteration is pursuant to a beautification, streetscape, and/or other City improvement project; and/or (e) public convenience and/or necessity (as reasonably determined by City). If any moving and/or relocation work is done for or at the request of a private individual, entity, developer, or development, the costs of such moving or relocation work will be borne by the requesting private individual, entity, developer, or development. Nothing contained in this Ordinance will be construed in any way to prevent City from sewerage, grading, planking, rocking, paving, repairing, altering, and/or improving any Right-of-Way in and/or on which the Facilities are or will be placed. If OTC is required to complete any removal, relocation, change, and/or alteration work under this Section 2.2 due to an Emergency, OTC will exercise its best efforts to complete such work promptly and without delay. City will not require OTC to remove or relocate its Facilities or vacate any Right-of-Way incidental to any public housing or renewal project under ORS Chapters 456 or 457 without reserving OTC's right therein or without requiring OTC to be compensated for the costs thereof.

2.3 Moving Aerials. Notwithstanding anything contained in this Ordinance to the contrary, whenever it becomes necessary to temporarily rearrange, remove, lower, and/or raise the Facilities to permit the passage of any building, machinery, and/or other object moved over any Right-of-Way (a "Temporary Adjustment"), OTC will perform the Temporary Adjustment within seventy-two (72) hours after OTC's receipt of written notice from the owner or contractor-mover desiring to move such building, machinery, and/or other object (the "Move Notice"). The Move Notice will (a) bear the approval of City, (b) detail the route of movement of the building, machinery, and/or object, (c) provide that the costs incurred by OTC in making the Temporary Adjustment will be borne by the contractor-mover, (d) provide that the contractor-mover will indemnify and hold OTC harmless for, from, and against any and all damages, claims, or causes of action caused directly or indirectly from the Temporary Adjustment, and (e) if required by OTC, will be accompanied by cash deposit or a good and sufficient bond to pay any and all such costs as estimated by OTC.

3. **Construction, Installation, and Operation**

3.1 Telecommunications Facilities. Facilities will not interfere with City's water mains, sewer mains, gas mains, and/or any other municipal uses of the Right-of-Way. Facilities will be erected and located so not to unreasonably interfere with the public's use of the Right-of-Way. OTC will maintain, at OTC's expense, all Facilities in good and safe order and condition. If OTC erects poles within the Right-of-Way for the purposes of providing and operating the telecommunications business, to the extent technically feasible and subject to reasonable conditions relating to safety, City may attach and maintain traffic signals, wires, control boxes, and similar items or equipment to the poles without cost or expense. City will compensate OTC for any make ready work needed in order to accommodate City's attachments to OTC's poles.

3.2 Construction Work. Except in the case of an Emergency, not less than fifteen (15) days prior to OTC commencing (or causing any person to commence) any Construction Work (as defined below) within City, OTC will (a) obtain all necessary construction permits concerning the proposed Construction Work, if any, (b) file with City maps, materials, documentation, a copy of the proposed work order, any necessary construction permits, and any other information or documentation requested by City concerning the proposed Construction Work (including, without limitation, a description of the location of any Facilities), and (c) obtain City's prior written consent to the proposed Construction Work. If OTC is required to perform any Construction Work due to the occurrence of an Emergency, OTC will be required to comply with Section 3.2(a), (b), and (c) as soon as practicable (but in no event later than five days after the occurrence of the Emergency). OTC will conduct its operations and will perform all Construction Work, including, without limitation, any excavation and/or restoration work, in accordance with the following: (a) all Construction Work will be completed in a safe manner, taking into account all applicable traffic control rules and procedures; (b) all Construction Work will be completed so as to minimize disruption and interference of the Right-of-Way; (c) all Construction Work will be completed in accordance with this Ordinance and all applicable Legal Regulations (as defined below); and (d) all Construction Work will be completed in a good workmanlike manner. City will be permitted to inspect any and all Construction Work and demand correction of any incomplete or improper Construction Work. For purposes of this Ordinance, the term "Construction Work" means any construction activity in, on, over, and/or under any Right-of-Way, including, without limitation, any excavation, maintenance, improvement, repair, extension, and/or relocation work; the term "Emergency" means a human created or natural event or circumstance that causes or threatens loss of life, injury to person or property, human suffering, or significant financial loss.

3.3 Restoration of Property. If OTC disturbs and/or causes another to disturb any Right-of-Way, OTC will, at OTC's cost and expense, replace or restore the Right-of-Way to the same condition to which the Right-of-Way existed prior to the disruption as soon as practicable and without unreasonable delay. If OTC fails to timely replace or restore any Right-of-Way to the same condition to which the Right-of-Way existed prior to the disruption, City may cause the replacement or restoration to be made at the expense of OTC. OTC will pay City any and all costs and expenses incurred by City to replace or restore the Right-of-Way immediately on City's demand.

4. **Franchise Fees**

4.1(a) Payment of Franchise Fees. In consideration of the rights, privileges, and franchise granted by City to OTC under this Ordinance, OTC will pay City a franchise fee equal to seven percent (7%) of OTC's Gross Revenues (as defined below). OTC will pay the Franchise Fee in quarterly installments, which quarterly installments will be due on or before the last day of the month immediately following the end of each calendar year quarter. Contemporaneously with each quarterly payment, OTC will file with City a sworn statement describing the total Gross Revenues OTC received during the immediately preceding quarter (the "Accounting Statement"). City's acceptance of any payments under this Section 4.1 will not constitute a waiver by City of any breach under this Ordinance. For purposes of this Section 4.1, the term "Gross Revenues" means any and all revenues OTC receives directly or indirectly from OTC's operations and/or delivery of services within City, less net uncollectibles, including, without limitation, revenues from the use, rental, and/or lease of the Facilities.

4.1(b) In the event OTC does not generate any Gross Revenue within the City's jurisdiction, OTC shall instead remit to the City on an annual basis, payable one (1) year in advance, \$2.50 per linear foot for those portions of OTC's cable that occupies City's public rights of way. This fee shall be payable to the City until such time that OTC begins to generate revenue within City at which time OTC shall then begin to remit franchise fees to the City in accordance with Section 4.1(a), with any amounts paid in advance pursuant with this Section prorated accordingly and applied to amounts subsequently owed under Section 4.1(a).

4.2 Inspection of Books and Records. On ten (10) days' advance written notice to OTC, City may review such OTC books, records, documentation, and/or information City reasonably determines necessary or appropriate to audit an Accounting Statement and/or ascertain OTC's compliance with this Ordinance. OTC will cooperate with City in conducting any inspection and/or audit and will correct any discrepancies affecting City's interest in a prompt and efficient manner. City will bear the cost of any audit provided irregularities of not more than five percent (5%) are found (if City discovers irregularities exceeding five percent (5%), OTC will bear the cost of City's audit). OTC will keep all its books, records, documentation, and/or information at its corporate headquarters. If OTC provides any books, records, and/or information to City that OTC reasonably believes to be confidential or proprietary, and OTC clearly and specifically identifies such books, records, and/or information as confidential or proprietary upon initial submission to City, City will take reasonable steps to protect the confidentiality of such books, records, and/or information subject to City's obligations under Oregon's Public Records Law, ORS 192.410-192.505. City will not be required to incur any costs to protect any confidential or proprietary books, records, and/or information, other than City's routine internal procedures for complying with Oregon's Public Records Law.

5. **Insurance; Indemnification**

5.1 Insurance. OTC, at its cost and expense, will obtain and keep in full force and effect during the term of this Ordinance the following insurance coverage and their respective minimum limits: (a) workers' compensation insurance within statutory limits; (b) employer's liability insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 in the

aggregate; (c) comprehensive general liability insurance with limits of not less than \$2,000,000 for bodily injury or death to each person, \$2,000,000 for property damage resulting from any one accident, and \$2,000,000 for all other types of liability; and (d) automobile liability insurance for all owned, non-owned, and hired vehicles that are or may be used by OTC and its employees with limits of \$1,000,000 for each person, \$2,000,000 for each accident. Each liability insurance policy OTC is required to obtain and maintain under this Section 5.1 will name City and its officers, employees, and agents as additional insureds. No cancellation, expiration, modification, or reduction in amount or scope of insurance coverage is permitted without providing City thirty (30) days' prior written notice. All insurance OTC is required to obtain and maintain under this Section 5.1 will be issued only by insurance companies licensed in Oregon. Prior to City's execution and acceptance of this Ordinance, and at any other time thereafter within ten (10) days after City's written request, OTC will provide City with certificates of insurance and endorsements evidencing OTC's compliance with this Section 5.1.

5.2 OTC Indemnification. OTC will defend, indemnify, and hold City, and each employee, officer, agent, contractor, and representative of City, harmless for, from, and against any and all claims, actions, proceedings, damages, liabilities, losses, and expenses of every kind, including, without limitation, attorney fees and costs, resulting from or arising out of, whether directly or indirectly, the following: (a) the acts or omissions of OTC and/or its directors, officers, shareholders, members, managers, employees, agents, representatives, contractors, and/or affiliates, whether such acts or omissions are authorized, allowed, or prohibited by this Ordinance; (b) damage, injury, or death to person or property caused directly or indirectly by OTC and/or its directors, officers, shareholders, members, managers, employees, agents, representatives, contractors, and/or affiliates; and/or (c) OTC's breach and/or failure to perform any OTC representation, warranty, covenant, and/or obligation under this Ordinance. OTC's indemnification obligations provided in this Section 5.2 will survive the termination of this Ordinance.

6. **Term of Franchise**

6.1 Term of Franchise. Unless sooner terminated or extended as provided in this Ordinance, this Ordinance (and the Franchise granted hereunder) will be in full force and effect for a period of five (5) years, commencing on first day of the month following acceptance of this Ordinance by OTC. Upon expiration of this Ordinance, OTC shall have the option to renew the Franchise granted pursuant to this Ordinance for one additional term of five (5) years. To exercise this option, OTC must make written application to City on or before 180 days prior to expiration and be in compliance with the terms of this Ordinance. The provisions of the Franchise renewal will be negotiated in good faith by City and OTC. Any renewal of the Franchise will be governed by and comply with the provisions of Section 626 of the Cable Act, as amended (11 U.S.C. § 546). This Ordinance may be terminated at any time by the mutual written agreement of City and OTC.

6.2 Termination for Cause. Notwithstanding anything contained in this Ordinance to the contrary, City may terminate this Ordinance (and the franchise granted hereunder) by notice to OTC on the occurrence of any of the following events (each an "Event of Default"): (a) OTC fails to comply with any applicable Legal Regulation; and/or (b) OTC breaches and/or otherwise fails to perform any OTC representation, warranty, covenant, and/or obligation contained in this Ordinance.

Prior to City’s termination of this Ordinance under this Section 6.2, City will provide OTC thirty (30) days’ prior written notice (the “OTC Default Notice”) specifying with reasonable particularity the Event of Default(s) City believes exist. Commencing from OTC’s receipt of the OTC Default Notice, OTC will have thirty (30) days to cure or remedy the Event of Default(s) (the “OTC Cure Period”); provided, however, if the nature of the default is such that it cannot be completely remedied or cured within the OTC Cure Period, there will not be a default by OTC under this Ordinance if OTC begins correction of the default within the OTC Cure Period and thereafter proceeds with reasonable diligence to effect the remedy as soon as practicable. Subject to the immediately preceding sentence, if OTC fails to cure or remedy the Event of Default(s) within the OTC Cure Period, City may terminate this Ordinance based on such Event of Default(s) and may pursue any and all rights and remedies available to City under this Ordinance and/or applicable law. Termination of this Ordinance by City will not constitute a waiver or termination of any rights, claims, and/or causes of action City may have against OTC.

6.3 City Default. No City act or omission will be considered a default under this Ordinance unless and until City has received thirty (30) days’ prior written notice from OTC specifying with reasonable particularity the nature of the default OTC believes exist (the “City Default Notice”). Commencing from City’s receipt of the City Default Notice, City will have thirty (30) days to cure or remedy the alleged default (the “City Cure Period”) before City will be deemed in default of this Ordinance; provided, however, if the nature of the default is such that it cannot be completely remedied or cured within the City Cure Period, there will not be a default by City under this Ordinance if City begins correction of the default within the City Cure Period and thereafter proceeds with reasonable diligence to effect the remedy as soon as practicable.

6.4 Remedies. If a party breaches or otherwise fails to perform any of its terms, covenants, conditions, and/or obligations under this Ordinance, the non-defaulting party may, in addition to any other remedy provided to the non-defaulting party under this Ordinance, pursue any and all remedies available to the non-defaulting party at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

7. **Miscellaneous**

7.1 Assignment or Transfer of Franchise. OTC will not assign or transfer in any manner whatsoever any interest in or to the franchise created by this Ordinance unless and until the following conditions are met: (a) the grantee, assignee, or transferee agrees in writing (in form and substance reasonably satisfactory to City) to assume and abide by the terms and conditions contained in this Ordinance; and (b) OTC provides City ninety (90) days’ prior written notice of the proposed assignment or transfer and City provides prior written consent of the proposed assignment or transfer, which consent City will not unreasonably withhold, condition, or delay, except that OTC may assign its interest in or to the franchise created by this Ordinance, to another entity that OTC owns or controls or to another person, as defined in Section 7.8, that OTC is owned or controlled by, by given written notice to the City of such assignment and confirms that the affiliate assignee agrees that it shall abide by the terms and conditions contained in this Ordinance. Subject to the terms and conditions contained in this Section 7.1, this Ordinance will be binding on the parties and their respective heirs, executors, administrators, successors, and assigns and will inure to their benefit. Any pledge or

hypothecation of corporate assets for the purposes of fulfilling corporate financing transactions in the ordinary course of business shall not be considered an assignment for the purposes of this section of the Ordinance.

7.2 Severability. Each provision contained in this Ordinance will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law.

7.3 Attorney Fees. With respect to any dispute relating to this Ordinance, or if a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Ordinance, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

7.4 Governing Law; Venue. This Ordinance is subject to any and all applicable federal, state, and local laws, rules, regulations, codes, and ordinances, including, without limitation, any City ordinances, standards, and regulations, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated (individually and collectively, the “Legal Regulation(s)”). Any action or proceeding arising out of or concerning this Ordinance will be litigated in courts located in Crook County, Oregon, or the United States District Court for the District of Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Crook County, Oregon, or the United States District Court for the District of Oregon.

7.5 Action by the Parties. In any action mandated or permitted by City or OTC under this Ordinance, such party will act in a reasonable, expeditious, and timely manner. Whenever the approval or consent of either City or OTC is required under this Ordinance, such consent will not be unreasonably withheld, conditioned, or delayed.

7.6 Compliance with Laws. OTC will comply with any and all applicable Legal Regulations, both generally and in connection with OTC’s performance of its obligations arising out of or under this Ordinance. The rights and privileges granted by City to OTC under this Ordinance extend only to the extent of City’s right or authority to grant a franchise to occupy and use the Right-of-Ways for the Facilities.

7.7 Notices. All notices or other communications required or permitted by this Ordinance must be in writing, must be delivered to the parties at the addresses set forth below, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax, or by a nationally recognized overnight delivery service, or at the end of the third business day after the date of deposit if

deposited in the United States mail, postage pre-paid, certified, return receipt requested.

To City:
City of Prineville
Attn: City Manager
387 NE Third Street
Prineville, Oregon 97754

To OTC:
Oregon Telephone Corporation
PO Box 609
Mount Vernon, OR 97865

with a copy to:
Jered Reid
35 SE C Street, Suite D
Madras, OR 97741
Fax: 541.475.1113

7.8 Person and Interpretation. For purposes of this Ordinance, the term “person” means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The words “include,” “includes,” and “including” are not limiting. The word “or” is not exclusive. Reference to “days” means calendar days, with any deadline falling on a day other than a business day being extended to the next business day.

7.9 Expenses. Notwithstanding anything contained in this Ordinance to the contrary, OTC will bear any and all fees, costs, and expenses incurred or arising out of OTC’s performance of its obligations under this Ordinance.

7.10 Entire Agreement. This Ordinance contains the entire agreement and understanding between the parties with respect to the subject matter of this Ordinance and contains all of the terms and conditions of the parties’ agreement and supersedes any other oral or written negotiations, discussions, representations, or agreements. OTC has not relied on any promises, statements, representations, or warranties except as set forth expressly in this Ordinance.

7.11 OTC Acceptance. Within thirty (30) days after City’s passage of this Ordinance, OTC will file with City the written acceptance attached hereto as Exhibit A (the “Acceptance”). If OTC fails to timely file the Acceptance with City, this franchise (and the rights granted to OTC herein) will be deemed null, void, and repealed by City in all respects without further act by City.

7.12 Corrections. This Ordinance may be corrected by order of City’s City Council to cure editorial and clerical errors.

7.13 Emergency Declaration. Passage of this Ordinance is deemed to be necessary for the immediate preservation of the peace, health, and safety of City’s citizens. Consequently, an emergency is hereby declared to exist. This Ordinance will be in full force and effect upon its passage by the City Council and approval of the Mayor.

Presented for the first time at a regular meeting of the City Council held on January _____, 2022, and the City Council finally enacted the foregoing ordinance this ____ day of January, 2022.

Rodney J. Beebe
Mayor

ATTEST:

Lisa Morgan, City Recorder

Exhibit A
Acceptance

The forgoing Ordinance No., adopted by the City of Prineville on, consisting of 10 pages, including this Exhibit A, is approved, accepted, and agreed upon by OTC.

Dated: _____, 2022

Oregon Telephone Corporation.
an Oregon Corporation

By:

Its: