



Location: City Hall – Council Chambers
Date: July 27, 2021
Time: 6:30 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

Call to Order

Flag Salute

Additions to Agenda

Consent Agenda

1. Regular Meeting Brief 7-13-2021
2. Authorizing Pay Out of Un-Used Vacation / Holiday Pay of CEO's 200 Hours

Visitors, Appearances and Requests

3. Deschutes Lab Presentation - Anthony Vivolo, CEO

Council Business

4. Exemption From Competitive Bidding - Krahl (**PUBLIC HEARING**) - Eric Klann
5. Ochoco Plaza Drive Jurisdiction Discussion - Scott Smith

Staff Reports and Requests

6. City Manager's Report - Steve Forrester
7. Meadow Lakes Update - Zach Lampert

Committee Reports

Ordinances

8. Ordinance No. 1267 - Grant an Electric Utility Franchise and General Utility Easement to Pacificorp (**SECOND PRESENTATION**) - Steve Forrester

Resolutions

9. Resolution No. 1501 - Authorizing Cooperative Agreement with Crook County Fairgrounds - Eric Klann

Visitors, Appearances and Requests

Adjourn

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
July 13, 2021

Council Members Present:

Jason Beebe
Patricia Jungmann
Gail Merritt
Ray Law
Steve Uffelman

Janet Hutchison
Jeff Papke

Council Members Absent

Additions to the Agenda

None.

Consent Agenda

1. Regular Meeting Brief 6-22-2021

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

Visitors, Appearances and Requests:

2. **Republic Disposal Update** – Susan Baker

Susan Baker, Municipal Manager provided an update explaining that it has been 17 months since they came into the community. Ms. Baker went through a power point presentation that highlighted activity since they acquired the disposal company.

Randy Stutzman, Finance Manager provided a financial recap and projections for 2021. They fell back from the original projection due to rising wages and fuel expenses. Recycling markets are showing an improvement.

There were no questions.

3. HORSES on the Ranch Presentation – Darcy Bedortha

Darcy Bedortha, Director provided Council with a handout explaining that HORSES is an acronym for Heal, Overcome, Reconnect, Strengthen, Educate and Support.

Ms. Bedortha provided a summary of the work and support programs that their organization provides to Veterans, young people and others impacted by trauma and the continuous training that they receive.

These types of programs are being recognized globally for being successful and added that they get referrals from counselors, the schools and online.

Public Appearances

Jerald Jackman, a Prineville resident talked about how he didn't know Council meetings were being held in person again, and stated that he will be attending all meetings in the future.

Council Business

None.

Staff Reports and Requests:

4. Supplemental Budget Clerical Correction – Liz Schuette / Lori Hooper

Lori Hooper, Accounting Manager presented the staff report explaining that no action is required from Council and they just have to inform Council in writing at the next regular council meeting per Oregon budget law, when the correction is made.

There were no questions.

5. Manager's Report – Steve Forrester

Mr. Forrester reported: the 10th and Main Street project is moving along and the paving at the funeral home parking lot should be completed by July 23rd. The Crooked River Round Up races are set to start. The EDCO annual luncheon is this Thursday.

Mr. Forrester presented Liz Schuette, retiring Finance Director with an Excellence Award for her years of service and developing award winning budgets.

There were no questions.

Committee Reports

Councilor Uffelmann provided a Community Renewable Energy (CREA) update and added that Oregon Department of Fish & Wildlife (ODF & W) keep shutting down projects.

There were no other committee reports.

Ordinances:

6. Ordinance No. 1265 – Amending Chapter 30, 90 & 153 of the Prineville Code for Compliance with ADA Language (SECOND PRESENTATION) – Josh Smith

Josh Smith, Planning Director explained that it is the same as the first presentation and there were no comments or concerns received.

There were no questions.

Councilor Hutchison made motion to approve Ordinance No 1265 for its second presentation. Motion seconded. No discussion on motion. All in favor, motion carried.

7. Ordinance No. 1266 – Amending Chapter 153 of the Code to Update Review Process for ADU’s and Partitions (SECOND PRESENTATION) – Josh Smith

Mr. Smith stated there were no changes or comments received since the first presentation.

Councilor Merritt made a motion to approve Ordinance No. 1266 for its second presentation. Motion seconded. No discussion on motion. All in favor, motion carried.

8. Ordinance No. 1267 – Granting an Electrical Utility Franchise and General Utility Easement to PacificCorp (FIRST PRESENTATION) – Steve Forrester

Mr. Forrester provided the background information.

Jered Reid, City Attorney added that the franchise agreement has been negotiated over the last several months in good faith and talked about the 4-1-21 effective date.

There were no questions.

Councilor Papke made a motion to approve Ordinance No 1267 for its first presentation. Motion seconded. No discussion on motion. All in favor, motion carried.

Resolutions:

9. Resolution No. 1498 – Authorizing the City to Enter Into an IGA with ODOT for Tom McCall Roundabout Artwork – Scott Smith

Scott Smith, Street Superintendent presented the staff report.

Councilor Uffelman asked if the County was participating in the maintenance financially.

Mr. Smith explained that as far as he knew the county would not be participating financially and since the construction of the roundabout it has always been the city that would be maintaining inside the roundabout.

There were no further questions.

Councilor Hutchison made a motion to approve Resolution No. 1498. Motion seconded. No discussion on motion. All in favor, motion carried.

10. Resolution No. 1499 – Declaring the Necessity and Intent to Appropriate Certain Described Real Property and Authorizing Epic Land Solutions Inc. to Negotiate for its Acquisition – Eric Klann / Scott Smith

Eric Klann, Public Works Director went through a power point that highlighted how the Transportation System Plan looks out twenty (20) years.

Discussions continued regarding residential development happening and the need for intersection improvements. There were several design methods researched, and possibilities for money sources and importance of being able to keep rail activity alive in that area.

Mr. Reid went through the process and acquisitions work.

Councilor Uffelman made a motion to approve Resolution No. 1499. Motion seconded. No discussion on motion. All in favor, motion carried.

Visitors Appearances and Requests:

Jerald Jackman came forward questioning the decisions Council made. Mayor Beebe explained that these decisions made were not just made, and it has taken several years to get to this point on some of them.

Liz Schuette came forward and thanked staff and council for all the years of working together.

No one else came forward.

Adjourn

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

Meeting adjourned at 7:40 P.M.

Motions and Outcomes:

Motion:	Outcome	Beebe	Hutchison	Jungmann	Law	Merritt	Papke	Uffelman
Consent Agenda	PASSED	Y	Y	Y	Y	Y	-	Y
Ordinance No. 1265 – Amending Chapter 30, 90 & 153 of the Prineville Code for Compliance with ADA Language (SECOND PRESENTATION)	PASSED	Y	Y	Y	Y	Y	Y	Y
Ordinance No. 1266 – Amending Chapter 153 of the Code to Update Review Process for ADU’s and Partitions (SECOND PRESENTATION)	PASSED	Y	Y	Y	Y	Y	Y	Y
Ordinance No. 1267 – Granting an Electrical Utility Franchise and General Utility Easement to PacificCorp (FIRST PRESENTATION)	PASSED	Y	Y	Y	Y	Y	Y	Y
Resolution No. 1498 – Authorizing the City to Enter Into an IGA with ODOT for Tom McCall Roundabout Artwork	PASSED	Y	Y	Y	Y	Y	Y	Y
Resolution No. 1499 – Declaring the Necessity and Intent to Appropriate Certain Described Real Property and Authorizing Epic Land Solutions Inc. to Negotiate for its Acquisition	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 documents referred to in this session are available at the City’s website. www.cityofprineville.com. An electronic copy of the meeting packet is available for download at www.cityofprineville.com/packets. A full recording of this meeting is available at www.cityofprineville.com/meetings



STAFF REPORT

MEETING DATE: 7/27/2021

PREPARED BY: Lisa Morgan

SECTION: Consent Agenda

DEPARTMENT: Administration

CITY GOAL: Fiscal Responsibility, Transparency and Effective Communication

SUBJECT: Authorizing Pay Out of City Manager's Vacation / Holiday Pay

REASON FOR CONSIDERATION:

This was discussed during the Council's annual evaluation of the City Manager on July 13, 2021.

BACKGROUND:

Policy No. 310 of the Employee Handbook, Section A.1(c) states: *If it is impossible to use vacation because of City's inability to provide vacation time off, such vacation time shall be paid at actual cash value.* Due to the City Manager being unable to utilize all of his vacation and holiday pay during the last Fiscal Year 2020-2021, it has capped out.

FISCAL IMPACT:

Vacation and holiday pay is accrued into a liability payroll account on a monthly basis. Vacation and holiday pay, along with other personnel expenses is taken into consideration for future liability during the budget process. Therefore, will not cause an additional fiscal impact other than what was approved in the budget.

RECOMMENDATION:

It is requested that 200 hours of the City Managers vacation / holiday pay incurred during the 2020-2021 fiscal year shall be paid to the City Manager.

Draft Findings Regarding Exemption from Competition for a Contract to Purchase Goods or Services

City Staff recommends that the Council make the following findings as their basis for approval if they approve exempting the contract for the purchase of 1800' of 48" High Density Poly Ethylene (HDPE) pipe by directly contracting with KRAH USA.

1. The nature of the contract for which the exemption is requested:
 - Contract for the purchase of goods.
2. The estimated contract price is \$171,900.00.
3. Findings to support the substantial costs savings, enhancement in quality or performance, or other public benefit anticipated by the exemption from competitive solicitation:
 - Pursuant to engineering reports, it is recommended that the City purchase a fully welded HDPE pipe for the proposed alignment of the replacement pipe on the Western boundary of Meadow Lakes Golf Course to try to avoid future leak propensity along the replacement area, especially within a heavily traveled public golf course. The proposed pipe alignment runs coincident with the golf cart path.
 - There are two primary options for HDPE replacement pipe. KRAH USA can provide pipe manufactured of re-pelletized (i.e., re-used HDPE 4710 resin from recycled, cleaned and reformed into manufacturing pellets) pipe and personnel to perform the welding for approximately 60% less than the cost of filed-welded solid-wall HDPE pipe. Furthermore, the normal cost for KRAH USA pipe is the same as the solid-wall pipe, therefore the City will realize a significant savings on this particular order, given the re-pelletizing approach.
 - The KRAH USA HDPE pipe is flexible, and will be suitable for installation in the revised pipe alignment along the edge of the golf course. Additionally, the KRAH USA pipe is a full 48" inside diameter, whereas 48" solid-wall HDPE would have less hydraulic capacity, since its inside diameter is about 45 inches.
 - The City Engineer has estimated it would take approximately three months to prepare the scope of work and other documents necessary to issue an invitation to bid, allow other contractors to prepare their bid, and to select the lowest bidder.
 - Additional costs to the City for preparing the documents to issue an invitation of bid would be eliminated.
4. Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or would otherwise

substantially promote the public interest in a manner that could not practically be realized by complying with the solicitation requirements that would otherwise be applicable:

- Based on the two options presented, directly contracting with KRAH USA is based on cost savings alone.
5. A description of the proposed alternative contracting methods to be employed:
 - Directly contracting with KRAH USA for the purchase of a 1800' of 48" HDPE pipe.
 6. The estimated date by which it would be necessary to let the contract is August 15, 2021.

ORDINANCE NO. 1267

**AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE AND
GENERAL UTILITY EASEMENT TO PACIFICORP**

Whereas, PacifiCorp, dba Pacific Power (“Franchisee”), is a regulated public utility that provides electric power and energy to the citizens of the City of Prineville (“City”) and other surrounding areas; and

Whereas, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the City; and

Whereas, the City desires to set forth the terms and conditions by which Franchisee shall use the public ways of the City;

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

Section 1. Definitions. Any term defined in the Prineville City Code and not in this Ordinance shall have the meaning provided by the Prineville City Code definition.

“Facilities” means Franchisee’s electrical transmission, distribution, and communication facilities, including lines, cables, conduit, poles, towers, wires, guys and anchors, vaults and boxes, transformers, fixtures, electric vehicle charging stations and other physical components of Franchisee’s electric power distribution system located within Right-of-Way or Public Place within the City by virtue of the rights granted under this Ordinance or any predecessor franchise agreement.

“Gross Revenues” means any revenue received from sources within the City limits by the Franchisee; including revenue from the use, rental or lease of operating facilities of the Franchisee and from the provisions of services by the Franchisee.

“Right-of-Way” means property owned by the City, or dedicated to the public or the City, for transportation purposes, including public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, bridges, and places used or intended to be used by the general public for travel as the same now or may hereafter exist.

“Public Place” includes any City-owned property that is open to the public and that is not a Right-of-Way, public square, or park.

Section 2. Grant of Authority. City grants to Franchisee the right to construct, install, maintain, repair, replace, upgrade and operate Facilities over, in, on, and under (i) the present and future Right-of-Way and (ii) existing Public Places currently in use by Franchisee, in each case, for the purpose of providing electric power utility service on the terms stated in this Ordinance. For the avoidance of doubt, except as may otherwise be agreed by Franchisee and

City, Franchisee may not place new Facilities in any Public Places that are not in use by Franchisee as of the effective date of this Franchise. This franchise is not exclusive, and City reserves the right to grant a similar franchise to any other person or entity. This Franchise is subject to prior rights, interests, agreements, City codes, permits, easements or licenses granted by the City, and to the City's and public's right to use and administer rights-of-way.

Section 3. Compliance with Laws, Rules, and Regulations. Franchisee shall comply with all City laws and regulations (including the Prineville City Code, other provisions or revisions of the Prineville City Code, and City ordinances, regulations, and standards and specifications and as directed by the City Engineer in accordance with the Prineville City Code) in constructing, installing, maintaining, repairing, replacing, upgrading, and operating its Facilities in the Right-of-Way and in Public Places for which Franchisee is granted permission to occupy under this Ordinance. Permits must be obtained prior to installation or construction of Facilities in Public Places. Where protection of the public health or safety or outage restoration requires emergency work to be performed, Franchisee may undertake work immediately to repair a break or restore service without a permit but must inform the City as soon as practical after the work is commenced, and, at the request of City, Franchisee shall submit documentation and/or a permit application in such form as is reasonably satisfactory to City describing the emergency work so performed. All Facilities shall be installed and at all times maintained by Franchisee in accordance with the National Electrical Safety Code, ANSI Standard C2 and any electric utility industry standards. The precise location of lines shall be determined through the permitting process.

Section 4. Franchisee Liability, Indemnification of City and Insurance.

A. Franchisee shall conduct its operations under this Franchise, including construction, installation, maintenance, repair, replacement, upgrade and operation of its Facilities, in a safe and workmanlike manner and all lawful governmental regulations.

B. Franchisee shall defend, indemnify and hold the City, its officers, agents, employees and volunteers harmless against all liability, claims, losses, demands, suits, fees and judgments (collectively known as "claims") that may be based on, or arise out of damage or injury (including death) to persons or property caused by or resulting from any wrongful or negligent act or omission of Franchisee, its agents or employees in exercising its rights and obligations under this Ordinance. This indemnification required shall not apply to claims to the extent caused by the negligence or willful misconduct of the City, its officers, agents, employees, and volunteers. Franchisee agrees that it is not an agent of the City and is not entitled to indemnification and defense under ORS 30.285 and ORS 30.287.

C. Franchisee shall purchase and maintain at Franchisee's expense, Commercial General Liability and Commercial Automobile insurance covering bodily injury and property damage in an amount of \$5 million per occurrence and \$10 million in the aggregate. The insurance policy obtained by Franchisee shall be primary and non-contributory. Franchisee shall remain fully responsible for any claims resulting from negligence or intentional misconduct of Franchisee or its subcontractors and their officials, agents and employees in performance of this Ordinance,

even if not covered by, or in excess insurance limits. This insurance requirement may be met in part by self-insurance.

D. Franchisee shall obtain and maintain Workers' Compensation insurance required by ORS chapter 656. Franchisee shall ensure that each of its contractors obtains and maintains workers' compensation insurance and obtains proof of the coverage before performing work.

E. Coverages provided by Franchisee must be underwritten by an insurance company authorized to do business in the state of Oregon and with a Best's rating of A-VII or higher.

F. As evidence of the insurance coverage required by this Franchise, Franchisee shall provide proof of coverage required by acceptable Certificate of Insurance and Endorsement from the carrier(s). The Certificate and Endorsement shall provide that there will be no cancellation, termination, or reduction in limits of the insurance coverage without a minimum 30-day written notice to the City, except if such cancellation is due to failure to pay premiums in which case 10 days' prior written notice of cancellation is given to City. The Certificate and Endorsement shall also state the deductible or self-insured retention level. This Ordinance shall not be in effect until the required certificates and signed endorsements have been received and approved by City. Renewal certificates and endorsements will be sent to City prior to coverage expiration. The City may terminate the Franchise for failure to maintain the required insurance.

G. Franchisee grants Waiver of Subrogation to the City, its officers, agents, employees and volunteers for any claims arising out of Franchisee's work or service. Further, Franchisee agrees that in the event of loss due to any of the risks for which it has agreed to provide insurance recovery shall be solely with its insurance carrier, and also grants to City on behalf of any insurer providing coverage to either Franchisee or City with respect to the work or services of Franchisee a waiver of any right to subrogation which any insurer or subcontractor may acquire against City by virtue of the payment of any loss under the insurance coverage.

Section 5. Construction and Conditions on Right-of-Way Occupancy

A. Use. Except in the case of emergency work described in Section 3 above, all work involving street or sidewalk cuts or protracted lane closures in the City Right-of-Way will require a permit prior to any work being started, which permit may not be unreasonably withheld, conditioned, or delayed, and will require a traffic plan that is fully compliant with the City of Prineville Design Standards and Specifications.

B. Reserved.

C. Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing by Franchisee, Franchisee shall, at its own cost and expense and in compliance with the City's pavement restoration policy and standards and specifications, promptly replace and restore the disturbed paving, sidewalk, driveway, landscaping or surface of any street or alley, as applicable, the condition it was in prior to the disturbance. Franchisee warrants all restoration work for a period of one-year from completion of the work. If Franchisee fails to make restoration as required by this section or if the restoration fails within the one-year warranty

period, City may, if Franchisee fails to make necessary repairs within a reasonable timeframe following written notice from City to Franchisee, cause the repairs to be made at the expense of Franchisee. If Franchisee fails to reimburse the City for any costs incurred under this section within 45 days of demand for reimbursement and such failure is not a result of a good faith dispute between City and Franchisee, City may refuse to issue additional permits.

D. Notification. Franchisee shall comply with the requirements of Oregon Utility Notification Law and implementing rules and regulations.

E. Relocation. City may require Franchisee to relocate its Facilities as follows:

1. If the removal or relocation of Facilities is caused directly by development of private property or any project sponsored or funded by a third party (including but not limited to any governmental agency or instrumentality other than the City) and the removal or relocation of Facilities occurs within the area to be developed or is made for the benefit or convenience of a third-party, Franchisee may charge the expense of removal or relocation of Facilities to the developer or other third-party, including the cost of acquiring private rights, permits, and other associated costs that result from the relocation. Franchisee shall be solely responsible for enforcing collection from the developer or other third-party, but Franchisee shall not be required to remove or relocate Facilities for the benefit of third-parties until it receives payment for the removal or relocation. For the purpose of this paragraph, the removal or relocation of Facilities shall be considered “caused directly” by a private development or third party project if, for example, the removal or relocation is necessary to enable the developer or third party to make any improvements or otherwise satisfy any conditions required under any permit, rule, regulation, or other requirement applicable to the project.

2. If Section 5.E.1 does not apply, and subject to Section 5.G below, if the removal or relocation of Facilities is required by City for a City-funded project that serves a public purpose (e.g., a street widening project undertaken independently of a project described in Section 5.E.1), Franchisee will remove or relocate its facilities at Franchisee’s expense within a reasonable time after notification by City and delivery of the City’s 100% complete design plan; provided that if the City requires the subsequent relocation of the same Facilities within five (5) years of the date of the last relocation, City shall bear the expense of the subsequent relocation; and provided further the removal and/or relocation of Facilities that are used to serve City as a customer of Franchisee shall be subject to terms of Franchisee’s tariffs and not this Section 5.E.2. City will make a reasonable effort to provide Franchisee with an alternate location for its Facilities within the Right-of-Way or Public Places. The City will make every effort to coordinate with the Franchisee during project development to reduce or eliminate conflicts with existing facilities, including coordinating and communication with Franchisee and interested parties regarding the relocation project.

F. Right-of-Way Vacation; Transfer of Property in Right-of-Way or Public Place; Relocations into Right-of-Way.

1. City shall retain public utility easements or otherwise require the petitioner of the vacation to grant an easement or obtain an easement in such form and in a location acceptable to

Franchisee if City vacates any public Right-of-Way or Public Place where Franchisee has facilities. If Franchisee's Facilities must be relocated from a vacated public right-of-way, the petitioner of the vacation will bear the expense of moving the Facilities and obtaining alternate rights, permits or easements.

2. In the event City conveys, assigns or transfers title to any property within any Right-of-Way or Public Place in which Franchisee has Facilities, as part of said conveyance, City shall either (i) secure from such transferee an easement or other rights allowing for such Facilities to remain in place in a form acceptable to Franchisee or, (ii) if such Facilities are to be relocated, (x) City shall obtain an easement or other rights in such form and in such location as are acceptable to Franchisee, and (y) the expense of relocating the Facilities and obtaining such easement or other rights shall be borne by City.

G. Underground Conversions. Franchisee shall remove and replace overhead Facilities with underground Facilities at the request of the City. Cost responsibility shall be allocated in accordance with all applicable Oregon Administrative Rules and a schedule agreed upon by the City and Franchisee. The City shall require that each customer served from the existing overhead Facilities shall make all facility changes to the customer's premises in accordance with Franchisee's policies and standards necessary to receive service from the underground facilities as soon as they become available.

H. Vegetation Management. Franchisee or its assignee may prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways, to prevent the branches or limbs or other part of such trees or vegetation from interfering with Franchisee's Electrical Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent Franchisee, when necessary and with the approval of the owner of the property on which they be located, from cutting down and removing any trees which overhang streets.

Section 6. Transfer of Franchise. Franchisee shall not sell, assign, dispose of, lease, or transfer in any manner whatsoever any interest in this Ordinance, without written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed. In the event the City provides such consent, the City may impose reasonable conditions, including but not limited to the requirement that the transferee acknowledge in writing and agree to be bound by the terms of this Ordinance. City shall have the right to collect from Franchisee City's actual administrative costs associated with processing a transfer request, including the cost of ascertaining the financial responsibility of the proposed transferee. Franchisee may mortgage this Ordinance, together with its Facilities and properties within the City, in order to secure any legal bond issue or other indebtedness of Franchisee, with no requirement for City's consent or that the trustees acknowledge in writing and agree to be bound by the terms of this Ordinance.

Section 7. City Rights and Obligations in Franchise.

A. City Supervision and Inspection. City shall have the right to inspect all construction and installation of Franchisee's Facilities to insure compliance with governing laws, ordinances, rules and regulations as they relate to the City approved permit.

B. Termination or Abandonment of Franchise. Upon any termination of this Franchise, if City and Franchisee are not engaged in efforts to renew or renegotiate this Franchise, (i) all above ground Facilities installed or used by Franchisee shall be removed by Franchisee at Franchisee's expense or de-energized and abandoned in place with approval of the City and the property on which the Facilities were used or restored by Franchisee to the condition it was in before installation; (ii) all underground Facilities installed or used by Franchisee shall be de-energized and abandoned in place.

C. City's Work in Right-of-Way. Whenever City shall perform or cause or permit to be performed any work in any Right-of-Way or Public Place where such work may disturb or interfere with Franchisee's Facilities are located, City shall, or shall require its permittees, to notify, in writing, Franchisee sufficiently in advance of the contemplated work to enable Franchisee to coordinate with the City or permittees, as applicable. No structures, buildings or signs shall be erected below Franchisee's Facilities or in a location that prevents Franchisee from accessing or maintaining its Facilities.

Section 8. Franchise Fee.

A. Franchisee shall pay monthly to City five (5) percent of Franchisee's Gross Revenues received from customers within the City limits of the City excluding amounts charged and received for separately billed governmental taxes and governmental fees.

B. The fee required by this section shall be due and payable within 30 days after the end of each month. With respect to any amount or portion thereof due hereunder that is not disputed in good faith by Franchisee, City shall have the right to charge interest at the rate of 5% per annum.

C. With each payment, Franchisee shall furnish City with a written statement verifying the amount of gross revenues of Franchisee within City for the monthly period covered by payment.

D. City's acceptance of any payments due under this section shall not be considered a waiver by City of any breach of this Ordinance.

E. City will provide notice of any annexation of territory, including a map of the annexed territory, a legal description of the boundary change, each site address to be annexed as recorded on county assessment and tax rolls and a copy of the annexation ordinance within ten (10) days of the annexation. Franchisee's obligation to pay franchise fees on revenue generated by service to the annexed property shall begin ten (10) days after notice is actually provided.

Section 9. Franchise Records and Reports. Franchisee shall keep accurate books of financial accounts at an office within the State of Oregon throughout the term of this franchise

and for six years after the expiration or termination of this Ordinance. Franchisee shall produce all books and records directly concerning its gross revenues and other financial information necessary for calculation of the franchise fee for inspection by City, upon ten (10) days' written notice, during normal working hours provided that only records that support payments which occurred during a period of three (3) years prior to the date the City notifies Franchisee of its intent to conduct an inspection shall be subject to review. City may require periodic reports from Franchisee relating to its operations within the City. City shall have the right during the term of this agreement or within 180 days after expiration or termination of the Ordinance to audit Franchisee's records for the period of three (3) years prior to the audit. If the audit reveals underpayment of five percent (5%) or more, the City may expand the audit to cover up to six (6) years. The audits shall be undertaken by a qualified person or entity selected by City. The costs of the audit shall be borne by City, unless the results of the audit reveal an underpayment of more than five percent (5%) or more, the full cost of the audit shall be paid by Franchisee. Franchisee shall promptly pay the portion of the underpayment as determined by the audit not subject of a good faith dispute to City together with nine percent (9%) annual interest from the date the payment should have been made to the date the payment is actually made. Any audit information obtained by City under these provisions shall be kept confidential to the maximum extent allowed by Oregon law, except that this obligation shall not prevent the City from introducing audit results in any forum where enforcement of the provisions of this Ordinance is at issue. Franchisee's obligations under this Section shall be subject to the requirements of applicable laws.

Section 10. Permit and Inspection Fees. Subject to the limitations set forth in Section 8, nothing in this Ordinance shall be construed to limit the right of City to require Franchisee to pay permit fees or reasonable costs incurred by City in connection with the issuance of a permit, making an inspection, or performing any other service for or in connection with Franchisee or its Facilities.

Section 11. Subdivision Plat Notification. City shall provide written notice of tentative subdivision approval, including a copy of the tentative plan, to Franchisee at least Twenty (20) days prior to approving the tentative plan to provide Franchisee an opportunity to comment on the portion(s) of the plan which impact Franchisee's facilities and/or easement rights. Further, City agrees that any public utility easements included on each final plat will be at least ten feet in width. City also will include a restrictive covenant or easement as part of the final plat limiting development on individual lots within Franchisee's easement corridors upon a timely request from Franchisee that is consistent with the restrictions set forth in the applicable easements held by Franchisee and that indicates that consent to install any fences, structures, buildings or other permanent facilities such as swales, ponds or other hardscaping features within the easement must be obtained from Franchisee. With respect to new public utility easement areas, the City will include a restrictive covenant or easement as part of the final plat prescribing that no fences, structures, buildings or other permanent facilities such as swales, ponds, or other hardscaping features may be installed or maintained in the public utility easement area.

Section 12. Enforcement and Termination of Franchise for Violation

A. Default. City may terminate this franchise, as provided in Section 12.B below subject to Franchisee's right to a court review of the reasonableness of such action upon the failure of Franchisee to perform promptly and completely any material term, condition, or obligation imposed upon it under this franchise; provided that City shall first provide Franchisee written notice of any such failure and Franchisee shall have sixty (60) days from receipt of such notice to cure the failure, or if the failure cannot reasonably be cured within sixty (60) days, to commence and diligently pursue curing the failure. If Franchisee does not cure the failure within the sixty (60) day period, or does not commence and diligently pursue curing the failure within the sixty (60) day period, then the City Council may declare the franchise terminated.

B. Termination for Defaults Not Cured. The City may terminate this Franchise for defaults that are not cured within the time allowed by Section 12.A by providing notice of termination to Franchisee following the declaration of termination by the City Council. Franchisee may challenge the notice of termination by providing a written protest to the City Manager within ten (10) business days of the date of the notice of termination. The City Manager, on receipt of the protest, shall refer the protest to the City Council for a decision. The termination will not become final until after the decision by the City Council. Because of the potential public health and safety risks that could arise as a result of cessation of power distribution within the City, if the City decides to terminate the franchise, it shall set a termination date that allows for implementation of a plan to assure continued electrical power delivery service.

Section 13. Remedies not Exclusive; Waiver. All remedies granted the City under this Ordinance are cumulative, and recovery or enforcement of one is not a bar to the recovery or enforcement of any other remedy. Failure to enforce any provision of this Ordinance shall not be construed as a waiver of a breach of any other term, condition or obligation of this Ordinance.

Section 14. Franchise Term; Acceptance; Effective Date. This Franchise is granted for a term of five (5) years beginning on April 1, 2021. The Franchisee shall, within sixty (60) days from the date this ordinance passes, file with the City its written unconditional acceptance of this Franchise, and if the Franchisee fails to do so, this ordinance shall be void. In the event of any conflict between the terms of this Franchise and future City ordinance setting forth terms and conditions of general applicability to franchises, the terms and conditions of this Franchise shall govern.

Section 15. Renewal. At least 120 days prior to the expiration of the Franchise, Franchisee and City shall agree to either extend the term of this Franchise for a mutually acceptable period of time or the parties shall use good faith efforts to renegotiate a replacement Franchise. Notwithstanding the foregoing, so long as the parties are in good faith negotiations to replace this Franchise, this Franchise shall continue to remain in effect unless otherwise terminated as provided herein.

Section 16. Severability. If any section, subsection, sentence, clause or portion of this Ordinance is for any reason held invalid or rendered unconstitutional by any Court of competent jurisdiction, that portion shall be deemed a separate, distinct, independent and severable provision and the holding shall not affect the validity or constitutionality of the remaining

portion of this Ordinance. If for any reason, the franchise fee is invalidated by court or governmental agency, the then highest permissible franchisee fee allowed shall be the franchise fee.

Section 17. Notices. Any notice required or permitted under this Ordinance shall be in writing and delivered in person, by overnight courier or by registered or certified United States mail, addressed as follows:

To City:
City of Prineville
ATTN: City Manager
387 NE Third Street
Prineville, OR 97754

To Franchisee:
Pacific Power
ATTN: Customer and Community Affairs Vice President
825 NE Multnomah
Lloyd Center Tower, Suite 2000
Portland, OR 97232

or other address specified by either party in writing in a notice conforming with these requirements. Notices shall be deemed effective when received or, if (i) sent via overnight courier, the next business day, and (ii) if deposited with postage prepaid in the United States Mail as registered or certified mail, three (3) business days following the date of deposit.

Section 18. Waiver of Jury Trial. To the fullest extent permitted by law, each of City and Franchisee waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this franchise. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

Section 19. Interpretation/Jurisdiction. Interpretation of the Franchise shall be governed by the laws of the State of Oregon and any legal action relating to this Franchise shall be brought in Crook County Circuit Court.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF PRINEVILLE DO ORDAIN AND APPROVE THE AFOREMENTIONED AGREEMENT, presented for the first time at a regular meeting of the City Council held on July ____, 2021 and the City Council finally enacted the foregoing ordinance this ____ day of July ____, 2021.

Rodney J. Beebe

Mayor

ATTEST:

Lisa Morgan, City Recorder

Accepted by PacifiCorp, dba Pacific Power

By: _____

Name: _____

Title: _____

Date: _____

**RESOLUTION NO. 1501
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION APPROVING A COOPERATIVE SERVICE AGREEMENT WITH
CROOK COUNTY FAIRGROUNDS**

Whereas, the City of Prineville (“City”) and Crook County, a political subdivision of the State of Oregon, acting on behalf of the Crook County Fairgrounds, (“Fairgrounds”); each are owners of certain vehicles and equipment such as, but not limited to, tractors, backhoes, excavators, dump trucks, tractors, pumps, maintenance trucks, sewer cameras, and graders, hereinafter collectively referred to as “equipment” that City and Fairgrounds are desirous of exchanging on a temporary basis for the other’s use; and

Whereas, City and Fairgrounds wish to have an agreement that delineates the responsibilities and liabilities of each party in relation to their use of the equipment; and

Whereas, City staff and Fairgrounds staff have negotiated an Agreement regarding the equipment; and

Whereas, City staff believes it is in the best interest of the City to approve and execute this agreement.

NOW, THEREFORE, the City of Prineville resolves that the Agreement between the City and Fairgrounds attached hereto is approved and the Mayor is authorized and directed to sign the agreement.

Approved by the City Council this ____ day of July, 2021.

Rodney J. Beebe, Mayor

ATTEST:

Lisa Morgan, City Recorder

COOPERATIVE SERVICE AGREEMENT

PARTIES:

City of Prineville
387 NE Third Street
Prineville, OR 97754

("City")

Crook County
300 NE 3rd Street
Prineville, OR 97754

("Fairgrounds")

This Cooperative Service Agreement ("Agreement") is entered into as the date set out below (the "Effective Date") between the City of Prineville, a municipal corporation of the State of Oregon ("City") and Crook County, a political subdivision of the State of Oregon, acting on behalf of the Crook County Fairgrounds, ("Fairgrounds"); each of City and Fairgrounds are "Party" and together the "Parties."

RECITALS

- A. City and Fairgrounds are desirous of cooperating to provide each other with vehicles, equipment, and building space for the other's use.
- B. The parties wish to memorialize their agreement and delineate responsibilities of each party in relation to the services provided.

AGREEMENT

NOW, THEREFORE, in consideration of the parties' mutual obligations contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agrees as follows:

1. **Term.** This Agreement shall commence on July 1, 2021, shall terminate on June 30, 2022, and shall automatically renew for annual one-year periods beginning on July 1st and terminating on the next subsequent June 30th, unless otherwise terminated by either party upon the giving of 30 days written notice to the other party.
2. **Termination.** This Agreement may be terminated by either party upon written notice to the other party of its intention to terminate thirty (30) days prior to the effective date of termination.
3. **Services.**
 - a. Each party agrees to provide the other, upon reasonable notice as defined heretoafter, certain vehicles and equipment which shall include but not be limited to the following: tractors, backhoes, excavators, dump trucks, tractors, pumps, maintenance

trucks, sewer cameras, and graders, hereinafter collectively referred to as "Equipment." Additionally, each party agrees to provide the other, upon reasonable notice as defined heretoafter, access to building space owned by the other, hereinafter referred to as "Space."

- b. The Party receiving the equipment shall take proper precaution in its operation, storage and maintenance. Equipment shall be used only for its intended purpose. The Party using the equipment shall permit the equipment to be used only by properly trained, properly licensed, and supervised operators. The Party using the equipment shall be responsible for equipment repairs necessitated by misuse or negligent operation. The Party using the equipment shall not be responsible for scheduled preventive maintenance (P.M.) unless equipment hours used exceeds the P.M. schedule periods and has been agreed by the Party providing the equipment. The Party using the equipment shall perform and document required written maintenance checks prior to and after use and shall provide routine daily maintenance of equipment (i.e., fluid checks, lubricating, etc.) during the period in which the equipment is in that Party's possession.
- c. The Party providing the equipment shall endeavor to provide equipment in good working order and to inform the Party using the equipment of any information reasonably necessary for the proper operation of the equipment. The equipment is provided "as is", with no representation or warranties as to its condition or its fitness for a particular purpose. The Party using the equipment shall be solely responsible for selecting the proper equipment for its needs and inspecting equipment prior to use. It is acknowledged by the Parties that the Party providing the equipment is not in the business of selling, leasing, renting or otherwise providing equipment to others and that the Parties are acting only for their mutual convenience and efficiency.

4. Notice. Each party shall provide the other with notice of its intention to utilize the other's equipment or space. Each party shall have the right to deny the other the use of its equipment or space; however, such denial shall not be unreasonable.

5. Insurance. Each party shall maintain insurance or self-insurance sufficiently adequate to protect such party from any liability arising from or relating to such party's obligation under this agreement.

6. Responsibility for Damage or Loss/Indemnification. City is not responsible for any damages or loss not related to City's acts or omissions while a City vehicle or equipment is in the custody or control of Fairgrounds. Fairgrounds is not responsible for any damages or loss not related to Fairgrounds' acts or omissions while a Fairgrounds vehicle or equipment is in the custody or control of City. Each party agrees to indemnify, defend, and hold harmless the other from all claims, lawsuits, and actions of whatever nature brought against it which arise as a result of a party having custody or control of the equipment of the other or for any actions or claims arising out of a Party's use of the other's space. This provision is subject to the limitation, if applicable, set forth in Article XI, Section 10 of the Oregon Constitution and in the Oregon Tort Claims Act, ORS 30.260 to 30.300; provided however, liability of the party having custody or control of the equipment of the other, or for actions or claims arising out of a Party's use of the other's space, its officers, employees or agents acting within the scope of their employment or

duties on claims within the scope of Oregon Revised Statutes (ORS) 30.260-30.300 shall not exceed the limits as described in ORS 30.272.

7. **Warranties.** Each party expressly disclaims all warranties related to the services provided under this Agreement, whether express or implied, including the implied warranties of merchantability and fitness for a particular purpose.

8. **Employment Status.** It is mutually understood and agreed by and between the parties hereto that neither this Agreement nor any services performed hereunder shall constitute any change in the employment status of any employees of the parties to this Agreement. It is additionally understood and agreed that neither party shall have the right to control or direct the activities of any employee of the other during the performance of any services under this Agreement. Each of the parties shall, at its own expense, keep in full force and effect during the terms of this Agreement, statutory workers' compensation insurance or adequate self-insurance funds to provide coverage for its own personnel.

9. **Amendment.** This Agreement shall not be amended except by a writing signed by both parties.

10. **Entire Agreement.** This Agreement shall constitute the entire agreement of the parties regarding the subject matter hereof and shall supersede all prior or contemporaneous agreements, proposals, negotiations, understandings, representations and all other communications, both oral and written, between the parties, including any additional or different terms or conditions as may be set out in any order form or other document submitted by one party to the other.

11. **Officials Not to Benefit.** No elected official or employee of City or Fairgrounds shall be personally paid or personally receive directly or indirectly any share or part of this Agreement or any benefit that might arise therefrom.

12. **Venue and Governing Law.** Venue for any and all legal actions regarding the transactions covered herein shall lie in the Circuit Court in and for the County of Crook, State of Oregon, and this Agreement shall be governed by the laws of the State of Oregon.

13. **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage prepaid, or by email if the recipient provides confirmation, addressed to the party to whom such notice is to be given at the address set forth below, or at such other address as has been previously furnished in writing to the other party.

City: Eric Klann, City Engineer
City of Prineville
387 NE Third Street
Prineville, OR 97754
eklann@cityofprineville.com

FAIRGROUNDS: Casey Daly, Manager
 Crook County Fairgrounds
 1280 South Main Street
 Prineville, OR 97754
 casey.daly@co.crook.or.us

14. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party, which consent may be withheld in the other party’s sole and absolute discretion.

15. **No Third-Party Beneficiaries.** Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between the parties and is not intended to, and shall not be deemed to, confer rights upon any persons or entities not named as parties, limit in any way governmental immunity and other limited liability statutes for the protection of the parties, nor limit the powers and responsibilities of any other entity not a party hereto. Nothing contained herein shall be deemed to create a partnership or joint venture between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

CITY OF PRINEVILLE

By: _____
 Rodney J. Beebe, Mayor

 Date

CROOK COUNTY

By: *Jerry M. Braumner*
 Signature

 Date *7-8-2021*

Jerry M. Braumner - Commissioner
 Print Name and Title